

RECLAIMING Balance

Edited by Victoria Tauli-Corpuz & Joji Cariño

Indigenous Peoples, Conflict Resolution & Sustainable Development

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&
JOJI CARIÑO

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&
Sustainable Development

Tebtebba
Indigenous Peoples' International Centre for Policy Research and Education

Third World Network

Reclaiming Balance:
Indigenous Peoples, Conflict Resolution and Sustainable Development
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INTRODUCTION

We have a saying in Aotearoa, the place that many peoples still call New Zealand, that the past is always ahead of us. And, indeed, the phrase in our language for the past is *i nga ra o mua* which actually means the days before. Thus the past are the days that are before us and with us as we move into the future. And so in our understanding of the world, you cannot put the past behind you because it is always in front, a constant reminder of what has been and well may be in the future.

And one of the things that I think is important for us to do as we discuss the issue of conflict resolution is to never lose sight of the past that has shaped the conflicts within which our people are involved. And whether they are conflicts between and among indigenous peoples, conflicts with nation-states, or conflicts with multinational corporations, they have historic origins, which shape not just the conflict itself but our past responses and present strategies.

And it seems to me that no matter how diverse our particulars are as indigenous peoples, they have two common sources, two common pasts if you like. The first is the common fact of colonization. As indigenous peoples we have been colonized and dispossessed in our own lands by people from other places for hundreds of years. That history persists today. Even in the lands of indigenous peoples which have now gained independence or are once again self-determining, that past history of colonization still shapes many of the issues that continue to be present in the so-called "developing

world".

The second shared history that we have is simply the fact of our indigenousness — the fact that we share, in spite of our linguistic differences, our different geographies and our different technologies, a common sense of oneness with mother earth, a sense of kinship with our ancestors, and a view of the world which is markedly different from that of the colonizing state.

It is out of these two common pasts that I hope to construct this overview.

One of the things I believe colonization does, whether it is enforced in North and South America, in Africa, in Asia or throughout the Pacific, or indeed in Europe itself, is make a number of assumptions. One of the most fundamental of those assumptions is that the ways of the colonizer are somehow inherently better, that there is something in the make-up of people who came to indigenous lands from colonizing Europe, that they had an in-built, almost a genetic sense of superiority. The corollary of that mythical belief was the assumption that indigenous peoples were inherently inferior.

Those assumptions were manifest in many ways — in the certainty that indigenous peoples have an inferior faith (if indeed they were regarded as having a faith at all) that needed to be replaced by the mono faith of the colonizer, in the belief that indigenous peoples have no real sense of governance, of how to organize their lives, or indeed any capacity to be sovereign and self-determining. By the 19th century when the colonization of the indigenous world reached its peak throughout the Americas, Africa, Asia and indeed most of the world, it was a given that the indigenous world was somehow not as worthy as that of the colonizer.

Nearly 200 years later the worst excesses of that construction of indigenous inferiority are now denied and disproved. Sometimes they even cause embarrassment to many of the descendants of those early colonizers. But it is apparent to me that the underlying values that underpin those ideas remain. And so we are still taught to believe that the ways of the colonizer are somehow the best. Whether it is their language, their institutions of government or even, indeed, the ways of settling disputes, it is still assumed to be the "reality" that their ways are better than the ways of our ancestors.

The views of that superiority are no longer expressed openly. Often however they are expressed in the name of reality. We are constantly told that the reality is, you must accept globalization; the reality is, that you must resolve your conflict in this particular Western framework; that you must govern, if you are allowed to govern

yourself at all, according to Western concepts of democracy. And so reality has become the new catch phrase to mask the old colonizing impulse that the ways of indigenous peoples are somehow not as valid or worthy as those of the colonizer.

Yet it seems to me that in all our unique traditions as indigenous peoples, our ancestors did the things that human societies always do. So if there was a dispute or conflict, we resolved it in ways that were deeply sourced in our cultures and in our ways of seeing the world. Many indigenous nations did not have a system of courts, which is a uniquely Western construct. But we did have unique systems of resolving conflict. And one of the dangers that I believe we confront now as we attempt to work through disputes among ourselves or with others is that in the name of reality we will be forced to accept (once again) non-indigenous ways of doing things. And then when those non-indigenous ways do not really work, non-indigenous peoples will chastise us and we will be blamed for their failure. They will say it is impossible working with indigenous peoples, that they cannot get their act together, and that really someone else should sort out their problems for them. Yet in being forced into, say, a Western model of conflict resolution, we are once again being constricted or restrained into systems which are not our own, just as we have been throughout colonization.

What I hope that we may do is as part of this International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples is begin to re-envision, or think again, of the ways in which our ancestors resolved conflicts. That is a difficult task because so much has been destroyed or marginalized by the colonizers. But it is possible if we accept that our past is still before us and that the causes of conflicts in which we are now involved often lie in that destruction and marginalization. If we can achieve the reconstruction and revalidation of our own ways of seeking reconciliation, we also, of course, take a small step on the road to reclaiming our own self-determination, for the ways in which we maintain peace and order among ourselves are a crucial part of what it means to be a self-determining people. For what our ways of settling conflict also does is refocus attention on our own ways of seeing the world.

Let me illustrate with an example from home. In our culture the word in the Maori language for someone with whom you are in conflict is not "enemy." Indeed we have no word for "enemy." Instead the word we use is *hoariri*, which means "angry friend." In that linguistic context the notion of a conflict is that anger has been

caused between friends. Often the friends are relatives, and so the process to resolve the dispute is based on restoring the relationship, on rebuilding the friendship, on establishing reconciliation between people who are close.

What that view of the world does, what the notion of angry friends does, is create not just a culturally specific and unique sense of what a conflict is, but a culturally unique and distinct way of resolving it. And it would seem to me that the values, which underpin that process, certainly survive in our land, and I believe in other indigenous lands as well. Thus the reality that we should be seeking to reconstruct is not the reality of the colonizer where resolution is often based on finding a winner and a loser, but one that seeks to reduce "anger" and so restore relationships in a way that has no losers. For the rights and spirit of one can never be restored if those of another are damaged in the course of finding "resolution."

Yet that recognition also requires a reconceptualization of the notion of rights. In the law of the colonizers, the source of rights was the individual, and the rights were given to an individual by an entity called the State and its institutions. Thus rights could be given and rights could be taken away. As a result many conflicts that indigenous peoples now have with colonizing states arise because the states have taken away or denied the rights of indigenous peoples as collective peoples, and either replaced them with rights vesting in an individual or simply declared that there are no unique "indigenous rights" left.

In our culture, there were no notions of either individual rights or some man-made body that could grant or take them away. Rather rights were inherent in your humanity as the descendant of the ancestors. They came with your birth. They were literally birthrights. And therefore in our law, the most important legal act that could happen in Maori society was the ritual associated with the birth of a new child, because whether the child was a boy or a girl there were certain ceremonies that had to be performed in order to establish the legal place of that child as a descendant of the ancestors.

Then if the rights of the child were denied in any way, that was also a denial of the collective to which he or she belonged. For the child did not exist alone as an individual but as part of a complex interrelationship linking it to the ancestors and mother earth. As a result we also have no word in our language that means "lonely" in the European sense. The notion of loneliness is unknown in our view of the world because the mere fact of birth into the collective mitigates against it. In that context the role of law and the institu-

tions of conflict resolution was to restore the rights of the individual as part of the collective. In a very real sense our people had rights to be safe as individuals, but every right was part of a broader construct of collective responsibilities.

So it seems to me that if those seeds, those values, those understandings of conflict, justice and resolution are present in Maori culture, then they are present too in the cultures of all indigenous peoples. And the challenge for us is to reclaim their birth, reclaim their validity and build upon them the institutions and processes, which will give effect to them once again. In relation to conflicts that indigenous peoples have with states, I believe that the issue is the same.

All of the conflicts that indigenous peoples currently have with the nation-state are also conflicts in which the past lies before us. They grow out of the ongoing culture of colonization and therefore demand unique strategies and unique approaches that can mediate the relationship and the original "anger" of the sense of European superiority that sustains it. If the causes lie in the systemic oppression of colonization, then the answers must lie within the values which colonization sought to destroy and not in the values it still seeks to impose. And so it seems to me that even in disputes with states, we should try to reinvestigate and reclaim what methods we have to sort through the issues with states, rather than accept without question the ideas and institutions these have imposed.

The African-American writer Audre Lorde said in the 1980s that you cannot change the master's house by using the master's tools. For too long, indigenous peoples have been forced to live in the master colonizer's house, where we have been taught that the only way we can relieve our oppression, solve our disputes, and even be "real people" is to use the master colonizer's tools. But I believe strongly that there are indigenous houses and realities, and that we need to reclaim them if we are to seek the true justice which should lie at the heart of any resolution process.

As we address and share some of the heartaches and some of the joys too of being indigenous, I hope that we can turn that sharing into a commitment to reclaim all of the things that our ancestors have left for us. For if we are to truly claim again the right of self-determination — and those who have worked on the UN Working Group on Indigenous Populations know how difficult that struggle is with states — then we must be self-determining in everything that we do. We must be self-determining not just in the way we care for mother earth, in the language we speak, or how we educate our

children, but also in the way we seek to resolve our conflicts. If we can be self-determining in that way, then we rebuild confidence again in those institutions and values which our ancestors gave to us.

And already around the indigenous world attempts are being made to do that. Former staff member of the UN Commission on Human Rights Don Augusto Willemsen Diaz has just recently been part of what became known as the Tribunal of Conscience which sat in Central America to consider issues of importance to peoples there in relation to water. In 1993 I was asked to be part of a tribunal that sat to hear grievances of the Hawaiian or *Kanaka Maoli* peoples against the state government of Hawaii and the federal government of the United States. And soon in Aotearoa a similar international indigenous tribunal will be invited to hear the grievances of our people against the New Zealand government.

People who are descendants of the culture of colonization, particularly Western-trained international lawyers, scoff at those efforts and say "the reality is" they have no legitimacy, they have no force. But it seems to me that the legitimacy lies in the fact that they are indigenous, that they seek to reclaim indigenous legal concepts, and that they seek to solve indigenous disputes, whether of states or among indigenous peoples, in an indigenous way. For legitimacy is not something granted by an external agency. It is something inherent in who we are. If you like, it comes with the rights and rites of our birth, and it is our challenge to act out the legitimacy.

I believe that this is a journey that indigenous peoples are embarking upon. I hope that out of this Conference will come another step in that journey. If that happens, then when your grandchildren and my grandchildren need to address conflict in 20-25 years time, they will not turn automatically to the colonizer's law as we have been taught, but will instead ask what is our law, what is our way, what is justice as we define it. If we can help achieve that, then we will keep the past before us and we will walk into the future with confidence as self-determining indigenous peoples.

Moana Jackson
Executive Director, Maori Legal Services,
Aotearoa (New Zealand)

Presented as Keynote Address at the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples, December 6-8, 2000, Manila, Philippines.

Chapter 1: Thematic Introductions

1

Self-determination and Sustainable Development: Two Sides of the Same Coin

Victoria Tauli-Corpuz

Our struggles, as indigenous peoples and nations, if peeled to the core, are struggles to assert our right to self-determination. Self-determination refers to the right of peoples to determine their own political status and to chart their own economic, social and cultural development.[1] It is our prior and inherent right as peoples. We consider self-determination as our collective right and the very foundation of the enjoyment of our individual civil, political, economic, cultural and social rights. The refusal of many states to recognize this right is one of the root causes of conflicts between indigenous peoples and states. However, at present, many experts in international law[2] and several states[3] accept that, we, indigenous peoples are peoples and as such our right of self-determination should be recognized and respected.

Our self-determining status as indigenous peoples has been existent long before the colonizers invaded our ancestral territories and incorporated us, against our consent, into empires, kingdoms or nation-states. Our ethnic, cultural, tribal or national identities predate the construct called "national identity," which is contoured

around the framework of a nation-state. Nation-states are 18th century creations, whereas indigenous nations, peoples and communities have existed for tens of thousands of years. That we possess sovereign rights on our own and have distinct identities as peoples based on history, territory, tradition, and self-identification was reaffirmed at the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples. In this conference, held in the Philippines in December 2001, we pledged as our ancestors did, that we would continue to fight for this right and perpetuate in dignity our distinct collective identities.

The basis of our own survival and development largely depends on how we maintain the balance in our relationship with each other and with our neighbors; with our territories and the rest of creation; and with the past and the future. It also depends on how we fulfill our obligations to future generations by ensuring that they will inherit a more just, humane and ecologically sustainable world. This is why this book is entitled **Reclaiming Balance**. This balance, which is crucial to our survival as distinct peoples, is also crucial to the survival of the world. The recognition and respect of our right to self-determination is one of the most important steps towards achieving this much needed harmony and equilibrium in a perversely unequal and imbalanced world.

CONFERENCE ON CONFLICT RESOLUTION

Many of the stories shared at the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples are those of indigenous peoples who persisted in sustaining this balance through self-determination. Most of those stories are presented in this book. Unfortunately, we could not publish all and we sincerely apologize to those whose presentations are not included here.

The Conference was an opportunity for indigenous peoples to retell the stories of our struggles in asserting our rights to self-determination, our territories and resources, and our identities. Most of the writers in this book are indigenous individuals who are themselves key actors in these ongoing struggles. Some actively took part in the armed struggles waged against states.` Other papers are authored by non-indigenous persons who are staunch advocates of indigenous peoples' rights.

This is what is unique about the Conference and this book. Many of the stories here are not new as books and articles have been writ-

ten on these same topics. However, most of what have been published were written by academics and researchers who looked at us from the outside. Most of these stories cannot be found in history books, most of which were written by the colonizers or those they trained and the local elite. Our efforts to organize the Conference and to publish this book are a way of asserting self-determination. It is our way of recounting our own histories and representing our own experiences, perspectives and analysis of our past and current situations. It is also our way of challenging the colonial and statist discourses and notions of self-determination, territorial sovereignty, modernity and development, and constructed nationality. The contributions our struggles have made in evolving a broader and more relevant discourse on self-determination and collective rights cannot be underestimated, and it is important to bring these out.

While participants to the Conference came from almost all regions of the world, the bigger number were from Asia, Central and South America and Africa. This was deliberate because we wanted to provide space for those whose stories have rarely been heard. There are more contributions from Asia, as it is one region where indigenous peoples are just starting to write their own stories and where many conflicts still remain unresolved. From South Asia we have India, with papers from the Northeast, specifically the Naga (Ngully) and from the Central Belt (Mullick, Rebbapragada). We have the stories of the Limbu from Nepal (Arjun Limbu), the Kalasha in Pakistan (Hussain and Zaman) and the Jumma[4] in the Chittagong Hill Tracts in Bangladesh (Roy). From Southeast Asia, we have two from the Philippines: one on the Igorot (Carling) and another on the Moro peoples (Esteban). Another two are from Indonesia, one on the Dayak of East Kalimantan (Bamba) and the other on mining and indigenous peoples (Muhammad).

Moana Jackson, a renowned Maori lawyer from Aotearoa, gave the Conference keynote address, which we present as the introduction to this book. The paper on Australia was written by representatives of the National Aboriginal and Torres Strait Islander Legal Services Secretariat (Bellear, Bond and Leslie). From North America, we have the Gitxsan story told by Chiefs Elmer Derrick and Vernon Smith, and one on Mexico (Palomo Sánchez). For Central and South America, we have two from Guatemala (León and Ochoa García), and one each from Panama (Martínez), Colombia (del Pilar Valencia), Bolivia (Paredes Alarcón) and Argentina (Araujo). From the Arctic we have the Greenland experience written by Henriette Rasmussen, and from Africa we have a contribution from Kenya **(**Joseph**).**

At the Conference there were also participants from South Africa, Burkina Fasso, Rwanda, Sierra Leone, Burma, Cambodia, Malaysia, West Papua, Solomon Islands, Peru, Russia, and Armenia. We were also fortunate to have Don Augusto Willemsen-Diaz,[5] who has dedicated his work and his life to help bring indigenous peoples' issues into the United Nations and put into the center of debate the collective rights of indigenous peoples. His presentation at the Conference, which is included in this book, discusses possible functions the United Nations can assume in conflict resolution in indigenous communities without infringing upon their self-determination.

The Conference enabled us to have a more comprehensive and broader understanding of the root causes and trajectories of conflicts in our lands. It has helped us to understand better why some conflicts were resolved and why others remain conflicts to this day. The challenge to resolve or transform these conflicts is tremendous. What comes out very clearly from the papers in this book is that for a just and lasting resolution of conflicts in our territories, the glaring contradictions between states and indigenous peoples in terms of control over lands and resources, perspectives, policies and programs should be addressed. There are many rays of hope in our quest to reclaim the balance we have lost. Many lessons have been learned and it behooves states, the international community, indigenous peoples, social movements and nongovernment organizations to use these well.

All of the stories here are rich historical accounts of our struggles for self-determination and for our rights to territory and resources. Although not all focus on these, references are made to them as overarching contexts. This thematic introduction takes off from the framework of the right to self-determination and sustainable development. Self-determination remains the lynchpin for the various rights which are inherent to us as distinct peoples, and thus it is but right to start off with this.

The first section of this paper deals with the continuing struggles of indigenous peoples to self-determination. It highlights the strategies used by colonizers and states to suppress these struggles as well as the relationship between conflict and the perpetuation of oppressive and unjust policies, laws and programs of colonial and post-colonial governments. The second part looks into how the principle and right to self-determination has evolved and continues to evolve in international and national law. It cites some examples of legal reforms and national laws, which have been changed due to

the struggles of indigenous peoples for self-determination. In line with the need to bring to light the distinct contributions of indigenous peoples in shaping the discourses on human rights and international law, this section includes experiences with self-government and peace negotiations and accords.

The third part establishes the links between the right of self-determination, sustainable development and indigenous territorial and resource rights. It also presents the influences of indigenous peoples in the discourse on sustainable development. The final section looks at the ways to achieving long and lasting peace and sustainable development in indigenous territories. The indigenous peoples' gains and losses in asserting their fundamental right to self-determination are dealt with across the various sections.

HISTORY OF RESISTANCE TO EXTERNAL AND INTERNAL COLONIZATION

The history of most indigenous peoples in the world is a history of constant struggle and resistance. During the colonial era this resistance came in the form of civil disobedience, uprisings, revolts and wars against invaders and colonizers. Even before civil wars for independence came about, many indigenous peoples had already revolted or risen against the colonizers who attempted to penetrate their territories. Not only did the colonizers launch military attacks against them but their ways of life were also systematically destroyed. These revolts were the precursors and foundations upon which national wars against colonialism were built. Anti-colonial wars were waged for defense and to assert the inherent right of peoples to self-determination. Refusing to come under the rule of foreign powers, many indigenous peoples participated actively in civil and anti-colonial wars.

Unfortunately, in most countries, after independence was gained and the nation-state emerged, indigenous peoples were once more denied of their right to be self-determining. This was not an unexpected development because before the colonizers left they trained a cadre of local people who would continue their development or modernization agenda. They ensured that the constructed nation-state was shaped in their own image. Professor Rodolfo Stavenhagen, an anthropologist and the United Nations Special Rapporteur on the Fundamental Freedoms and Human Rights of Indigenous Peoples, aptly described this process which he saw in Latin America.

> *The dominant concept of nation-state, identified with centralist and republican tradition which emanated from western Europe from the nineteenth century onwards, was adopted uncritically by Latin American states. This was despite the fact that their demographic and cultural composition was totally different from the European models which were their inspiration, and it caused tensions and disagreements between government policies and the social realities of the countries from the start. The contradiction between the formal and real country or the imaginary and deep country was often and remains much talked about.*[6]

It is not surprising, therefore, that indigenous peoples felt betrayed by the nation-state as their basic right to self-determination which their ancestors fought and died for was, once again, violated by the new rulers. Legal, cultural, social and economic systems of European origin were put in place. These ignored or contradicted pre-existing social, political and cultural systems, which they developed to govern their communities and their relations with nature and their neighbors. The states enshrined doctrines and laws, which are legal fiction inherited from the colonizers, such as *terra nullius*,[7] crown lands or the Regalian Doctrine.[8] Theories of racial superiority, the imperative and mission to civilize the savage, "manifest destiny" were created to justify the ethnocide and genocide of indigenous peoples. Ancestral territories were either claimed by the state as crown lands or public lands or were converted into private property to be owned by individuals, no longer collectively. The colonizers used the Western political system as a standard to claim that the indigenous peoples were incapable of self-government and lacked the needed requirements to qualify as nations.

When such racist justifications became unacceptable or politically incorrect, indigenous peoples were referred to as vulnerable "cultural or ethnic minorities" or wards to be protected and guided towards the path of progress, development and democracy. Indigenous socio-cultural and political systems, which were seen as barriers to the entrenchment of colonial rule or the perpetuation of state hegemony, were destroyed or made illegal. These were the factors that have spurred the indigenous peoples to continue their ancestors' struggles to maintain their pre-colonial, self-determining status as peoples and nations.

The history of colonization, which undermined or destroyed the pre-colonial systems of indigenous peoples, and the resistance they put up shaped the conflicts in many territories. The stories in this book show that in spite of the colonizers' and nation-states' system-

atic efforts to dominate, subjugate and assimilate them, they have persisted in asserting their worldviews and in using their own economic, political and cultural systems. The degree to which these cosmologies and systems have been retained or changed depended on the strength of their resistance. The fact that some elements of these systems continue to be practiced today even after systematic attempts by colonizers and nation-states to destroy and undermine them provides further justification of the right of indigenous peoples to self-determination. The recuperation of elements or whole cosmologies and systems is crucial. Professor James Anaya, an eminent indigenous international lawyer, reiterated the role of self-determination in this:

> *Self-determination is identified as a universe of human rights precepts concerned broadly with peoples, including indigenous peoples, and grounded in the idea that all are equally entitled to control their own destinies. Self-determination gives rise to remedies that tear at the legacies of empire, discrimination, suppression of democratic participation, and cultural suffocation.*[9]

From Independent Communities to Subjects of Empires

As the determination of political status is one of the core elements of the right of self-determination, it is important to look at the political pre-invasion status of indigenous peoples. This is the content of the historical overviews of the conflicts discussed in this book. Sanjay Bosu Mullick goes back to the years before Christ and traces how the non-Aryan indigenous peoples (Dravidians), who are now called Scheduled Tribes or *Adivasi*, were victimized by a series of invasions started by the Aryans from 321 BC to 185 BC. These established the caste/class-based Mauryan Empire. The establishment of Hindu and Muslim feudal states followed in the 7th century and British colonial rule in the 1800s. When the Indian State gained its independence in l947, the oppression and marginalization of the tribals continued. Mullick describes this continuing pattern:

> *The first came with the entry of the Indo-Aryans (said to be from Southern Russia) around 1500 BC. The Indo-Aryans superimposed themselves over the native Dravidians who were then occupying the Indus city-states [what is Pakistan today] along the Ganges. The second wave of colonialism came with the Westerners, specifically the British colonizers, who by 1757 had established a firm control over the subcontinent. The British*

> *government however initially did not rule the region directly; it administered the area through the East India Company until 1857 when it was ceded to the British crown. This started the drawing and redrawing of the geopolitical divisions of the Indian territory that would have significant impact on the indigenous peoples to the present.*

Be it the Aryan Rashtra (state), Islamic Sultanate, the British Raj or the modern Indian nation-state, a mixture of aggression and paternalism has always characterized the official policy towards indigenous peoples…In the main, the history of indigenous peoples of India has been a history of conflict between two different social systems.

Mullick shows the responses of the indigenous peoples and the various strategies they used, characterizing these as processes of "retaliation and retreat," "conflict and compromise" and "confrontation and submission." He emphasizes that these responses in no way indicate that they have surrendered and conceded defeat to the external and internal colonizers. These were fitting responses considering the balance of power between them and the colonizers and the Indian nation-state.

Phyobemo Ngully writes about the Naga peoples, who until now are trying to negotiate their political status with the government of India. Before they were invaded by the British in l832, the Nagas, he says, "lived in villages, which were either self-contained and self-reliant sovereign republics much like the Grecian states, or ruled by chieftains with circumscribed functions and authority." The Naga fiercely resisted the British but with the latter's superior military technology in ruthless military campaigns, some parts of the Naga homeland were subjugated. The period between 1839 and 1846 was one of the bloodiest in their history, as it was during this time that the British sent out six military expeditions to suppress the Naga peoples.[10] Ngully writes, "In l879 about one-third of Nagaland came under British rule, and the rest was designated as 'no man's land' which was later partitioned between India and Myanmar (Burma)."[11]

As the British were leaving, the Naga sought an audience with Mahatma Gandhi who agreed that if they did not want to be a part of the Union of India, they would not be forced to do so. They declared their independence on August 14, 1947, one day before India declared its own independence from Britain. Unfortunately, this was frustrated by the newly independent Indian State. The Naga

doggedly asserted their pre-British independent status and negotiated the Akbar Hydari–Naga Agreement[12] with India. However, India[13] did not honor the Agreement, and this is the reason for the long-standing conflict between the Naga peoples and India to the present.

Ngully's description of his own peoples' tenacity in continuing their struggles will determine how this conflict will be resolved in the future.

> *The Nagas, a fiercely independent people with an in-born love for freedom, hold a strong spiritual and cultural bond with their homeland. For them, to die for their land would be the greatest honor, and to fail to defend it would mean disgrace worse than death. Today this remains the spirit, which continues to fuel their struggle for independence and their homeland.*

In the Philippines the continuing struggle for self-determination by the Igorot peoples is tackled by Joan Carling. The Igorots successfully resisted more than 300 years of Spanish colonization (1521-1896). Before the Spaniards came, there was no construct called the Philippines or the Filipino Nation. Carling notes that among the communities which remained unconquered were :

> *…the Igorots of northern Luzon, the Aetas of central Luzon and the Moros of Mindanao in southern Philippines. Throughout the 300 years of Spanish colonization, they retained their indigenous systems and ways of life. The Spanish colonizers were interested from the very start in exploiting the gold of the Igorots who traded it for food and other basic items with lowlanders. They conducted several expeditions into the Cordillera but were effectively rebuffed by the strong resistance of the Igorots.*

This resistance was a major problem for the colonizers, prompting them to portray the indigenous population as barbarians and pagans who had to be civilized and Christianized. This justified the unrelenting series of military expeditions they launched against the Igorot. The Americans who came after the Spaniards were more successful in subjugating them. Aside from effectively using the church to penetrate Igorot territory, they enacted laws,[14] which allowed their appropriation of the Igorots' rich mineral lands. The coming into being of the nation-state called the Philippines continued the colonizers' legacy, as they passed several discriminatory

and oppressive laws and decrees that have violated the rights of the Igorots to self-determination.

Igorot independence, unfortunately, has hardly been written about in mainstream Philippine history books. This was one way by which the colonizers and the newly emerged nation-state marginalized and discriminated against those who resisted their rule. Dr. William Henry Scott, a historian who wrote extensively on Spanish colonization, lamented this:

> *It is a strange thing that history textbooks commonly used in the public and private schools of the Republic of the Philippines never mention the fact that the Igorot peoples of Northern Luzon fought for their liberty against the 350 years that their lowland brethren were being ruled over by the Spanish invaders.*[15]

By deliberately ignoring the stories of resistance and assertions of self-determination of indigenous peoples, colonizers and nation-states can continue to violate this fundamental right.

The fate of the indigenous peoples/ethnic minorities in Burma has trod a similar path. They lived as independent communities before the coming of the British. Liton Bom's[16] paper focuses on the Chin who had their own independent nation with clear territorial borders before British colonization in l895. Without consulting the Chin, the British colonizers drew up the Burma Act of l937, which dismembered Burma from British India. "The western part of Chinland remained under British-India, and the eastern part came under the administration of British-Burma." When Pakistan declared its independence from India in l947, the western part of Chinland was further subdivided between East Pakistan (Bangladesh) and India. The fight of the 16 ethnic minority/indigenous groups against the military dictatorship in Burma has been going on for 38 years. The Chin National Front is one of the groups leading the struggle to get the Burmese government to grant them regional autonomy.

The Kuna of Panama also persisted in their fight against the Spanish colonizers. Flaviano Martínez, a Kuna lawyer, cites this as a background to his presentation of the Comarca San Blas or Kuna Yala.

> *...During the period of 1915 to 1925, the Kuna People were subject of a series of assaults on their culture, which provoked a bloody uprising in February 1925 against the colonial police, resulting in 27 deaths (mostly of policemen). On March 3, 1925 the `Peace Treaty between the Kuna Indians of San Blas and the*

Government of Panama' was signed. One of the principal clauses of the treaty sets forth that the national authorities shall respect Kuna customs and traditions.

Resistance to Assimilation and Integration and the Creation of Indigenous Peoples

Stavenhagen's earlier description of what occurred in Latin America also took place in the newly formed countries in Asia, Africa and the Pacific. The principles of national sovereignty and territorial integrity were used to suppress, marginalize and oppress indigenous peoples. With the creation of new nation-states, the centralization of state power became the main preoccupation of governments. One way to do this was through the forcible assimilation of indigenous peoples and denial of their distinct cultural and ethnolinguistic identities. According to Professor Hurst Hannum, an expert on international law and self-determination, "coerced assimilation of minority groups and indigenous peoples was state policy in both the developed and developing world, as the centralization of state power became a hallmark of political activity in the l950s and l960s."[17]

During colonization, indigenous peoples negotiated and signed various treaty agreements with the rulers, which defined their political and economic status.[18] Some of these treaties were forced upon them to surrender their sovereignty. When new nation-states emerged, additional treaty agreements were forged. While a few states complied, the majority reneged on these agreements. The earlier cited Akbar Hydari-Naga Agreement is just one among many treaties that were not complied with by the nation-states.

The Limbus of Nepal also negotiated a treaty as described by Arjun Limbu in his paper. They were once sovereign peoples with their own territory and socio-political and cultural systems. The Gorkha King, Prithvi Narayan Shah, however, wanting to conquer and rule the many small principalities under a unified Nepal, coveted their territory. He failed to conquer the eastern part of the region (*Limbuwan*) and thus had to sign a treaty of peace and conciliation with Limbu Kings in 1774. The treaty gave Limbus certain rights over their lands. However, in the end the Limbus' customary land tenure system called the *kipat* and their traditional institutions such as the Chumlung (traditional council) were overrun by a totally alien system called the Panchayat system. The government used a land reform program to undermine collective ownership of land

under the kipat system. The Subbas, who were the custodians of Limbu traditions and culture and who maintained the Subba Court which administered justice, became defunct because of a deliberate government policy to weaken them.

These stories of betrayal led to the loss of confidence and trust of indigenous peoples in the state. Such experiences provided the spark, which fueled many of the conflicts between our ancestors and states. The only option left for many of those betrayed by the state was to resort to armed struggle to reclaim what they had lost.

There are indigenous peoples who refused to negotiate treaties with the colonizers and the new nation-states because they did not recognize their rule. This does not mean that they surrendered their rights. In fact, the act of consciously not entering into treaty arrangements is, in itself, an assertion of one's sovereignty.

The relationship of indigenous peoples with the state, almost always, was defined unilaterally by states, and indigenous peoples were expected to accept these. Many states have assumed that indigenous peoples and their cultures and languages would disappear naturally through modernization and assimilation into the dominant culture. This is why states developed hostile policies against the continuing existence of indigenous languages, sociopolitical and cultural systems and practices. International Labor Organization (ILO) Convention 107[19] (1957), the first international legal instrument that dealt with indigenous peoples, assumed that their assimilation or integration into the dominant society was the way to solve the indigenous question. States undertook measures for forced assimilation and integration as the solution to the indigenous problematique. These measures were but manifestations of racist and discriminatory mindsets that do not respect cultural diversity.

The balance of power between the state and indigenous peoples determines the degree of assimilation and integration, and military strength is a key factor that shapes this balance. The experience of indigenous peoples in Argentina shows how assimilation policies changed with a shift in the balance of military strength. Ariel Araujo explains that even under Spanish colonization and beyond independence, indigenous peoples managed to maintain equal military strength with the colonizers. Because of this the National Constitution of 1853:

> *recognized that the sovereignty of the new Argentine State did not extend to the territories of the indigenous peoples. Through-*

> *out this period, the relationship between the various province-states and the indigenous peoples, as well as between the Argentine State and the indigenous peoples, was egalitarian. A mutually agreed upon border existed. The various provincial governments and the national juntas recognized the sovereignty and autonomy of the various Indigenous Nations, just as the Spanish Crown had done previously.*[20]

This arrangement did not last long, however, because when the Argentine State reached military superiority it undertook massive military operations to wipe out indigenous peoples. Araujo notes:

> *Following the consolidation of the Argentine State and the end of the wars among the province-states, the stage of military invasion of the Indigenous Nations began, principally during the presidential administrations of Sarmiento and Avellaneda. Major military interventions during this period were plotted culminating in the 1879 'Conquest of the Desert,' with the Argentine State's occupation of the Patagonia and the genocide of the Mapuche People, the 'Conquest of the Chaco,' with the military occupation of the Chaco forest region, and with several cases of genocide committed against indigenous peoples coupled with the occupation of their territories… The Argentine State unilaterally ignored and breached treaties and other agreements signed during the Spanish colonial era. By the start of the twentieth century, the Argentine State had consolidated its current borders…After the occupation of the territories of indigenous peoples, the Argentine Republic implemented a policy of forcibly integrating and assimilating the surviving indigenous peoples into what was conceived of as the 'national society.' Until 1953, this policy also included the mass murder of indigenous persons who opposed forced integration.*

In Colombia, the indigenous peoples have resisted assimilation and integration and del Pilar Valencia's paper shows what they are currently doing to operationalize the 1991 Constitutional provision, which acknowledges that Colombia is a multiethnic, multicultural country. Her case studies of the Cocama, Yagua and Ticuna peoples who live in Puerto Narino present very concrete ways in which these peoples are asserting their right to govern themselves and define their relationship with those outside of their territories. The indigenous peoples in various parts of the country are developing what they call a Plan of Life, which contains their strategies and plans for ethno-development. Part of this is how to deal

with the reality that their cultures are changing especially with the attempts of the state to assimilate them. Del Pilar Valencia describes the guidelines or strategy they employ:

> *All cultures, whether urban, indigenous, Afro-Colombian or peasant, are in a constant state of change. Nonetheless, at present, it is the dominant society or culture that is controlling and determining that change. In order for the local communities to reaffirm their identity and determine cultural change for themselves, it is proposed that the strategy of 'the 4 R's' be employed, as developed by the Ipkikuntiwuala community of the Kuna Culture:*
> ***R**ecover that which is possible from the past.*
> ***R**eaffirm that which is relevant from the present.*
> ***R**eadapt that which is necessary from other cultures.*
> ***R**ecreate or generate that which is required through new things, when unknown in our own cultures or those of others.*
> *This implies that our starting point needs to be a recovery of the historical memory of social and political organizing, territory, authority, and the application of traditional justice. Such knowledge must be enriched with elements from the present and lessons from the experiences of others. That will make it possible to develop alternatives for facing problems that tradition leaves unresolved, but that indigenous authorities must address. The Emberá of Cristianía added a fifth **R** that ought to be added to this list: **R**esist integrationist and acculturating attempts, as an alternative for maintaining one's cultural identity.*

The cases earlier cited, such as the fight of the Nagas, the Igorot struggle and the Kuna uprising, among others, are stories of resistance against integration and assimilation. Such policies have long been discredited as solutions to what nation-states perceive as the indigenous problem. This is the reason why ILO Convention No.107 had to be replaced by Convention No. 169. The convention had to be purged of its assimilationist framework.

The common aspiration and demand of indigenous peoples is to reestablish and reclaim their connections with their ancestral lands and their indigenous ways of life, and live in dignity with their own worldviews and economic, cultural, social and political systems. Conflicts have arisen because states refuse to recognize the legitimacy of this demand. In fact, for most indigenous peoples, it was because of their valiant resistance to colonial rule that they remained largely unconquered and retained their territories, identities and

cultures. Colonial and national governments crafted oppressive laws and policies, which discriminated against them. In most cases, they fought back using various strategies, such as negotiating treaties, petitions and resolutions, mass mobilization, civil disobedience and the use of the courts. Failure to achieve results with these methods pushed some to resort finally to armed struggle. Some of them have negotiated peace accords with states. Whatever gains indigenous peoples have won came about only because they put up a struggle, using whatever means possible and available.

Laws and policies which discriminate against indigenous peoples, as shown earlier, date back to the colonial era. What is unconscionable is that even to the present, such archaic policies are still in place. Chief Elmer Derrick describes how the Gitxsan, who "... have lived on their territory since creation" are still faced with such discriminatory policies. Western archeological evidence has established that they have occupied their territory for more than 10,000 years. In spite of this unrefuted evidence, the Supreme Court of British Columbia ruled on March 8, 1991, that "... any aboriginal rights, which the Gitxsan and Wet'suwet'en may have held, had been extinguished by the colonial government of BC." Chief Justice McEachern declared: " .. aboriginal rights exist at the pleasure of the Crown if it chooses to do so and ...that the First Nations are to blame for their oppression because they have 'failed to adapt' to the modern world." One would think this was a judgment made during the colonial era and not in the 1990s.

"Indigenous peoples" as a construct is a creation of colonialism. This is not to say that indigenous peoples do not exist or that in post-colonial settings this construct will disappear. If there were no colonization, and equality and non-discrimination were the operative principles followed by builders of nation-states, then there would not be a classification called indigenous peoples. Unfortunately, this is not what happened in history and the clock cannot be turned back; thus it is the responsibility of the international community to rectify this historical wrong. To a certain extent, the degree of resistance of native peoples against colonization and against assimilation and integration defined their identities.

The classic situation, which created "indigenous peoples," was the settler colonization of the Americas, Canada, Australia and Aotearoa (New Zealand). The colonizers came to settle these lands, which were already occupied by the native peoples for tens of thousands of years. These colonizers became the rulers of the new nation-states after they declared their own independence from the

mother empires. They established some form of apartheid, which placed the original, indigenous or native peoples in the margins. The indigenous peoples were called by various names, which include natives, aborigines, Indians. But while they are generally referred to in these terms, they have maintained their distinct identities as nations, tribes or peoples.

In countries where colonizers chose not to settle, there were people who became assimilated into the colonial system more than others. As there were those who refused integration and managed to sustain this position for hundreds of years, substantial differences between the assimilated and unassimilated peoples developed. For instance, in the Philippines, it was eventual assimilation by the dominant populations into Spanish colonial rule and the persistent resistance by others that created differentiation. During the American colonial era the Igorot, Aeta, Moros were categorized as "non-Christian tribes" and "cultural minorities."[21] The Americans used the term "non-Christian tribes" to refer to "the natives of the Philippines Islands of a low grade of civilization."[22] When independence was won, the colonizers left behind a legacy of discrimination and marginalization for those who refused to be integrated into their rule, and this was continued by the newly created nation-state. While the assimilated and non-assimilated are all called Filipinos, the indigenous peoples are those who maintained many aspects of their pre-colonial culture, who still live in their ancestral territories, and who want to maintain their own cultures and traditions and their self-determining status.

The legacy of the colonizers includes analytical constructs and labels they used to differentiate indigenous peoples from those who accepted their rule. Even the names given to particular groups were those invented by the colonizers. These do not even come close to the identities of the indigenous peoples and in most cases are derogatory. Indigenous peoples dealt with this in various ways. Some adopted the labels and used them to strengthen their demands for their rights. Others altered the terms and popularized what they believe are more politically correct.

Anthropologists, for instance, developed the concept of "tribe" to describe kinship patterns in pre-colonial societies. Ngully observes that among his people, there is a popular view that "the whites only did two things in Naga — they called the Naga nation `tribes' and they brought Indians to Nagaland." Tribe is a concept used to denote backwardness or primitiveness and led to policies which ensured that these collectivities became insignificant culturally and

politically with no option left but to integrate with the dominant populations. Most indigenous peoples, of course, rejected integration or assimilation. What many did was to adopt these categories by necessity in order to assert their "otherness" and claim their prior rights as distinct collectivities and peoples.

Whatever their differences were in historical experiences, what is common to indigenous peoples is their continued marginalization and discrimination, and their persistent assertion of their rights to self-determination, to their distinct identities and cultures, and to ownership and control of their ancestral territories and resources. In his keynote address, Moana Jackson aptly described what binds indigenous peoples together:

> *... no matter how diverse our particulars are as indigenous peoples, they have two common sources, two common pasts if you like. The first is the common fact of colonization. As indigenous peoples we have been colonized and dispossessed in our own lands by people from other places for hundreds of years. That history persists today. Even in the lands of indigenous peoples which have now gained independence or are once again self-determining, that past history of colonization still shapes many of the issues that continue to be present in the so-called 'developing world'…*
> *The second shared history that we have is simply the fact of our indigenousness — the fact that we share, in spite of our linguistic differences, our different geographies and our different technologies, a common sense of oneness with mother earth, a sense of kinship with our ancestors, and a view of the world which is markedly different from that of the colonizing state.*

While indigenous peoples are steadfast in maintaining and asserting their distinct identities, many have no choice but to identify themselves as nationals of the countries they are found in. Some indigenous peoples were key players in anti-colonial wars, and thus have a claim in the nation-states that emerged out of these wars. The Igorots, for example, consider themselves as Filipino nationals. The indigenous peoples in Mexico likewise identify themselves as Mexicans.[23] In a message delivered on March 28, 2001 at the San Lazaro Legislative Palace, the Zapatista National Liberation Army (EZLN) said they want a Mexico "… in which the indigenous peoples can be both indigenous and Mexican, in which respect for difference is balanced by respect for what makes us all equal. A Mexico in which being different is not a reason for death, prison, persecution, mock-

ery, humiliation or racism."[24]

Physical and Cultural Dispersion of Indigenous Peoples

A common experience many indigenous peoples share is the dismemberment of their ancestral territories and their deliberate dispersion into different nations, states and regions within nations. This is a direct result both of colonization and the creation of the nation-state. Some of those who lived this experience still dream of the day that they can come together and live in their original homelands. This is one of the most difficult aspects of their struggles as national territories and national sovereignty are sacred cows in nation-state building. However, a few partial successes have been achieved, as several papers in this book show.

The physical and cultural dispersion of indigenous peoples resulted from the splintering of their traditional territories. Their sociopolitical, economic and cultural systems were destroyed, undermined or distorted by the imposition of national laws and governance systems, modernization and so-called development. Much of this was done by states through violent and legal means. Newly established nation-states continued the pattern of genocide and ethnocide of indigenous peoples during the colonial era.

The Naga peoples for instance were dispersed, and their territory divided, by acts of the British and the States of India and Burma, which effectively weakened their resistance. Their territories were first divided between Burma and India. In India, they were dispersed to the states of Nagaland, Manipur, Assam and Arunachal Pradesh, while in Burma they were divided between the states of Kachin and Sagaing Division. The dream of the Nagas in India to create the Greater Naga Homeland to bring back together the dispersed Nagas is becoming more remote each day.

The indigenous Jummas of the Chittagong Hill Tracts suffered a different fate. The CHT was at first a part of India. When India and Pakistan became independent, it was brought under the territorial jurisdiction of Pakistan. The CHT finally ended up with Bangladesh when the latter seceded from Pakistan.

In the case of the Igorot peoples in the Philippines' Cordillera region, they were dispersed not between countries but between regions in the country. In l972, the Igorot found in contiguous areas within the Cordillera mountain range were divided between Region 1 and Region 2. It was a deliberate move to mix them with the lowland populations to make them a minority and undermine their

aspirations for autonomy. Carling provides insights into the various ways and methods the organized indigenous peoples employed to realize this aspiration. Among these was intense lobbying under the leadership of the Cordillera Peoples Alliance at the Constitutional Commission in l986. This led to the adoption of a constitutional provision recognizing the rights of indigenous peoples to their ancestral lands.[25] The 1987 Philippine Constitution also contains general provisions for the creation of two autonomous regions in Mindanao and in the Cordillera region. However, it left the elaboration to a constituted Regional Consultative Commission which drafted an Organic Act for the Autonomous Region and which Congress finalized within eighteen months after submission of the draft. During this time the President passed Executive Order 220 which created the Cordillera Administrative Region. This was a gross distortion of what was envisaged as the Cordillera Autonomous Region. However, this brought the five provinces of the Cordillera under one administrative region.

The dispersion of indigenous peoples because of nation-state building is commonplace in Central and South America. Many of the indigenous peoples in these regions live in mountain ranges, plains and coastal areas, which were common ancestral territories of particular indigenous groups. However, the birth of modern nation-states led to the division of these territories. Thus, today we find the Maya in Guatemala, Mexico and Belize, with the majority in Guatemala. The various ethnolinguistic groups of the Emberá People are currently found throughout the Pacific Andén region, dispersed among the countries of Panama, Ecuador and Colombia. The Kuna are divided between Panama and Colombia. In Colombia, as Valencia's paper points out, the traditional territory of the Ticuna, Cocana and Yagua peoples "spills over international borders (Colombia, Peru and Brazil)."

Stories not told in this book but which illustrate similar experiences are many. We have the Sami peoples of the Arctic who are scattered in Russia, Finland, Sweden and Norway; the Kichwa and the Aymara in Bolivia and Peru; the Mapuche in Chile and Argentina; the Garo and the Tripura in India and Bangladesh; the Maasai in Kenya and Tanzania; and the Batwa in Rwanda, Burundi and the Democratic Republic of Congo. These are but a few examples. This situation of indigenous peoples makes it difficult to apply the concepts of internal and external self-determination. If self-determination is for peoples, and one indigenous nation or group is dispersed between two or among three nation-states, who and how

will internal or external self-determination be applied? It also shows why indigenous peoples carve out and occupy spaces beyond the borders of the nation-state.

Clearly, the physical and cultural dispersion of indigenous peoples has been an effective way to weaken their struggles for self-determination. A classic divide-and-rule tactic, it was also an efficient way to minoritize them. If they were mixed with other populations, then their dominance as a distinct group would disappear. This grossly undermined their capacity to unite and fight against a common enemy. It also compromised their capacity to strengthen their common identities and use and build upon their common socio-economic, political and cultural systems. Divided between borders, it was difficult for them to practice their own cultures and political systems. These acts of dispersal justify the need for trans-nationalizing or internationalizing their struggles. Indigenous peoples have to go beyond the artificial borders set by states to reach out to the other members of their nations or tribes. They also have to bring their grievances outside the border of the nation-states to gain wider responses and more attention from the international community.

Internationalization of Indigenous Peoples' Struggles and Movements

Each nation-state has its own particularity in terms of how it addresses the indigenous question. However, it cannot be denied that since most of them are followers of the Western paradigm of development and modernity, their program is to forcibly assimilate or integrate indigenous peoples into the dominant society. The state's response and methods to meet indigenous peoples' demands determine the forms of counter-response. If the state employs violence instead of redressing and offering legal recourse to grievances, then the only option for indigenous peoples is to take up arms to defend themselves and ensure their survival. Violent means have been and still are used by governments to suppress indigenous peoples. Massive militarization persists in many indigenous territories in countries like Burma, India, the Philippines, Indonesia, Bangladesh, Nepal and Colombia. National security laws[26] are in place in many Asian countries, which legitimize the shooting, arrest and detention of those suspected to be threats to national security. The September 11 terror attack in the US, which led to its global anti-terrorist crusade, has spurred more vicious security measures and laws and military methods, and among the targets are indigenous peoples.

Because indigenous peoples in most countries form the minority

population, there is a necessity to connect with other sectors of society to gain more political strength. In the 1960s and 1970s, indigenous movements linked up with broader national liberation movements, many of which were inspired by the Marxist, Leninist and Maoist ideologies and with their own liberation armies. As international solidarity is an essential element of these movements, solidarity groups emerged in the industrialized countries. These groups facilitated visits of representatives of revolutionary movements to the West, which at times included indigenous individuals.

The increase in the number of refugees from indigenous territories also contributed to the internationalization of their struggles. The worst forms of militarization and violations of human rights were taking place in indigenous peoples' territories, resulting in an exodus of refugees into neighboring countries. Such was the case of the Maya in Guatemala who became refugees in Mexico, the CHT's Jumma who fled to India, and Burma's ethnic minorities who sought refuge in Thailand, India and Bangladesh, and so many others. Others were forced to go on political exile.

The struggles of indigenous peoples in the Americas and in other parts of the world undoubtedly influenced the international community to pay some attention to them. One of the UN's earlier responses was the creation of a Special Rapporteur to study the problems of discrimination of indigenous populations. Prior to that the International Labor Organization issued Convention No. 107 in l957 and Convention No. 169 in l988. In 1982 the United Nations established the Working Group on Indigenous Populations (WGIP), which many indigenous peoples started to use to bring to international attention their grievances against States. If there were laws to protect indigenous peoples' rights and the justice systems work to redress their grievances, there would have been no need to go outside of the borders of the nation-state.

In some cases, collaboration occurs where governments share indigenous peoples within their borders. In fact, the geopolitics between neighboring countries sometimes determines whether peace negotiations or war takes place. For the tribals in the Chittagong Hill Tracts, India played several roles. It became the sanctuary for many of those displaced by the Kaptai Dam project and militarization, as well as the refuge and training area of the Shanti Bahini, the armed group of Parbattya Chattagram Jana Samhati Samiti (PCJSS). When the Awami League came to power in Bangladesh, they made a deal with the Congress Party in India, which agreed to stop providing support and a safe haven to the Shanti Bahini. This left the

PCJSS with no other option but to enter into peace negotiations[27] with the Bangladesh government. But the PCJSS was able to muster international support for its struggle through the creation of the Chittagong Hill Tracts Commission. This international commission conducted an investigation and produced two reports on the human rights situation of the indigenous peoples in the Hill Tracts.

Guatemala offers another well-known case of an armed movement that became transnationalized. While various books have been written about Guatemala, it is rare to find Maya people writing about their situation from their own perspective. In this book, Juan León,[28] one of the leading Maya leaders who took part in the Maya struggle, tells their story. The Maya were active participants in the armed struggle waged under the leadership of the Unidad Revolucionaria Nacional Guatemalteca (URNG).

Describing the long historical neglect of the Maya in Guatemala's history, León says that "the sectors in power closed all possibilities for dialogue and left the vast marginalized and excluded sectors with no political avenues for their proposals and requests." Thus, resorting to armed struggle was the only option left for many Maya peoples. "For several hundred years, the existing political system has generated structural conditions that have provoked extreme poverty, discrimination, exclusion, marginalization, and repression. As a result, the country has not had a stable political system capable of creating conditions of social equilibrium and harmony… The country's greatest conflict was the armed conflict that began in 1960. The conflict lasted for quite a long time, until December 29, 1996, when the guerrillas and the government signed the Accord for a Firm and Lasting Peace."

This struggle was transnationalized, as during the same period similar national liberation movements emerged in the neighboring countries of Nicaragua and El Salvador. These revolutionary movements of oppressed peoples forged solidarity linkages with other groups in these countries. In 1985, the Central American governments[29] held the first of several meetings in Contadora, Panama to look into the conflicts in the region, and among those examined was Guatemala. One year after, Costa Rica President Oscar Arias Sanchez presented the Esquipulas 11 Agreement, a comprehensive regional peace plan based on the simultaneous resolution of existing conflicts in the region. Contacts were formalized between the revolutionaries and the Norwegian government in l987, ushering in the beginnings of peace negotiations.

In March 1990, the National Reconciliation Commission of Gua-

temala[30] and the URNG signed an agreement to start the process for peace negotiations. On recommendation of the UN Secretary General to the UNGA on 19 September 1994, the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) was established. The Maya were marginal in the earlier processes, but comprising the majority of the fighting force, they asserted their right to be active participants in the negotiations. The processes concluded with the Peace Accords, which led to the laying down of arms by the URNG. The Accords include the "Accord on the Identity and Rights of the Indigenous Peoples," which is a testimony of what indigenous peoples can achieve by asserting their right of self-determination.

A case which has not reached the level attained in Guatemala but which similarly became internationalized is the Igorot peoples' fight against development aggression. The object of sustained protest was the infamous Chico River Basin Hydroelectric Dam Project, a "development" project supported by the World Bank (WB) in the mid-1970s. As the WB is an international multilateral institution, there had to be a way to bring the message to them and force them to respond. The need to internationalize the struggle, in particular to get support outside of the Philippines to put pressure on the WB and to publicize the issue widely became part of the campaign strategy. It was clear to us, Igorot activists,[31] that the determining factor on whether this fight would be won or not primarily depended on the strength of the local struggle. At the same time, however, global support and projection were crucial because of the nature of the project and because all efforts to convince the national government to cancel the project had failed. The arrogance of the Marcos government and the World Bank to implement a project against their will was the main reason indigenous peoples took up arms to defend their lands.

The United Nations presented an opportunity to bring this issue to the attention of the international community through our participation in the first session of the Working Group on Indigenous Populations in l982. Since then, the Cordillera Peoples Alliance, which was established in l983, has ensured a representative in all the sessions of the WGIP. Through the CPA, the Igorots can claim to be part of the process that evolved the Draft Declaration on the Rights of Indigenous Peoples. Finalized in l993, the Draft Declaration became the main framework of reference for the draft bill that became the Indigenous Peoples' Rights Act (IPRA) of the Philippines. The CPA

did not actively lobby for this law[32] but it is fair to say that it was they who laid down its foundation. The Constitutional provision, which serves as the basis for this law, was the result of a CPA lobby in 1986.

The IPRA contains much of what the Draft Declaration provides for. Thus, in spite of the fact that it has not yet been adopted by the UN member states, it is already being used as an international customary law. This is clearly one of the gains indigenous peoples have achieved through their persistence in struggling for their rights and in internationalizing their movements. As these few cases show, it is inevitable that indigenous peoples will seek spaces beyond the confines of the nation-state to generate unity and support and to obtain redress for the injustices and human rights violations committed against them.

There are many reasons which justify the need to internationalize indigenous peoples' struggles. Firstly, many of them are divided between nation-states, forcing them to cross borders to forge common struggles. Secondly, most have failed to find redress domestically, prompting them to bring their issues to the international community such as the United Nations and the Inter-American Commission on Human Rights, among others. Thirdly, for those in landlocked regions, engaging in armed struggle brings the need for areas to train and retreat to, and in some cases this usually means the countries nearest to them. Fourthly, institutions that make decisions directly impacting on them are usually found outside of the countries where they are. These are bodies such as the World Bank and the International Monetary Fund, trade bodies like the World Trade Organization, as well as transnational corporations such as mining, oil and gas companies whose headquarters are located in Canada, Australia, Europe or the United States but whose operations cut across indigenous territories. And finally the support and the solidarity of other indigenous peoples, social movements, NGOs, some governments and civil society formations can contribute considerably in improving their chances of success in their struggles.

Bringing indigenous issues into the global arena has increased the pressure on nation-states to address these. But of greater importance is its empowering effect on indigenous peoples. Meeting other indigenous peoples who share similar stories of oppression and injustice but who still actively struggle against these becomes a source of inspiration and strength for those who lose hope. A few have used the human rights complaints mechanisms of the UN Treaty Bodies, which has led to the resolution of some cases. Professor

Richard Falk, a renowned international lawyer, however presents the challenges indigenous peoples still face and the realities they have to deal with:[33]

> *The movement to uphold the basic rights of indigenous peoples has enjoyed enough success over the past two decades to challenge simplistic structural notions of capitalist and modernist primacy. At the same time, the limits of this success help us appreciate the relative strength of these dominant forces that are structuring contemporary world order. As a result, the very survival of indigenous peoples in many specific settings remains in acute jeopardy.*

Evidently, much more needs to be done as there is strong resistance by some powerful states and other non-state actors, i.e., corporations, to recognize that indigenous peoples have the right of self-determination.

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EVOLUTION OF PRINCIPLE AND RIGHT OF SELF-DETERMINATION

The right to self-determination is a subject, which has been extensively discussed in the UN and written about by many experts. It remains one of the most contentious subjects of debates within the General Assembly, the United Nations Commission on Human Rights, the Convention for the Elimination of Racial Discrimination (CERD) and the Working Group on the Draft Declaration. This section presents how it has evolved and several of the legal arguments supporting the contention that indigenous peoples have the right of self-determination. While there is no doubt in indigenous peoples' minds that this is their inherent and prior right, it is important to see how this discourse is shaping up in the UN and how indigenous peoples are contributing to this discourse.

The United Nations Charter, established in l945, recognizes self-determination as a key principle for international relations and is one of its goals. It states that one of the purposes of the UN is:[34]

> *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace.*

From being a principle it started to gain stature as a right. The 1960 "Declaration on the Granting of Independence to Colonial

Countries and Peoples" refers to it as a right: It states: "All peoples have the right of self-determination…"

Subsequently, it was enshrined in common Article 1 of the International Bill of Rights — the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The common Article 1 states:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based on mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The State Parties to this present Convention, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall provide for the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

This Article does not establish or create the right of self-determination. It confirms that this right exists and that it is a right possessed by "peoples" or "a people."[35] Self-determination is expressed in the following freedoms:

- The freedom of peoples to choose their own government or to define their relationship with an existing state;
- The freedom to design and chart their own path towards economic, social and cultural development; and
- The freedom to dispose and use the wealth and natural resources found in their territories.

It also confirms that depriving peoples of their own means of subsistence is a violation of this right. Indigenous peoples consider the right of self-determination as a collective human right, which is

a fundamental condition for the enjoyment of all their individual human rights, be these civil, political, economic, social or cultural. The right to define a peoples' relationship with the state is a fundamental aspect of self-determination. This means allowing peoples to decide on sovereign independence or free association or incorporation into an existing state. The fact that this right occupies a prominent position in both the International Covenant of Civil and Political Rights and the International Covenant of Economic, Social and Cultural Rights (Article 1) is an affirmation that it is both a civil and political right, as well as an economic, social and cultural right.[36]

While the Articles clearly say that this is a right of "all peoples" and not of governments or states, many UN member-states assume that they are the "legitimate representatives" of the people and therefore this right is theirs. Many arguments have been forwarded to clarify that this is, indeed, the right of "all peoples" and not of state governments. The United Kingdom expressed this view clearly at the Third Committee of the General Assembly in l985.[37]

> *It is no accident that the first Article of each of the International Covenants proclaims the right of self-determination. We should always remember that under the Covenants self-determination is a right of peoples and not of governments. Moreover, it is not only peoples suffering occupation by a foreign power which are deprived of their right of self-determination. We are all aware of appalling violations of the right of self-determination, accompanied by equally appalling violations of many other fundamental rights perpetrated against peoples by their own countrymen. Amin's atrocities in Uganda and Pol Pot's in Cambodia are perhaps the most glaring contemporary examples. But they are by no means the only ones. Self-determination is not a single event but a continuous process.*

Article 3 of the UN Draft Declaration on the Rights of Indigenous Peoples deals with the right of self-determination for indigenous peoples. It states:

> *Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

This is almost like Article 1.1 of the UN Covenants on Human Rights except for the use of the term "indigenous peoples" instead of "all peoples." It is an affirmation that indigenous peoples are

included in the category of "all peoples." Article 3 of the UN Draft Declaration on the Rights of Indigenous Peoples remains one of the most difficult and unacceptable articles for some member-states in the UN Commission on Human Rights.[38] They fear that such an explicit recognition of this right poses a potential threat to a state's territorial integrity and sovereignty, as it can be used to justify secession or independence. They prefer that this be qualified to refer merely to internal self-determination, which is expressed in such arrangements as self-government or autonomy.

Internal self-determination in the Martinez-Cobo report is "a people or group possessing a separate and distinct administrative structure and judicial system, determined by and intrinsic to that people or group."[39]

Article 31 of the Draft Declaration is on self-government and autonomy, which states:

> *Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.*

This should be one of the least controversial articles because it fits well within the mold of so-called internal self-determination, which some governments prefer. Moreover some indigenous peoples already exercise varied forms of self-government, such as the *Comarca* in Panama, the Greenland Home Rule government, the Indian reservations in the US and Canada, the Sami Parliaments, regional autonomy in Nicaragua, *resguardos* in Colombia, among others. However, this particular Article, which merely confirms what already exists in practice, has not yet been adopted by the Working Group on the Draft Declaration (WGDD). Its weakness lies in its explicit exclusion from the scope of autonomy such matters as foreign affairs, military security, policing, taxation and judicial issues. Neither does it explicitly state the right of indigenous peoples to their territories and resources. This is the reason why indigenous peoples are not happy with this Article and why they vehemently oppose proposals by some states for it to replace Article 3 on the right to self-determination. The irony, however, is that even this Article has not yet been adopted by the Working Group on the Draft Declaration.

Many arguments are used by some states to dilute the right of indigenous peoples to self-determination. One of these is differentiating between internal and external self-determination. The United States, in several statements at the WGDD, has said it agrees to Article 3 so long as it refers merely to internal self-determination. The dichotomy is difficult for indigenous peoples, and the factors cited earlier on the internationalization of indigenous peoples' struggles relate to this difficulty. The indigenous peoples of North America who negotiated treaties with the European colonizers rightfully claim that the treaties were between sovereign nations and therefore fall within the realm of international diplomacy and external self-determination. Article 36 of the Draft Declaration, which is on treaties, states:

> *Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.*

The phenomenon of globalization, in itself, strengthens the argument against dividing self-determination into internal and external categories. Professor James Anaya says:[40]

> *The internal/external dichotomy effectively is premised on the conception, rejected earlier, of a limited universe of 'peoples' comprising mutually exclusive spheres of community (i.e. states). Given the reality of multiple human associational patterns in today's world, including but not exclusively those organized around the state, it is distorting to attempt to organize self-determination precepts into discrete internal/external spheres defined by reference to presumptively mutually exclusive peoples.*

An added reason why this distinction between internal and external is irrelevant is the fact that the claim of indigenous peoples to self-determination is linked to the claim to territorial and land rights. This is dealt in more detail in the following section on sustainable development.

Another argument used by States, which in effect denies indig-

enous peoples of this right, is that this only applies to peoples under foreign domination. This was the reservation expressed by the Indian government when it ratified ICCPR. It declared that in Article 1 "the words `the right of self-determination'…apply only to the peoples under foreign domination… and these words do not apply to sovereign independent States or a section of a people or nation – which is the essence of national integrity."[41]

It is interesting to note that the countries, which objected to this reservation, were the Netherlands, France and the Federal Republic of Germany. The Netherlands reminded India:

> *that the right of self-determination… is conferred upon all peoples. This follows not only from the very language of Article 1 common to the two Covenants but as well from the most authoritative statements of the law concerned, i.e. the Declarations of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. Any attempt to limit the scope of the right or to attach conditions not provided for in the relevant instruments would undermine the concept of self-determination itself and would thereby seriously weaken its universally acceptable character.*

The Federal Republic of Germany was of the opinion that :

> *the right of self-determination as enshrined in the Charter…and as embodied in the Covenants applies to all peoples and not only those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue their economic, social and cultural development. The Federal government cannot consider as valid any interpretation of the right of self-determination which is contrary to the clear language of the provision in question. It moreover considers that any limitation of their applicability is incompatible with the object and purpose of the Covenants.*

France also objected to this reservation because "..it attaches conditions not provided for by the Charter of the United Nations to the exercise of self-determination."

The stories in this book are clear evidences that strengthen the historical, political and moral claims of indigenous peoples to this right. Indigenous peoples on many occasions have repeatedly said that they are not asking for special rights or special protection but

that the rights applied to others be equally applied to them. The experts of the United Nations Working Group on Indigenous Populations who crafted the Draft Declaration have declared that indigenous peoples, just like all other people, have the right of self-determination. Claims to the contrary are discriminatory, racist and perpetuate further inequalities among peoples. Qualifying it is tantamount to saying that all peoples have the right to self-determination, but where indigenous peoples are concerned it should be qualified or interpreted differently. This kind of discrimination is unacceptable, considering the fact that many indigenous peoples were independent peoples or nations even before states came about. Chief Ted Moses of the Grand Council of the Crees aptly captured this paradox when he said:[42] "How is it that, I, a Cree, whose ancestors have lived in Cree Territory of James Bay for at least 5,000 years, find myself and my people suddenly subject to the laws of States that were only established a few hundred years ago?"

Indigenous peoples' assertions of their rights challenge head on the strict view of international law as the "Law of Nations" and not of individuals and peoples. Their right to self-determination, their right to territories and resources, and their cultural rights pose the biggest challenges to international law. But this is the way international laws should evolve in the first place. Laws are not the creation of brilliant legal minds. Richard Falk argues ".. that the contours of self-determination are an outcome of history and struggle, and that these contours are only partially a matter of legal craftsmanship and analysis, particularly in an area where entrenched interests and power seek to maintain the status quo to the fullest extent possible."[43] The state-centrism of international law and of the United Nations needs to be changed as the world has changed from what it was when the United Nations came into being.

From Independence to Autonomy: Various Forms of Self-determination

Self-determination, as envisaged by indigenous peoples, can come in various forms depending on their history of colonization and the history of their struggles. It also depends on their positions of strength *vis-à-vis* the state. This refers to the balance of power between indigenous peoples' formations and the state. There are those who clamor for independence or secession from the nation-state while others clamor for decolonization. Some indigenous peoples in the Pacific who are still under colonial rule, such as those in New Caledonia, still have valid claims for decolonization.

Massive militarization and systematic divide-and-rule tactics employed by many states have succeeded in creating divisions among indigenous peoples, resulting in the downgrading of their demand for self-determination. For instance, among the Nagas, there are still those aspiring for independence, even if this becomes more difficult to achieve each day. But others are willing to settle for regional autonomy. Those fighting for independence are treated with vicious impunity. The violence unleashed by governments to contain independence movements has led to some of the worst conflict situations we have witnessed in our lifetime.

In 1991 the UN Commission on Human Rights Meeting of Experts held in Nuuk, Greenland and participated in by this writer reviewed the experiences of countries in the operation of schemes for internal self-government for indigenous peoples. One of its key conclusions and recommendations was an enumeration of the features that self-government schemes should include:

Subject to the freely expressed desire of the indigenous people concerned, autonomy and self-government include, *inter alia*, jurisdiction over or active and effective participation in decision-making on matters concerning land, resources, environment, development, justice, education, information, communications, culture, religion, health, housing, social welfare, trade, traditional economic systems, including hunting, fishing, herding, trapping, gathering and other economic and management activities, as well as the right to guaranteed financial arrangements and, where applicable, taxation for financing these functions.[44]

This was further elaborated into a number of general requirements associated with self-government for indigenous peoples. Among these are:[45]

a. The exercise of adequate powers and self-government within the traditional territories of indigenous peoples as a prerequisite for the development and maintenance of traditional indigenous cultures and for the survival of indigenous peoples;
b. Redefinition of the relationship between indigenous peoples and the States in which they now live, in particular through the negotiation process;
c. Self-government as a means of promoting better knowledge about indigenous peoples vis-à-vis the wider society;
d. The assumption that the exercise of self-government

presupposes indigenous jurisdiction, that is, the right of indigenous peoples to establish their own institutions and determine their functions in fields such as lands, resources, economic, cultural and spiritual affairs;

e. The possibility to establish relations with other ethnically similar peoples living in a different region or State;
f. The establishment of mechanisms for joint control by an indigenous autonomous institution and the central government;
g. The necessity to delimit clearly areas of competence in order to avoid conflict;
h. The establishment of conflict resolution mechanisms.

This elaboration is useful to use as indicators for the implementation of self-government schemes by states. For self-government to be achieved most of the existing national constitutions and laws should be amended. Recent experiences in Latin America show moves by indigenous peoples to amend Constitutions towards recognition of the nation-state as pluricultural, pluriethnic and plurinational. This is just stating the obvious as almost all nation-states in the world, except perhaps for Iceland and South Korea, are such.

The Colombian experience, as del Pilar Valencia relates, illustrates how the indigenous peoples influenced a change in the 1991 Constitution to bring recognition of Colombia as a multiethnic and multicultural nation. She notes, "A nascent recognition of Colombia as a multiethnic, multicultural State was incorporated through recognition of Indigenous Territories as political/administrative entities (Articles 286, 329, and 330), recognition of special indigenous jurisdiction (Article 246), and participation of indigenous resguardos in national government funding (Article 357)." The constitutional changes are illustrated in various Articles, such as "… the recognition of indigenous territories as political/ administrative entities (Article 286, 329, and 330), recognition of special indigenous jurisdiction (Article 246), and participation of indigenous resguardos[46] in national government funding (Article 357)." The indigenous peoples were granted collective and inalienable rights to the land in their resguardos. This means these lands cannot be ceded, alienated or seized (Articles 63 and 329).

These changes resulted into a more pluralistic legal system, which gives limited recognition to traditional legal systems that

predate the existence of the Colombian State. According to ONIC (National Organization of Indigenous Peoples of Colombia):[47]

> *The Constitution does not only entrench the autonomy of the authorities of indigenous peoples. It also entrenches their normative autonomy by raising the usages and customs of their communities to rank as sources of law. The Councils take over the functions regarding the following questions: land use, peopling of territories, development plans and programs, public investments, fiscal resources, natural resources, program for communities inhabiting the territories, public order and government representation.*

Other forms of self-determination are the creation of indigenous states, regions, provinces or other administrative arrangements, which offer indigenous peoples some degree of political, economic and cultural autonomy. The Kuna of Panama underwent a different experience from their counterparts in Colombia. Panama used to be a part of Greater Colombia until it seceded in l903. Throughout this time the Kuna (whose ancestral territories are both in Panama and Colombia) remained independent and conducted their own trade with foreign merchants like the British. Panama's secession came about with the help of the Americans who saw this as a way to implement their plan to construct their inter-oceanic canal. This process led to the division of the Kuna nation between Panama and Colombia.[48] The government tried all possible ways to civilize the Kuna. The First Article of the Indian Civilization Law of l908 defined its purpose as "... to reduce the savage tribes which exist in the country to civilized life, by every pacific means, including missions, education, land concessions to non-indigenous colonists, gifts of farm implements, livestock and scholarships." The Kuna fought back and the conflict came to a head with the Revolucion Dule of l925, which was settled through the Treaty of El Parvenir. This Treaty confirmed indigenous territorial rights, which led to the creation of the Comarca of San Blas, which is governed by the Kuna General Congress, the supreme institution of the Kuna.

Martínez' paper elaborately describes how the Kuna of Panama achieved self-government. "The Comarca of San Blas, known today as Kuna Yala, was created under Law Two of September 16, 1938. On February 19, 1953, the National Assembly enacted Law 16 organizing the Comarca of San Blas. Under this law, the Kuna Yala Comarca is a territory given special administrative treatment. The land is under collective ownership and the traditional authorities

are recognized, as are the General Assembly, the Local Assemblies, and the internal authorities of the communities, who are given jurisdiction over misdemeanors and minor civil cases." The law, which recognizes the Kuna legal system, is Law 16 of l953, of which Article 12 states:

> *The State recognizes the existence and jurisdiction of the Kuna Assembly, the Assemblies of the peoples and tribes, other authorities established under indigenous traditions, and the Organic Charter of the Indigenous Communal Regime of San Blas in matters concerning violations of law, except as concerns the application of criminal law.*

Martínez, however, notes that in spite of the Kuna's gains, this applies only to them and does not extend to the other six indigenous groups in the country. The Constitution of Panama still does not recognize the multiethnic, multicultural and multilingual nature of its society.

Another example of those who have achieved some degree of self-government are the Inuit with their Greenland Home Rule Government. Henriette Rasmussen, the present Minister of Culture and Education, describes the Inuit's struggle to assert their right to self-determination and how they achieved self-rule. Indigenous peoples' success in their struggles for self-determination should be appreciated within their own particular contexts, and Rasmussen emphasizes this:

> *The Greenland Home Rule stresses the definition of indigenous peoples as collective entities, being the first inhabitants of part or all of the country. The Greenlanders have collective ownership to their land and resources. Our model for self-government has been an inspiration for other indigenous peoples around the world. It may not be suitable for all other situations, but the principle that the establishment of self-government does not necessarily mean secession or armed conflict — and that it is possible through negotiations and respect for each other to reach an agreement which can lead to self-determination through self-government, was a workable solution for the Inuit.*

The establishment of the Sami Parliaments in Norway, Finland and Sweden, which are results of the struggles of the Sami peoples of the Arctic, is another manifestation of self-rule achieved by indigenous peoples. The various Sami Parliaments now have inter-par-

liamentary processes, which bring them together for common programs. Samis are also found in Russia, but they still have a long way to go to catch up with the achievements of their Scandinavian counterparts.

Undoubtedly these existing forms of self-government still have many imperfections. Indigenous peoples however do not see these as ends in themselves but as building blocks towards the achievement of a wholistic expression of self-determination. While these can be considered as partial gains, there are still many battles to be won.

A case in point is the situation of the Adivasis in India. As mentioned earlier, the revolts and uprisings of the Adivasi against the British colonial rule in the 19th century undoubtedly contributed to the establishment of an independent India. Pandit Nehru acknowledged the Adivasi as distinct peoples when India declared its independence: "The Adivasis have been the first to hoist flags and to fight for their flags…Hereafter, there will be two Flags, one Flag which has been there for the last six thousand years, and the other will be this National Flag which is the symbol of our freedom."[49]

However, the achievement of self-determination among the Indian Adivasi continues to be an uphill battle. Mullick explains why up to the present the indigenous/tribal peoples' assertion of their right to self-determination remains unwavering in spite of the brutality they have suffered under the Indian Armed Forces. The struggle for autonomy in Jharkand, which led to the creation of the Jharkand State in 2000, is only a partial victory because the Adivasi still comprise the minority (27 percent of total population). The Jharkand state brought together the Munda, Oraon, Ho and Santhal and 26 other tribes but did not include the Adivasi from West Bengal and Orissa who demanded to be part of it. Chattisgarh is another newly formed state of which 40 percent are Adivasi.

Paternalism is the approach the Indian government has taken with the Adivasi, who have strongly opposed it from the start. Mullick quotes Jaipal Singh[50] who stated during the formation of India's Constituent Assembly: "We do not ask for protection…we want to be treated like every other Indian." This is a declaration echoed by indigenous peoples in other parts of the world. Equality and non-discrimination are basic elements of the right to self-determination.

For the Moro peoples in Mindanao in southern Philippines, self-determination has taken on other forms. While the Moros in Mindanao have not identified themselves as indigenous peoples,

they were invited to participate in the Conference, and among those who attended were representatives of the Moro Islamic Liberation Front (MILF), who are fighting for independence. The story of the Moro peoples' struggle, presented by Rolando Esteban, is included in this book not only because it has many similarities with the struggles of indigenous peoples but also because it is a symbol of our solidarity with them. Esteban gives the historical development of the Moro struggle against the Spanish and American colonizers and elaborates on what the Moro Question is.

> *The Moro Question which began as an anti-colonial struggle for self-determination first against Spain and the United States has been transformed into a post-colonial one and against the integrationist Philippine State. Ethnicity has fueled secessionism. In the case of secessionism as espoused by the MILF, it has been given greater impetus by the resurgence of Islam not only in the world but also in the Philippines.*
> *Another Moro group, the Moro National Liberation Front (MNLF), entered into peace negotiations with the government after engaging it in combat from 1973 to l976. The negotiations, through the mediation of the Organization of Islamic Countries, culminated in the signing of the Tripoli Agreement between the Philippine Government and the MNLF on December 26, 1976. The Autonomous Region of Muslim Mindanao (ARMM) was established as a result of this Agreement.*

Armed revolutions and uprisings still remain viable forms of struggle for some indigenous peoples, especially in Asia. Until indigenous peoples adopted militant tactics including armed means to raise their grievances, their distinctive vulnerability and normative demands were largely neglected and ignored. For the majority, however, the main methods are diverse forms of organizing, awareness raising, campaigns, and political actions such as civil disobedience, general strikes, lobbying national governments, use of the courts and publicity work, most of which are done on the local level. These are coupled with international networking with other indigenous peoples, generation of support from other peoples' movements, NGOs and institutions, and engagement with global multilateral bodies, such as the United Nations.

Self-government and Peace Accords

Because of the very nature of the indigenous struggles and demands, states find great difficulty in addressing these. Professor Hurst Hannum describes the challenges states face when indigenous peoples assert their rights and maintain that it is self-government that will ensure their survival.

> *Indigenous rights pose a dilemma for states in which rights are believed to inhere in individuals rather than groups. While it is true that non-discrimination and equality rights may be applied to indigenous individuals as such, the historical situation of indigenous peoples, their geographic concentration, their attachment to particular territories, and the fact that their institutions of self-government have largely survived make recognition of true group rights necessary if the goal is to enable indigenous peoples to preserve their way of life. It is precisely the exercise of a meaningful degree of self-government – in addition to the protection of religious and cultural values – that indigenous peoples seek to maintain or expand. Such self-government is an essential part of their heritage, unlike the primarily cultural or linguistic concerns of the minorities.*[51]

Clearly, one reason why the realization of the right of self-determination is so difficult to achieve is that most governments prefer to consider self-determination only within the traditional decolonization mode. This mode promotes the fiction that a people and a state are virtually interchangeable concepts and the notion that self-determination is subordinate to an overriding concept of unity and integrity of the state.[52] The indigenous peoples, on the other hand, look at it from a historical, philosophical and political perspective on the basis of the principles of equality and non-discrimination. Because they are aware that history has moved, their demand for self-determination does not translate automatically to secession or independence. Most of them are asking for free association or incorporation into an existing state, but on terms mutually agreed upon. But it should also be clear that while most indigenous peoples do not aspire for independent statehood, this option should not be barred as it is still within the framework of free association.

Self-government remains a central demand in most peace accords or treaties negotiated between indigenous peoples and states, but the rate of failure in reaching and implementing peace accords is quite high. In almost all the experiences of indigenous peoples in

this regard, there is an appalling record of a lack of good faith and political will on the part of governments to implement peace agreements and accords. The experience in the Chittagong Hill Tracts, as Devasish Roy recounts and as observed personally by this writer, is a notable example. After more than twenty years of armed conflict between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samity and long-winding peace negotiations, the Chittagong Hill Tracts Accord was finally signed in December l997. Roy analyzes the Accord's salient features and evaluates how these are being implemented. The provisions, which call for self-government and control by indigenous peoples over their lands and resources, are those hardly implemented.

The CHT Accord provides for the establishment of political structures for self-government, such as the Hill District Council, Regional Council (RC) and Ministry of CHT Affairs. According to Roy, however, the implementation is far from what was hoped for.

> *An indigenous person, the MP from Khagrachari district (Kalpa Ranjan Chakma), has been appointed as the minister. However, the advisory body is yet to be appointed. The ministry (as is the RC) is still in a state of mutation and is yet to evolve as a dynamic institution in playing a positive role as a spokesperson for the CHT institution and to act as an effective influence in national decision-making processes regarding the CHT. As in the case of the RC, its administrative capacities may perhaps be enhanced by the strengthening of its staff and by playing a more pro-active role in national policymaking regarding the CHT. In particular, its influence over various ministries having subordinate institutions within the CHT may be increased.*

In a recent visit (January 2004) to the Chittagong Hill Tracts, this writer found the situation still remains pretty much the same as Roy has described. The Regional Council continued to be ill-equipped in terms of budget, technical resources, human resources, and powers to be more self-determining. The Land Commission, which is supposed to resolve long-standing land conflicts, had not yet been constituted. Army detachments had not been removed and, in fact, more were being built. The refugees who returned from India remained housed in a decrepit public school building. The settler issue had not been addressed, and more violent conflicts were occurring between settlers and tribals. We visited Mohalchari, a tribal village, which was burned by Bengali settlers with the help of the Army in August 2003. At the time of our visit the rehabilitation work was so

slow there was hardly any sign of it in the villages we went to. The people were still living in plastic tents. The situation remained tense because the Member of Parliament of that District, a Bengali and head of the Chittagong Hill Tracts Development Board, was clearly partisan. He had the resources to support the settlers against the tribals. When we visited him, he organized a demonstration of settlers who held placards with inflammatory and discriminatory slogans. It would not be a surprise if the tribals revert back to the use of arms to defend themselves from such attacks and gross violations of their basic right to life.

The Guatemala Peace Accords of 1995, particularly the "Accord on the Identity and Rights of the Indigenous Peoples," contained specific recommendations on how to address the basic issues of indigenous peoples and make them more self-governing. Several Commissions were established such as the Commission on Constitutional Reform and the Commission on Indigenous Law, among others. Assessing what had been achieved, León notes:

> *The Commission on Indigenous Law participated in drafting the proposed constitutional reforms on the recognition of indigenous law. Though many changes were introduced to the bill, limiting its content and scope, the Congress of the Republic passed the law. Nonetheless, the reforms were rejected in the referendum held in May 1999. The Commission on Constitutional Reforms drafted proposed reforms to the Guatemalan Constitution. Twelve reforms regarding Indigenous Peoples were passed in the Congress, but were not approved in the referendum.*

Peace accords ideally should end in processes where justice and retribution are accorded to the victims of discrimination, unjust state laws and systems. Power sharing between the conflicting parties can also be an end result. This is why recommendations for self-government and reform of justice systems and laws are central elements of peace accords. Unfortunately, these rarely happen as we have seen in many peace negotiations, which involved indigenous peoples and the state. For many governments, their main interest is for the "enemy" to surrender their arms, which is one source of their strength and political power. When this is achieved, the government regains the dominant position in the balance of power. Thus, the hope is that the government, after having achieved a degree of stability, should do its best to adhere to what it agreed to. If the contending parties lack good faith and political will, pressure should

be exerted by civil society and the international community. This is the reason why it is crucial for indigenous peoples to internationalize their struggles and gain widespread support for their causes. In a situation where the government reneges on its commitments, one source of pressure can be the international community.

The more long-lasting solution, of course, is widespread support from the people who identified with the causes underlying the armed conflict. However, with government's power and machinery, use of the media, capacity to divide and rule the indigenous peoples and to play on the fears and racist attitudes of the elite and middle class, what happened in the 1999 Guatemala referendum did not come as a surprise. The possibility of instituting constitutional reforms on the basis of the 1996 Guatemala Peace Accords — through the adoption of 47 reforms passed by the Guatemalan Congress – failed to be realized through a referendum. Among these were reform of the military, judicial reforms and recognition of Guatemala as a multiracial, multilingual and multicultural state. Opposition by conservative groups which fed on Guatemala's deep-seated racism worked. Little effort was also made by the government to promote the referendum in which only 18 percent of the eligible voters took part.

Most of Guatemala's indigenous peoples remain alienated from the country's political system, and this situation was not altered by the peace process. Some of the key actors in the peace negotiations also admit that they failed to bring the peace process to the people and to mobilize their political base.[53] The disappointing implementation record of the Guatemala Peace Accords, especially as it relates to the indigenous peoples, presents a lot of lessons to learn from.

INEXTRICABLE LINK BETWEEN SELF-DETERMINATION AND SUSTAINABLE DEVELOPMENT

The right to self-determination has political, economic, social and cultural aspects. It is difficult to address these separately, as these are interlinked and the realization of one is closely tied to the realization of the others. Hector Gross Espiel, Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities on the Right to Self-Determination, defined these aspects.[54] Political aspects are "the right of peoples under colonial and alien domination… to achieve independence, free association or in-

tegration with another independent State of the acquisition of any other freely determined status." Economic aspects are manifested "in the right of peoples to determine in freedom and sovereignty, the economic system or regime under which they are to live." The social aspect is the "right to choose and determine the social system under which it is to live, in accordance with its free and sovereign will and with due respect for its traditions and special characteristics." Finally, the cultural aspect is "their right to determine and establish the cultural regime or system under which it is to live; this implies recognition of its right to regain, enjoy and enrich cultural heritage, and the affirmation of the right of all its members to education and culture..."

Treating self-determination, sustainable development and territorial and resource rights as integrated concepts can be seen in almost all the papers in this book. For indigenous peoples, it is impossible to talk of self-determination without control over territories and resources and cultural identity. Our identities are rooted in our ancestral territories. For example, while my identity is Kankana-ey-Igorot, I would add that I am *i-Besao*, which means I am from Besao (a town in Mountain Province in the Cordillera Region of the Philippines). It is inconceivable for us *i-Besao* to allow our territory to physically or legally disappear or our resources to be wasted. We have strict customary laws to regulate the use of our resources, be these forests or waters. We adhere to a customary law, which restricts us from selling lands to any one outside of Besao, unless he/she is married to a local person. Even if many of us are now based elsewhere, we continue to go back as often as we can to perform rituals and pay respect to our ancestors. The Bontoks and the Kalingas fought against the Chico River Hydroelectric Dam Project in the Cordillera Region because they could not allow their ancestral territory to disappear from this earth. The Jumma in the Chittagong Hill Tracts took up arms when their ancestral lands were inundated by the Kaptai Hydroelectric Dam Project, and more than 50,000 of them were forcibly displaced.

The challenge in addressing these issues in an integrated manner is discussed by del Pilar Valencia.

> *Any analysis of environmental conflict related to indigenous peoples must necessarily address the issues of territoriality and culture, if one's starting point aims to guarantee a territorial base; respect for the rights inherent thereto; conservation of natural resources; the use, management and enjoyment of those re-*

> *sources by the respective peoples and communities; and, finally, exercise of autonomous administration and control. Based on the preceding considerations, an examination of conflicts over the appropriation of nature and indigenous rights can make positive contributions if certain features are borne in mind. For such analysis to make sense, it must inevitably refer to territory as a central principle. It also needs to focus on possibilities and obstacles for turning Colombia's monocultural State into a multiethnic, multicultural one that transcends rhetoric and goes beyond mere coexistence of cultures in a single geopolitical space.*

Our links and relationships to our land base and territories are what distinguish us from minorities or peasants. Minorities are not necessarily linked to a land base, and most peasants are either tenants or landless farmers, who till the land of other people. Indigenous peoples have historical, spiritual, cultural and social ties to their territories and resources (whether these are plants, water, animals, etc.) since time immemorial. This is why totems or clan identities and symbols represent either animals or plants. The differences between indigenous and non-indigenous people in their attitudes and worldviews toward land have been a cause of many conflicts. Colonial powers and post-colonial nation-states enacted land laws, which totally contradict existing customary laws and the ways indigenous peoples relate to their lands. For indigenous peoples, land possesses a sacred quality rooted in an attachment to history, a sense of identity, and a perception of duty towards future generations. Land and natural resources are not to be exploited and consumed solely for the pursuit of material gain; they must be protected and conserved. This collective reverence for land and spiritual rapport with it contrast sharply with the larger society's material conception of land as a commodity for individual ownership, consumption and sale.

Ted Moses captures the essence of this relationship between self-determination and sustainable development:[55]

> *When I think of self-determination, I think also of hunting, fishing and trapping. I think of the land, of the water, the trees, and the animals. I think of the land we have lost. I think of all the land stolen from our people. I think of hunger and people destroying the land. I think of the dispossession of our peoples of their land… The end result is too often identical: we indigenous peoples are being denied our own means of subsistence… We cannot give up our right to our own means of subsistence or to*

> *the necessities of life itself… In particular, our right to self-determination contains the essentials of life – the resources of the earth and the freedom to continue to develop and interact as societies and peoples.*

The right of self-determination for indigenous peoples cannot be fully realized if their right to their ancestral territories and natural resources is not recognized and respected. This is why the principle of permanent sovereignty over natural resources has been made an integral aspect of the right to self-determination as enshrined in Article 1 of the ICCPR and ICESR. Many ancestral territories have been devastated, exploited and plundered by colonizers, states or private corporations, all in the name of modernization or development. In order to promote their economic and social well-being, indigenous peoples need the natural resources that would enable them to satisfy their basic individual and collective needs, increase their standards of living and generate employment. Depriving them of access to and control over the soil and subsoil resources in the regions in which they are largely concentrated is a denial of their basic human rights, particularly their means of subsistence. Hence, the demand for self-determination includes autonomous control over such resources.

Rebbapragada's paper on mining and the Adivasi in India describes what happens when the state takes control over the lands of indigenous peoples and deprives them of their basic means of subsistence.

> *The leasing of indigenous peoples' lands to mining companies…is illustrative. Local communities were rudely transported from a situation of minimum conflict in their traditional livelihood systems or in situations where communities had social mechanisms to resolve their internal disputes whenever they arose to a maximum conflict situation totally beyond their control. While their resources are snatched away from them, they are physically displaced or forced to migrate, they do not have alternative means of survival and their role is changed from a resource owner to a wage laborer dependent on the mercy of a powerful industry whose basic approach is to maximize profits by minimizing costs. It cannot be gain said that social costs are the first to be compromised.*

This is a picture commonly seen in indigenous peoples' territories both in the Third World or the First World. Development aggres-

sion is the term we use in the Cordillera to capture the phenomenon of the entry of so-called "development projects" in our communities even against our will. Many conflict situations have erupted in indigenous territories because of development aggression, as the cases earlier cited and most of the stories in this book illustrate. Indigenous peoples' negative experiences with development is a major factor for the damning indictment of development by academics, peoples' movements, and NGOs after the development decades of the 50s to the 70s. The theories of development and modernity, which have been propagated worldwide, do not consider in any significant manner the experiences, views and perspectives of indigenous peoples. Within their framework, indigenous peoples are primitive and backward who need to be assimilated into the dominant society to civilize or develop them.

Evolution of the Right to Development

The evolution of the right to development within the United Nations is closely linked to the struggle for decolonization and the assertion of so-called Third World governments or developing countries of their sovereign rights over their natural resources. After decolonization in the l960s, economic development became the priority agenda of newly independent nation-states. Philip Alston, an expert in international law, observed that:[56]

> *... Given the level of resentment over the negative consequences of the colonial experience and the reticence of the former colonial powers to recognize the continuing obligations towards the peoples concerned, the assumption that reparations were payable was never far below the surface. In terms of the U.N.'s human rights debate, these concerns translated into demands that greater attention be paid to economic and social rights (cultural rights being largely neglected in this setting), that colonialism and neo-colonialism be recognized as gross violations of international law and that some forms of development cooperation be seen as entitlements rather than as acts of welfare or charity.*

The discourse on human rights and development was enriched by the realities on the ground, and one of these was the conceptualization of a "third generation of human rights." Karel Vasak, a former legal adviser of UNESCO, proposed this concept and describes the different generations in this manner:[57]

- First generation rights were those rights which emerged from the American and French revolutions. These were aimed at securing the citizen's liberty from arbitrary action by the State. They correspond by and large to the Civil and Political Rights in the International Bill of Rights. They are said to be negative rights in that they call for restraint from the State;
- The second generation rights emerged with the Russian revolution and were echoed in the welfare state concepts which developed in the West. They correspond largely to the Economic, Social, and Cultural rights and they require positive action by the State;
- The third generation rights are a response to the phenomenon of global interdependence. Individual States acting alone can no longer satisfy their human rights obligations. The problems that are now being faced require international cooperation for their resolution. These problems include the maintenance of peace, the protection of the environment and the encouragement of development. The third generation of rights necessarily benefit individuals and people.

Vasak calls this third generation of rights, solidarity rights, and this includes "the right to development, the right to peace, the right to environment, the right to the ownership of common heritage of mankind and the right to communication."[58] This taxonomy of rights fits in with the growing concept of a "structural approach" to human rights. This came into the Commission on Human Rights, which argues for the identification and removal of the structural obstacles to the enjoyment of human rights.[59] The structural obstacles should be identified and recommendations on how these can be removed should be made. Common structural and policy obstacles affect both the Third World and indigenous peoples (who are sometimes referred to as the "Fourth World"). An example are the conditionalities imposed by international multilateral financing institutions like the World Bank and International Monetary Fund.

The debates within the Commission on Human Rights on the right to development started in l977. Many issues related to economic development were raised and led to the establishment of a Working Group to draft a Declaration on the Right to Development in l981. The Working Group, composed of fifteen member states,

was not able to conclude a text. This failure pushed the Commission to refer the issue to the General Assembly. Yugoslavia led the process and in the 40th Session of the General Assembly circulated a draft declaration based on the various drafts made by the Working Group. At the 41st Session the next year it circulated the draft declaration again and called for a vote. On December 4, 1986 the General Assembly adopted Resolution 41/128 (Declaration on the Right to Development), with 146 voting in favor, one against (United States)[60] and eight abstentions.[61]

It was argued that the right to development should be seen first and foremost as a collective right. Georges Abi-Saab was one of those who advanced some considerations on this:[62]

> *It is possible to think of different legal bases of the right to development as a collective right. The first possibility… is to consider the right of development as the aggregate of the social, economic, and cultural rights not of each individual, but of all the individuals constituting a collectivity…This version…has the merit of shedding light on the link between the rights of the individual and the right of the collectivity; a link which is crucial…Another way …is to approach it directly from a collective perspective…by considering it either as the economic dimension of the right of self-determination, or alternatively as a parallel right to self-determination, partaking of the same nature and belonging to the same category of collective rights.*

The principles and concepts raised in the debates on the right to development resonate with indigenous peoples. Some of these are the collective nature of the right, development as an economic aspect of the right to self-determination, and permanent sovereignty over natural resources. The structural causes of inequities between First World and Third World countries are basically the same ones which have caused the marginalization of indigenous peoples. The structural approach to human rights is consistent with the framework which underpins the Draft Declaration on the Rights of Indigenous Peoples.

It must not be forgotten however that indigenous peoples are not in full agreement with the statist agenda on development and modernization. The disastrous impacts of mainstream development are one of the root causes of conflicts, armed or unarmed, between indigenous peoples and the state. The disagreement lies not only in the non-consultation of indigenous peoples but more importantly in the basic ideology or construct of development. While develop-

ment is being promoted as the solution to problems of underdevelopment and poverty, indigenous peoples see development as part of the problem instead of the solution. This is why the term and concept of development aggression emerged. This can only come from indigenous peoples who have been the worst victims of development.

Development is described as a:

> *process leading to modernization, whereby societies disadvantaged in terms of living standards and material wealth reach socio-economic levels perceived to be acceptable to society as a whole…it is interpreted primarily within a an economic framework, measured by advances, such as increased income, participation in the labour market, and economic growth.*[63]

Vincent Tucker, an Irish sociologist, provides an analysis of development, which indigenous peoples can relate to.

> *Development is the process whereby other peoples are dominated and their destinies are shaped according to an essentially Western way of conceiving and perceiving the world. The development discourse is a part of an imperial process whereby other peoples are appropriated and turned into objects. It is an essential part of the process whereby the 'developed' countries manage, control and even create the Third World economically, politically, sociologically and even culturally. It is a process whereby the lives of some peoples, their plans, their hopes, their imaginations are shaped by others who frequently share neither their lifestyles, nor their hopes, nor their values. The real nature of this process is disguised by a discourse that portrays development as a necessary and desirable process, as human destiny itself.*[64]

The most devastating failures of development have occurred in indigenous peoples' territories. A classic example is the Calha Norte project in the State of Roraima in Brazil. The area, found to be very rich in minerals, was the traditional land of the Yanomami Indians. In spite of this the state decided that the land was underpopulated and the Governor of the State justified the exploitation of the land in his declaration: "An area as rich as this, with gold, diamonds and uranium, cannot afford the luxury of preserving half a dozen Indian tribes who are holding back development." A gold rush ensued, bringing in 45,000 miners. This led to the massive pollution of the

headwaters of all the rivers in Yanomami territory, which measured around 9 million hectares. It is estimated that 15 percent of the Yanomami population died and mining only stopped because of the massive international outcry.[65]

This story is repeated in many indigenous territories all over the world. This is why we are persistently going after the World Bank, which is the prime multilateral body that supports the entry of extractive industries (mineral, gas and oil extraction) into our lands. Aside from providing loans to extractive industries, it has also been involved in liberalizing mining acts in various countries to facilitate the entry of these industries.[66] Tebtebba, in partnership with the Forest Peoples' Programme, participated in the Extractive Industries Review (EIR) made by the World Bank by conducting an independent study on the role of the World Bank in projects which have directly impacted on indigenous peoples' territories. Seven case studies were made and presented to the World Bank in April 2003. The indigenous peoples who did most of these studies came up with the "Indigenous Peoples Declaration on the Extractive Industries,"[67] and one of the demands they raised is:

> *… respect for our rights to our territories, lands and natural resources and that under no circumstances should we be forcibly removed from our lands. All proposed developments affecting our lands should be subject to our free, prior and informed consent as expressed through our representative institutions, which should be afforded legal personality. The right to free, prior and informed consent should not be construed as a 'veto' on development but includes the right of indigenous peoples to say 'no' to projects that we consider injurious to us as peoples. The right must be made effective through the provision of adequate information and implies a permanent process of negotiation between indigenous peoples and developers. Mechanisms for redress of grievances, arbitration and judicial review are required.*

The final report of this review was recently released and some of the recommendations echo what we have raised in the Declaration. One of these is free, prior and informed consent. Fergus MacKay, a Maori lawyer, summarized it:

> *The Final Report concludes that 'indigenous peoples and other affected parties do have the right to participate in decision making and to give their free prior and informed consent throughout each phase of a project cycle;' and that 'there are real issues*

> *that need to be worked out to make free prior and informed consent a clearer and more effective tool. These should be worked out in cooperation with bodies that have expertise in indigenous peoples' issues, such as the U.N. Permanent Forum on Indigenous Issues, which has established a working group on the topic.' The recommendations specify that FPIC is an internationally guaranteed right for indigenous peoples and part of obtaining social license to operate in the case of local communities and state that the WBG should ensure that indigenous peoples' right to give their free prior and informed consent is incorporated and respected in its Safeguard Policies and project-related instruments. The Final Report further recommends that it is 'necessary to include covenants in project agreements that provide for multiparty negotiated and enforceable agreements that govern various project activities, should indigenous peoples and local communities consent to the project.' This is a very important statement as this recommendation provides for negotiated and enforceable conditions/agreements in the project agreement/contract itself. The project agreement is the primary legal document (and technically an international treaty) pertaining to the project and presumably also accords indigenous peoples standing to challenge implementation of the project in cases of alleged breach.*[68]

Whether the World Bank accepts and implements the recommendations which emerged from a review process it created itself remains to be seen. The Executive Board of the Bank, which is the main decision-making body, is set to meet in June 2004 to make a final decision. Clearly the biggest challenge to development is how to break the power exerted by the world's richest nations and corporations over the poorer nations and sectors in society. Another is how to find the balance between large-scale and small-scale goals in order for the majority of the peoples of this world to enjoy a full human life. The resistance of indigenous peoples against mainstream development and their efforts in engaging with bodies, which serve as the think-tanks and promoters of this paradigm, are changing the contours of the dominant development discourse. The World Bank is one of these bodies. The history of indigenous peoples' struggles against development aggression has almost always included the struggle against the World Bank because it is the source of loans that support such projects. The assertion by indigenous peoples that their right to free, prior and informed consent should be recognized is creating ripples in the local, national and global scenes. We

see FPIC as an aspect of our right to self-determination.

It is worth noting that while the right to development is being debated in the United Nations, indigenous peoples both in the First World and the Third World are being denied their inherent right of self-determination, which includes the right to determine how economic development should take place in their territories. The Martinez-Cobo report documented the violations of the basic rights of indigenous peoples, which led to the creation of the UN Working Group on Indigenous Populations in l982. The Working Group on the Right to Development was established a year earlier and existed until l986. It took the UN six years to adopt the Declaration on the Right to Development, while the Draft Declaration on the Rights of Indigenous Peoples remains a draft ten years after it was adopted by the Subcommission in l994. As a statist body, it is easier for the UN to pass declarations, which support member-states, more than that which will establish rights for indigenous peoples. In spite of our reservations on the statist framework of the Right to Development, we see its complementarities with the Draft Declaration on the Rights of Indigenous Peoples.

Permanent Sovereignty over Natural resources

Central to the issue of self-determination is the principle of permanent sovereignty over natural resources. On December 114, 1962 the General Assembly adopted Resolution 1803 (XV11) entitled "Permanent sovereignty over natural resources." Paragraph 1 declares that:

> *The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being for the State concerned.*

This was reinforced in Section 2 of Article 1 (self-determination provision) of the ICCPR and ICESCR, which provides that all peoples may freely dispose of their natural wealth and resources and in no case may a people be deprived of its own means of subsistence. While these provisions clearly identify the rights-holders as peoples (in the case of Resolution 1803, it includes nations), these came about because new nation-states wanted to have full control over their natural resources. Thus the term "sovereignty" refers to national sovereign control of the government over the natural resources found

within its territory.

This is where a clear dispute lies because indigenous peoples also claim permanent sovereignty over the natural resources found in their territories. If recognized as "peoples," indigenous peoples have the right of self-determination. If so it also follows that they have permanent sovereignty over their natural resources. During its fifty-fourth session, the Sub-commission on the Promotion and Protection of Human Rights passed Resolution 2001/10 requesting Erica-Irene Daes to prepare a working paper on indigenous peoples' permanent sovereignty over natural resources. She submitted the working paper at the fifty-fourth session of the Sub-Commission, which subsequently appointed her as the Special Rapporteur to undertake a study based on her paper. In her report to the fifty-fifth session in 2003, she stated that during the sessions of the WGIP:

> *…it has become clear that meaningful political and economic self-determination of indigenous peoples will never be possible without indigenous peoples having the legal authority to exercise control over their lands and territories and thereby enjoy the full economic and other benefits deriving from their natural resources. Moreover, these exchanges have led to a growing recognition that an appropriate balance can be reached between the interests of the States and the interests of indigenous peoples in the promotion and protection of their rights to self-determination and to their lands and resources.*[69]

In the same report she examined whether the term "sovereignty" is appropriate to use in reference to indigenous peoples and their natural resources within independent States. While acknowledging that the term "sovereignty" refers to governmental control and authority, she also cited many cases which prove that "indigenous peoples have long been recognized as being sovereign by many countries in various parts of the world." (para. 11). She mentioned the United States which has recognized Indian tribes as sovereign political entities since the early years of the Federal Government (para.15); New Zealand where the concept of sovereignty as applied to the indigenous Maori peoples is part of the accepted legal framework of the State (para. 18) and Canada which recognizes indigenous self-government (para.19). She further cited the recent case of the Mayagna (Sumo) Community of Awas Tingni vs. Nicaragua, where the Inter-American Court of Human Rights judged "that indigenous peoples' rights to their lands include rights to their resources there (para.153) and that these rights of ownership are held

by the community in their collective capacity and according to their own customary law, values, customs and mores." (para.16)

There are other international laws, which recognize the principle of indigenous peoples' permanent sovereignty over their resources, and one of these is the ILO Convention 169 on Indigenous and Tribal Peoples (l989). Article 15, Paragraph 1 says:

> *The rights of the peoples concerned to the natural resources pertaining to their lands shall be specifically safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*

The Draft Declaration on the Rights of Indigenous Peoples has several articles regarding this, one of which is Article 26:

> *Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for their development, management or resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.*

From Development to Sustainable Development

Through the years the world has witnessed growing impoverishment and greater inequity between and within nations aside from a deteriorating environment. The crisis of development and environment prompted the United Nations to create the World Commission on Environment and Development (WCED), also known as the Brundtland Commission, in 1987. Its report, called "Our Common Future," recognized the contributions that indigenous peoples can make to sustainable development.

> *These communities are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. It is a terrible irony that as formal development reaches*

> *more deeply into the rain forests, deserts and other isolated environments, it tends to destroy the only cultures that have proved able to thrive in these environments.*[70]

As has been mentioned several times, to indigenous peoples self-determination and sustainable development are closely interrelated, and this is why they actively engaged with the processes leading to the UN Conference on Environment and Development (UNCED, l992) and with the subsequent follow-up mechanisms and processes. The root cause of the global ecological and social crisis humanity faces today lies in the gross imbalances in prevailing economic, political and social relationships, which exist in all levels and relationships between human beings and nature. Indigenous peoples understand this well and thus cannot but be key actors in the debates on sustainable development. Their engagement with the various international and local processes around sustainable development has brought about concrete results, among which are the:[71]

- Kari-oca Declaration and the Indigenous Peoples' Earth Charter (l992);
- Chapter 26 (Recognizing and strengthening the role of indigenous peoples and their communities in sustainable development) in Agenda 21. This recognizes indigenous peoples as crucial actors in sustainable development and they are now one of the Major Groups actively engaged in the various arenas dealing with sustainable development;[72]
- Article 8(j) and related provisions of the Convention on Biological Diversity, which deal with the issue of traditional knowledge, practices and innovations of indigenous peoples;
- Kimberley Declaration and the Indigenous Peoples' Plan of Implementation for Sustainable Development (2002).

The most significant contributions of indigenous peoples in the sustainable development debate is their articulation of their worldviews and practices in relation to their territories and all creation found therein. These also include building sustainable communities in their territories and changing national and international laws, policies and programmes. In "Asian Indigenous Peoples' Per-

spectives on Environment and Development," a paper this writer prepared on request during the UNCED fourth preparatory commission (Prepcom), I noted that our ancestors are the world's original environmentalists. Their struggles for self-determination were efforts to stop the dominant world from destroying their territories, their ways of life and their worldviews. Many of them sacrificed their lives to defend our ancestral domains from being appropriated and destroyed by the colonizers and the new rulers of nation-states. The present generation of indigenous peoples are trying their best to protect the heritage left by our ancestors and in this book we find some of the best stories of how this is being done not only at the local and national but also at the global levels.

We, indeed, have been and still are victims of the mainstream development paradigm, but many of us in all parts of the world have risen above victimhood and are challenging development and modernity. Joji Cariño, an Ibaloi-Igorot activist and thinker, describes this:

> *… in the last decades of the 20th century, indigenous peoples have become highly visible in many parts of the world, challenging the deep imbalances within modern societies and raising central questions about the contemporary social and ecological crisis. Indigenous values, knowledge and perspectives are increasingly respected as vital contributions to the renewal of society and nature. Likewise indigenous peoples have underlined the interrelationships between social and environmental justice, asserting that aboriginal self-determination and sustainable development are two sides of the same coin…*[73]

At the national level indigenous peoples have conducted various activities and campaigns to change existing laws and policies and to implement sustainable development in their own communities. This agenda and campaign is gaining headway in various countries as seen in recent changes in the Constitutions of Colombia, Venezuela, Bolivia, Ecuador, and the Philippines, among others.

CONCLUSION

The consignment of indigenous peoples to the margins is the legacy of colonization and nation-state building. Marginalization, inequality, racism and discrimination, which have been their lot, cannot be allowed to persist and indigenous peoples know this well. Their responses have taken various forms of resistance: invisible and vis-

ible, organized and unorganized, legal and extra-legal, violent and non-violent, armed and unarmed. These have not only been limited to fighting against the economic and political mechanisms of domination and control. The cultural dimension of the hegemony by the colonizers and the nation-state's elite was also challenged. These are their ways of defending their worldviews, their ways of life, and their territories, which have been and still are systematically assaulted by extremely powerful organized entities such as the colonizing empires and the newly born nation-states. These are their ways of asserting their inherent right to self-determination. The denial of this right is precisely the reason why conflicts erupted in many indigenous peoples' lands.

Most indigenous peoples who took up arms were left with no other option because they were treated as sub-humans or barbarians destined to disappear or to be assimilated. While armed resistance was already a route taken during the colonial era, it remained a valid option even after political independence was won and nation-states in the Third World emerged. Many of the indigenous peoples who resisted have maintained some of their territories, cultures, and political, social, and economic systems and kept their identities intact.

Others became victims of brutal genocidal campaigns launched by the armies of the colonizers and the nation-states. Many conflicts ended in peace **a**greements that have only added to the growing number of agreements that remain unimplemented by governments. This lack of good faith and political will on the part of governments to abide by what they signed is causing serious tensions, which could potentially explode into new full-blown conflicts. Communities, which are in so-called post-conflict situations, remain in a bad shape because of this. While there may be an absence of war, the violence caused by poverty, hunger and increasing criminality still persists.

In these situations where political antagonisms continue to exist between indigenous peoples and states, indigenous peoples and corporations, indigenous peoples and the dominant society, a constant process of negotiation takes place. It is a negotiation, which is understood as a continuous struggle by indigenous peoples to implement their visions and programs for economic, social, cultural and political development and to have their views and proposals represented and acted upon. These are happening on the local to the national, regional and global levels. At the local level expressions of self-government and sovereignty are already in place. In Colombia,

for instance, aside from having their *resguardos* and *cabildos* recognized by law, indigenous peoples now have what they call a Plan of Life, which is their own indigenous development framework and program. There are many successful stories of indigenous peoples who have stopped the entry of large-scale, destructive "development" projects such as mineral, oil and gas extraction, logging, biopiracy and dam-building on their lands. They are asserting local sovereignty over their natural resources and demanding that their free, prior and informed consent be obtained before so-called "development" is brought in. Traditional political structures and customary laws are still operating in many communities. In places where these have disappeared, programs are being undertaken to recover and recuperate them.

Within the past twenty years national constitutions of various countries have been revised towards recognition of indigenous peoples' rights and acknowledgement of the nation-state as multinational, multiethnic and multicultural. In Latin America these have occurred in Argentina (1994), Bolivia (1994), Colombia (1991), Ecuador (1998), Nicaragua (1995), Panama (l994), Paraguay (1992), Peru (1993) and Venezuela (1999). Mexico still has to adopt the 2001 proposal for "Indigenous Rights and Culture" and in Guatemala, a decision to change the Constitution to reflect the multicultural and multiethnic character of the country was defeated in a referendum in 1999. In Asia the Philippines is the only country, which has a national law that recognizes indigenous peoples' rights (Indigenous Peoples' Rights Act of l997).

The indigenous peoples' movements have seriously challenged the concept of a nation-state. The conversion of former colonies into nations ignored their multicultural and multiethnic composition. Indigenous peoples' demands can be clustered into three groups. First is the demand for territorial or land rights and resource rights. Territory is the fundamental base of indigenous peoples' distinct identities, which is integral to self-determination. The second set of demands revolves around cultural and legal identity, which includes language and appropriate and relevant education.

If education has been used as a tool to homogenize and assimilate indigenous peoples into the dominant society, now education should be used to reinforce indigenous peoples' identity and recognition of the cultural diversity within the nation-state. The third area is on the right to self-determination. This goes beyond respect for culture and identity. It involves affirming that the nation-state is a multicultural, multiethnic and plurinational entity. It is not neces-

sarily a demand for secession or independence but of changing social, economic, cultural and political relations within the state. This is a recognition that there exist many nationalities within a state and thus, the principle of equality and non-discrimination should apply to all.

Indigenous peoples are also making headway at the regional and global levels. Several regional processes are taking place such as at the Organization of American States (OAS) where a Draft Declaration on the Rights of Indigenous Peoples is being evolved. The African Commission on Human and Peoples' Rights (ACHPR) adopted a Resolution on the Rights of Indigenous People/Communities in Africa at its 28th Ordinary Session held in October 2000. Subsequently a Working Group on the Rights of Indigenous People/Communities in Africa was established under this Commission,[74] and in November 2003, the ACHPR adopted the Report of the Working Group. "This means that a major African human rights body has now recognized the existence of indigenous peoples in Africa and acknowledged that they suffer from a range of human rights violations that must be addressed."[75]

At the global level, some of the gains made are:

- ILO Convention No. 107 and ILO Convention No. 169;
- Establishment of the UN-WGIP (1982) and the expansion of its mandate beyond hearing developments to setting international standards (1985) which brought forth the Draft Declaration on the Rights of Indigenous Peoples (1993);
- Declaration of the Year of Indigenous Peoples (1992)
- Declaration of the International Decade of the World's Indigenous Peoples (1993-2004);
- Chapter 26 of Agenda 21, Article 8(j), 10(c) of the Convention on Biological Diversity;
- Policies on Indigenous Peoples by donor countries and multilateral bodies: (UNDP Policy of Engagement with Indigenous Peoples; World Bank Operative Policy 4.20 and Draft Operative Directive 4.20; Asian Development Bank Policy on Indigenous Peoples; Working Document of the Commission of 11 May 1998 on support for indigenous peoples in the development cooperation of the Community and the Member States

SEC (1998), Country policies of Denmark, the Netherlands, etc.);
- Establishment of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples;
- Establishment of the Permanent Forum on Indigenous Issues;
- Indigenous Peoples' Declarations and Statements in various UN World Conferences, World Trade Organization Ministerial Meetings, World Bank Events, etc.

Much more work remains to be done at all levels and in different arenas. Achievements have been made in terms of formal laws and policies enacted; peace accords addressing indigenous peoples; and bodies and mechanisms at the national, regional, global levels where indigenous peoples' rights are being addressed. Indigenous peoples are influencing the trajectories of important international laws and discourses on issues like national sovereignty, nation-state, territorial integrity, permanent sovereignty over natural resources, self-determination, development, modernity, sustainable development, multiculturalism and multiethnicity, etc.

Indigenous peoples are recuperating and renewing their traditional systems of governance; their relations with their neighbors, the earth and all creation; and the manner of dealing with the past, the present and the future. They are reinventing these to fit the demands of the modern world. New forms of politics, new forms of organization of power, and new methods of expressing resistance have been developed and are still evolving. Indigenous peoples do not believe that their problems will be solved by global multilateral bodies like the United Nations. However, they also recognize the dynamic interrelationships between what happens at the international, regional, national and local levels and different forms of actions.

Joji Cariño expounds on this:[76]

> *Policy advocacy includes lobbying, education, campaigning, communications and the associated research related to 'organizing the strategic articulation of information to democratize unequal power relations'[77] Understanding the nature of policy advocacy work in this broader dimension makes the inter-relationship of political action by indigenous organizations in other arenas (e.g. local actions, national mobilization, or media cover-*

> *age) with lobbying. aimed at reforming or promoting specific polices clearer…Narrow conceptualizations of participation in the United Nations for solely political aims would overlook a multiplicity of additional relationships that can be forged simultaneously surrounding the formal meeting; the education and networking and alliance-building opportunities that are critically important for self-realisation and the exercise of self-determination. These meetings actually provide fora for face-to-face interactions among people who seldom have the opportunity for direct contact. Thus the elaboration and articulation of shared values and the construction of unity within a diverse movement of indigenous peoples is evolving.*

In the resolutions of conflicts, The Manila Declaration of the International Conference on Conflict Resolution, Peace-Building, Sustainable Development and Indigenous People**s,** which captures the collective thinking of the participants, can serve as a framework and program for the journey of indigenous peoples in reclaiming balance and achieving peace in their lands. Since the Conference, several of the recommendations have been implemented. The Indigenous Peoples' Global Research and Education Network (IPGREN) has been established, which hopefully can help in monitoring how peace accords and other conflict resolution processes are addressing indigenous peoples' rights and concerns. The Indigenous Peoples' International Commission on Conflict Resolution and Mediation is in the process of being set up, and plans are underway for several fact-finding missions in indigenous territories where armed conflicts are raging. There is a vibrant networking and alliance building among indigenous peoples across and within continents.

Indigenous peoples, the natural bearers of radical cultural politics, are reconstructing their own histories, which have been misrepresented, and creating their own theories of resistance, culture and power. Even the domain of national and international law is feeling their influence, and the imperative is to transcend the limitations of statism and liberal individualism. The challenge is for lawyers to become instruments in shifting the law away from being a tool for domination to a tool for resistance and liberation for those it has marginalized and discriminated. The best sources of ideas for changing laws come from social movements, which include indigenous peoples' movements.

The stories in this book are stories of how indigenous peoples have resisted and asserted their right to self-determination. These are stories of how they are changing the landscape of sustainable

development, national politics, international law and theories on change. The role of indigenous peoples in analyzing and deconstructing underlying assumptions and norms of national and UN intergovernmental structures and processes and challenging these with their own concepts, politics and approaches is crucial in correcting the historical wrongs committed against them. The aim is to change the balance in power relationships, whether in the economic, social, political or cultural arena. This is reclaiming balance.

Victoria Tauli-Corpuz is the Executive Director of Tebtebba and Convenor of the Asian Indigenous Women's Network.

Endnotes:

[1] This definition is enshrined in common Article 1 of the United Nations Human Rights Covenants; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, Cultural and Social Rights. Article 3 of the UN Draft Declaration on the Rights of Indigenous Peoples also has the same formulation except for the use of the terms "indigenous peoples" in place of "peoples" in the Covenants mentioned.

[2] The UN Working Group on Indigenous Populations which is composed of five UN Experts have expressed their expert opinion on this issue with the final Article 3 of the Draft Declaration. Other internationally renowned experts who have discussed this issue substantially and have expressed their view that indigenous peoples are peoples and possess the right of self-determination are indigenous peoples who are well known international lawyers; James Anaya, John Henriksen, Mick Dodson, Moana Jackson, Sharon Venne, among others. The best experts on this issue are our ancestors who are martyrs as they laid down their lives to assert this right. There are also many indigenous peoples of this present generation who continue to commit themselves to get the international community, national governments and the broader society to acknowledge and respect this right.

[3] During the first session of the UN Working Group on the Draft Declaration in l995, countries which expressed support of Article 3 of the Draft were Denmark, Norway, Finland, Australia, Bolivia, Cuba and Fiji. (see Gray, Indigenous World, 1996-1997) Some of these countries shifted their position on this Article through the years but Denmark and Fiji still retain their clear support for it. Other countries have laws which clearly recognize indigenous peoples right to self-determination. Sec-

tion 13 of the Indigenous Peoples' Rights Act of the Philippines says; "The State recognizes the inherent right of Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) to self-governance and to self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/ IPs to freely pursue their economic, social and cultural development. Denmark and Fiji supports fully the Draft Declaration on the Rights of Indigenous Peoples which has Article 3 on the right to self-determination.

[4] Jumma is a collective identity for the various people in the Hilltracts of Bangladesh. This includes the Chakma, Tripura, Marma, Bawm, Mru, Lushai, Khumi, Chak, Khyang, and Pankhua.

[5] Don Augusto Willemsen-Diaz worked at the UN Human Rights Centre in Geneva in the 1970s. He initiated efforts to incorporate indigenous peoples' issues into the agenda of the Subcommission on Prevention of Discrimination and Protection of Minorities which eventually agreed to appoint a Special Rapporteur to study the problem of indigenous populations. Jose Martinez-Cobo was appointed as the Special Rapporteur and he started the study in l972 which got finished in l983. Willemsen-Diaz was the one who did most of the work in this study. He was instrumental in creating spaces for indigenous peoples in the United Nations such as the UN Working Group on Indigenous Populations and the UN Voluntary Fund for Indigenous Populations.

[6] Rodolfo Stavenhagen, "Indigenous Rights: Some Conceptual Problems," **IWGIA Document** 76 (1994): 18.

[7] The doctrine of *terra nullius,* which means 'lands unoccupied before European settlement' was used by colonizers to justify their occupation of indigenous peoples' territories. This concept did not gain universal recognition as customary international law by several decisions like the one made by the International Court of Justice on the question of whether the Western Sahara was a territory belonging to no one at the time of its colonization by Spain (l884). Another was the Mabo Case where the Australian High Court had to decide who owned the Mer (Murray) Islands – the islanders or the Queensland Government. In a landmark decision the High Court recognized the title of the indigenous peoples to their ancestral lands.

[8] The Regalian Doctrine, which declared untitled lands as crown lands (land owned by the King of Spain) or public lands (lands owned by new Philippine nation-state), remains enshrined in the Philippine Constitution.

[9] Anaya, James, **Indigenous Peoples in International Law** (New York: Oxford University Press, 1996) 75.

[10] See Apam Muivah in "Nagaland: The Continuing Quest for Sovereignty" in **Indigenous Peoples In Asia, Many Peoples' One Struggle,** eds., Colin Nicholas and Raajen Singh (Bangkok, Thailand: Asia Indigenous Peoples Pact, 1996) 104.

[11] Phyobemo Ngully is a Naga who represented the Naga Human

Rights Organization.

[12] The Akbar Hydari-Naga Agreement was negotiated in June l949 between Akbar Hydari, the Governor of Assam acting on behalf of the Indian Constituent Assembly and the Naga National Council (NNC), which represented the Nagas. This was also known as the Nine-Point Agreement and it covers a ten-year period. This promised that the Nagas could develop themselves according to their expressed wishes in the judicial, executive, legislative, land, taxation, and boundaries. The government of the Indian Union would ensure its implementation for ten years, after which the NNC would be asked whether they want this to be extended.

[13] A three-man delegation of the NNC met with the representatives of the Government of India on Nov. 3, 1949 to firm up the Akbar-Hydari NNC Agreement. At this meeting the NNC delegation were told that there was no agreement made with them. This betrayal led the Nagas to declare that they would not like to be called Indians and on January 24, 1950 they informed the Government of India and the United Nations that the Nagas do not accept the Indian Constitution. A plebiscite was undertaken by the NNC in May 1951 and 99.9 percent of the Nagas voted for a sovereign independent Naga State.

[14] Examples of these laws are the Land Registration Act of 1902 and the Public Land Act of 1905. All lands unregistered under the former law were declared public lands under the later. Most ancestral lands were then considered public lands. Another law is the Mining Act of 1905 which declared that "all public lands in the Philippines to be free and open for exploration, , occupation and purchase by the citizens of the United States and the Philippines."

[15] See Henry Scott, **Of Igorots and Independence** (Baguio City: ERA. 1993) 1.

[16] Liton Bom is a Chin who is in exile from Burma. He represents the Chin Human Rights Organization.

[17] Hurst, Hannum**, Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights** (USA: University of Pennsylvania Press, l990) 453.

[18] Many treaty agreements have been forged between indigenous peoples and the colonizers and also with the nation-states and this was the subject of the study done by Miguel Alfonso Martinez, the UN Special Rapporteur on Treaties and other constructive arrangements of States with indigenous peoples.

[19] ILO Convention 107 is a convention on "The Protection and Integration of Indigenous and other Tribal and Semi-Tribal Peoples in Independent Countries."

[20] Ariel Araujo is an I'alak Mocovi, one of the indigenous peoples in Argentina; he is the Director of the I'alak Mocovi Centre.

[21] This resistance was described by Dr. William Henry Scott, an anthropologist who lived with the Igorot and wrote about them. He said, " Spanish records make it clear that they (Igorot) fought for their indepen-

dence with every means at their disposal for three centuries, and that this resistance to invasion was deliberate, self-conscious and continuous." (Scott,1993.) The term used by the government for people like the Igorot was cultural minorities. When the Indigenous Peoples' Rights Act was enacted in l997 the terms used were indigenous cultural communities/ indigenous peoples.

[22] Quoted from Block, Edmond and Noble, H.L.**, Digest of the Report of the Supreme Court of the Philippine Islands** 4 (Rochester, New York: The Lawyers Co-operative Publishing Company, 1927) 85.

See Anti-Slavery Society, "The Philippines;Authoritarian Government, Multinationals and Ancestral Land," **Indigenous Peoples and Development Series** 1 (London, 1983) 39.

[23] A story was told to me about a question raised by the media to the Zapatistas who led the uprising in Chiapas, Mexico in January 1994. They were asked why they also use the Mexican flag as a symbol of their struggle. One of them, a Maya, answered that it is because they also took part in the fight of Mexico for independence against the Spanish colonizers. Therefore, they have an ownership over the Mexican flag.

[24] See IWGIA, **Indigenous Affairs** 2 (2001) 65. This is a speech delivered by Esther, an indigenous woman who is a member of the Revolutionary Indigenous Clandestine Committee of the General Command of the Zapatista National Liberation Army, Mexico, March 28, 2001.

[25]The l987 **Philippine Constitution**'s Article XI, Section 5 states: "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

[26] Examples of these laws are the Indian laws like the Armed Forces Special Powers Act, National Security Act, Nagaland Security Regulation (1962), Assam Maintenance of Public Security Order (1963), etc. The first one gives unlimited powers to the Indian Armed Forces to 'shoot and kill' on mere suspicion, to arrest and raid houses without warrants. Those who do this are provided legal immunity. The Special Powers Act was challenged by the Naga Peoples' Movement for Human Rights in the Supreme Court in 1982. It took 15 years to hear the case and finally in l997, the Supreme Court of India upheld the constitutional validity of this law. After September 11 many countries are making anti-terrorism laws. India now has the Prevention of Terrorism Act (POTA) which further undermines human rights. See IWGIA (2001).

[27] I gathered this from my own discussions with the leadership of the PCJSS in several of my field trips to the Chittagong Hill Tracts.

[28] Juan Leon, a Maya, was the Director of Defensoria Maya, an indigenous NGO involved in fighting and defending rights of indigenous peoples in Guatemala, at the time of the Conference. He is now part of the present Guatemala government as the Ambassador of Guatemala to the Organization of American States.

[29] The Contadora Group consists of the Governments of Colombia,

Mexico, Panama, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

[30] This was a body established by the Government in accordance with the Esquipulas 11 Agreement. This Agreement was supported by the United Nations General Assembly and the Security Council. This is otherwise known as the "Procedure for the Establishment of a Firm and Lasting Peace in Central America". See Department of Public Information, **Guatemala Peace Agreement** (l998).

[31] The author, who is a Kankana-ey - Igorot, has been centrally involved in this struggle from the 1970s to the present. She was a student and an organizer of Manila-based Igorot students between l972 to 1976 and part of her task was to raise the issue in Manila and bring students to the communities for exposure. After she got her University degree, she moved into the region and did community organizing work. She became the Chairperson of the Cordillera Peoples' Alliance in the early l990s. Joan Carling, the present Chairperson, also wrote about this struggle in the paper she presented at the Conference.

[32] The Cordillera Peoples' Alliance deliberately kept out of the subsequent lobbying processes in Congress after they campaigned against the flawed draft Cordillera Organic Act for Regional Autonomy. The groups who took up the task of lobbying for the Indigenous Peoples' Rights Acts were newly formed groups such as the Cordillera Peoples' Forum, CIPRAD (Coalition for Indigenous Peoples' Rights and Ancestral Domain) and support NGOs for indigenous peoples like the Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK), PANLIPI (Legal Assistance Center for Indigenous Filipinos), PAFID (Philippine Association for Intercultural Development), among others.

[33] Richard Falk, **Predatory Globalization: A Critique** (Cambridge, UK: Polity Press, 1999) 98-99.

34 Willem J. Assies, **"**Self-determination and the 'New Partnership': The Politics of Indigenous Peoples and States," **IWGIA Document No. 76** (1994)38.

[35] Carino, Joji, "Notes on Indigenous Peoples' Self-Determination and Free, Prior Informed Consent in the Development Process," unpublished paper presented at the MacArthur Consortium Summer Institute on Human Rights University of Wisconsin – Madison, June 21-24, 2001.

[36] See James Crawford ed**., The Right of Self-Determination in International Law: Its Development and Future**. (USA: Oxford University Press, 2001) 27.

[37] Ibid., p.29.

[38] For further detailed accounts of the debates on the floor during the sessions of the Working Group on Indigenous Populations and the Working Group on the Draft Declaration see Tauli-Corpuz**, Indigenous Perspectives***(*1998); Gray and Dahl, **The Indigenous World** (l997); Clech Lam, **At the Edge of the State** (2000).

[39] See J.R. Martinez-Cobo, **Study of the Problem of Discrimination Against Indigenous Populations**, Chapter V, Definition of indigenous

populations, E/CN.4/Sub.2/1982/2/Add 6.

[40] See Anaya (1996) 81.

[41] Quoted in Crawford (2001) 28.

[42] Moses, Ted, "Seeking Justice at the International Level," in **Aboriginal Peoples: Towards Self-Government**, ed. Marie Leger (Canada: Black Rose Books, 1994) 25.

[43] Quoted in M. Clech Lam, **At the Edge of the State: Indigenous Peoples and Self-Determination** (New York: Transnational Publisher, Inc.) xviii.

[44] See John Henriksen, **Implementation of the Right of Self-determination of Indigenous Peoples within the Framework of Human Security** (1999)17, www.IWGIA.org., 15 June 2004.

[45] Ibid.

[46] *Resguardos* are reserved territories for indigenous peoples, which were created during the Spanish colonial rule. Indigenous peoples possess community titles over the lands in these *resguardos.* It is interesting to note how the *resguardo* was converted from being an instrument of control and repression into an instrument which protects the land rights of indigenous peoples. It was a creation of the Spanish colonizers to concentrate indigenous peoples so it will be easier to convert them into Catholicism and recruit for labor purposes. The *cabildos* were a group of Indians who could speak Spanish and who were willing to negotiate with the Spanish on behalf of the residents of the *resguardos*. At the later part of the colonial rule the Spanish land-owners wanted to abolish these but the indigenous peoples fought against this. After Colombia became a republic in 1810 Simon Bolivar decreed that these be abolished again but the Indians consistently resisted and thus these remain in place until now. The *cabildos* became a form of indigenous authority. All the subsequent attempts by the state to make these disappear failed and in 1890, Law 89 was enacted which says that the conversion of the *resguardos* into private lands had to be postponed for 50 years. While this law is discriminatory because it describes Indians as savages, semi-savages and minors, it still was the only law which recognized and protected *resguardos* and *cabildo*s.

With the persistent protest of the Indians against attempts to kill these institutions, finally in l988 the resguardo was defined in Decree 2001 as " a legal, social political institute with a special character which owns by a communal landtitle her territory. Internally the resguardo must be governed by an organization which will be regulated by indigenous law or by cultural customs and traditions of the community." *The* cabildo *was defined as* "A special public entity, whose members must be elected and recognized indigenous people by a localized community in a particular territory. They have the task to represent their group legally and execute the functions that the law and their customs adjudge them. The cabildantes must be members of the community that elects them and the election will be realized to conform article 3, law 89 from 1890 or conform to their own forms of traditional organization." Please see:

J.Kloosterman, "Indigenous Self-Government in Colombia, Indigenous Peoples' Experiences with Self-Government," **IWGIA Document** 76 (1994) 160-162.

[47] ONIC (National Organization of Indigenous Peoples of Colombia), "A Multiethnic and Pluricultural Society" in **Aboriginal Peoples: Towards Self-Government**, ed. Marie Leger (Canada: Black Rose Books, 1994) 78.

[48] See Aristedes Turpana, "The Dule Nation of the San Blas Comarca: Between the Government and Self-Government," Ibid. 150.

[49] Devalle, Susan B., "Multi-ethnicity in India: The Adivasi Peasants of Chota Nagpur and Santhal Parganas," **IWGIA Document**, (1980) 21.

[50] Ibid. Jaipal Singh is a Pan Tribalist leader of the Jharkand Party, which was created in l951. He is Munda who was educated in Oxford. He stated this in the debates of the Constituent Assembly.

[51] See Hurst Hannum, **International Human Rights in the 21st Century: Protecting the Rights of Groups** (2003) 74.

[52] See Richard Falk (2001) 26.

[53] See Margaret Swedish, Central America/Mexico Report, www.rtfcam.org/index.html, 16 June 2004.

[54] Hector Gros Espiell, "Study on the Right to Self-Determination:Implementation of the United Nations Resolutions," (1980) UN Document E/CN.4/Sub.2/Rev.1, quoted in John Henriksen (1999).

[55] Ted Moses, The Right to Self-Determination and its Significance to the Survival of Indigenous Peoples. In "Operationalizing the Right of Indigenous Peoples to Self-Determination. supra note 57," pps. 155-78, at 162-4.

[56] See Henry Steiner and Philip Alston (1996) 1112.

[57] See Roland Rich, "The Right of Development: A Right of Peoples?" in J.Crawford, ed. (2001) 41.

[58] Quoted from Philip Alston (1996) p. 1111.

[59] Philip Alston described the right to development "as the single most important element in the launching of a structural approach to human rights." Alston (l981)99.

[60] The US delegation's explanation for its vote is that the Declaration is 'imprecise and confusing' and it took exception to the connection between disarmament and development, and disagreed that development was to be principally achieved by transfers of resources from the developed to the developing world. Roland Rich in J. Crawford ed. (2001)53.

[61] The member-states who abstained were Norway, Sweden, Finland, Denmark, Japan, the United Kingdom, Federal Republic of Germany.

[62] Quoted in Alston (1996) 1114.

[63] See Elspeth Young, **Third World in the First: Development and Indigenous Peoples (**London: Routledge, 1995) 4.

[64] See Vincent Tucker, The Myth of Development: A Critique of a Eurocentric Discourse, (1999) 1.

[65] See Dalee Sambo, "The Emerging Indigenous Human Right to

Development," **IWGIA Yearbook** (1991) 173-74.

[66] For more details on this issue please see **Extracting Promises: Indigenous Peoples, Extractive Industries and the World Bank** (Baguio City: Tebtebba, 2003).

[67] Ibid., p.335.

[68] Fergus MacKay is a lawyer working with the Forest Peoples' Programme. This comes from a paper he made entitled "Summary of the Main Points Contained in the Conclusions and Recommendations of the Final Report of the Extractive Industries Review", 2003. Accessed online at http://www.fpp.org on June 17, 2004.

[69] Para 6, E/CN.4/Sub.2/2003/20, "Preliminary Report of the Special Rapporteur, Erica-Irene A. Daes."

[70] See World Commission on Environment and Development, **Our Common Future**. (UK: Oxford University Press, 1987) 114-115.

[71] For more details on what the gains are please refer to the IWGIA, **Indigenous Affairs** 4 (2001) and Tebtebba, **Indigenous Peoples and the World Summit on Sustainable Development** (2003) .

[72] Agenda 21, the main output of UNCED, is the Action Plan for Sustainable Development. Chapter 26 is on "Recognizing and Strengthening the Role of Indigenous People and their Communities."

[73] Joji Carino in **IWGIA** 4 (2001) 4.

[74] See **Indigenous World 2001-2002**.p.453.

[75] See **Indigenous World 2004**. p.456.

[76] See Joji Carino, "Indigenous Peoples and The WSSD," **Indigenous Affairs** 4 (2001)5.

[77] Lisa Jordan and Peter van Tuijl , Political Responsibility and NGO Advocacy – Exploring emerging shapes of global democracy. (unpublished manuscript), 1998.

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2

Indigenous Peoples Addressing Land and Resource Conflicts

Joji Cariño

> *No matter how diverse our particulars as indigenous peoples, they have two common sources, two common pasts. The first is the common fact of colonization. The second shared history is the fact of our indigenousness …*
>
> Moana Jackson, Keynote Address

The various contributors to this book each provide the diverse particulars from their part of the world about indigenous peoples' experiences of colonialism and conflicts over lands and resources. Understanding these particulars allows an historical understanding of the unfolding relationships between States, indigenous peoples and other actors involved in these conflicts, their interests and perspectives, as well as the influences and pressures that could contribute towards conflict transformation today.

Expert studies[1] on this issue put forward a framework for the analysis of contemporary problems regarding indigenous land rights highlighting:

- Failure of states to acknowledge indigenous rights to lands, territories and resources;
- Discriminatory laws and policies affecting indigenous peoples in relation to their lands;
- Failure to demarcate;
- Failure of States to enforce or implement laws protecting indigenous lands;
- Problems in regard to land claims and return of lands;
- Expropriation of indigenous lands for national interests, including development;
- Removal and relocation;
- Other government programmes and policies adversely affecting indigenous peoples' relationship to their lands, territories and resources;
- Failure to protect the integrity of the environment of indigenous lands and territories.

The contributors to this book discuss how indigenous peoples have suffered from these problems, but more importantly, they present the struggles launched to address land and resource conflicts, and the various strategies ranging from constitutional, legal, policy and administrative reform, to public protests and mobilizations, and the building of popular support for indigenous peoples' rights. Significantly, these experiences also show how these historical and ongoing conflicts can be transformed into constructive arrangements which secure greater social and ecological balance in response to the contemporary crisis of environment and development. Recognition and respect for indigenous peoples' collective rights to land and subsistence are a prerequisite to resolving these conflicts.

The indigenous peoples' experiences span a full spectrum of arrangements ranging from ongoing assimilation (Nepal and Kenya), development aggression (India, Bangladesh and Pakistan) to recovery and reinstatement of collective sovereignty over traditional territories (Greenland), (re)negotiation of modern-day treaties (Canada), regional autonomy (Argentina and Colombia), constitutional recognition of ancestral domain (Philippines) and legal recognition of aboriginal or native title (Australia).

For all indigenous peoples in different countries, an underlying theme is transforming the constitutional and legal foundation of the

state towards respect for indigenous peoples and diversity and embedding indigenous peoples' rights in the institutions and administrative processes of government and broader society. This requires a shift in government perspective and understanding towards valuing the contributions and welfare of indigenous peoples as integral to "national development." The Gitxsan people in Canada have taken this road of negotiation:

> *The challenge for the Gitxsan, as it is for other aboriginal peoples, is to drag the Crown along by every means possible. The path that the Gitxsan has chosen to take is to negotiate small interim agreements that may some day be rolled into a Treaty. The British Columbia government sees the advantage of working on bilateral issues. It is clear to both the Gitxsan and British Columbia that interim agreements can be reached on some major resource and planning issues. Working on small agreements can benefit both parties as those that are viable can be put in place for longer terms. Those that do not work can be renegotiated or scrapped.*
>
> *The past cannot be ignored or set aside. The ties to the traditional territories, the losses suffered when the resources are taken away, and the long and troubled relationship with Canada cannot be left off the negotiating table.*
>
> *The Gitxsan acknowledge that we are all here to stay. It is not possible for us to go back in history and change the way that newcomers and new authorities were received…. The Supreme Court justices, knowing the depth and breadth within which Canadian laws can operate, do see the same possibilities for reconciliation as the Gitxsan do. We will continue on with our journey to reconciliation.*

Transforming the colonial relationship towards respect, inclusion and equality with other peoples is a critical requirement towards overcoming the structural conflicts faced by indigenous peoples.

The paper by the National Aboriginal and Torres Straight Islander Legal Services Secretariat (NAILSS) states: "The skill is to use mechanisms which will demonstrate that indigenous land rights are a valuable product of a well-designed peaceful conflict resolution process."

"NEITHER ENFORCED ISOLATION NOR ENFORCED ASSIMILATION"

In Australia, the demise of the doctrine of *terra nullius* or "empty lands" has paved the way for the recognition of aboriginal or native title. The paper "Land Rights and Conflict in Australia" by Bellear, Bond and Leslie of NAILSS shows how the courts have been used to good effect to realize the recognition and implementation of aboriginal land and resource rights relating to mining, hunting, fishing and other customary uses of the land.

On the other hand, the experience of the Gitxsan nation in Canada reveals that the courts and the legal system themselves are arenas of struggle and contestation, of setbacks and advances. Chief Elmer Derrick's paper on "Reconciling Pre-existence with Crowns Title" shows that when the constitutional and legal framework provides sufficient breadth and depth for accommodation of state and aboriginal interests, then indigenous peoples are equipped with the tools for reconciliation, including using the courts to challenge and change government policy on land and resources.

Sang Joseph traces the destruction of the forests and the Ogiek way of life through decisions made by powerful political actors without consultation or consent by the politically marginalized Ogiek people. Ogiek hunter-gatherers have traditionally depended on honey from beehives which are being destroyed due to declining forest ecosystems, the introduction of logging and tea plantations and the economic activities of settlers. For the Ogiek, the last remaining forest dwellers in Kenya, the High Court could still be a window of hope in challenging the legality of the government's ownership and reallocation of the ancestral East Mau Forests to outsiders.

Following the Kuna revolt in 1925, the indigenous reserve in San Blas, Panama was established as a *comarca* (district) regulated by special laws, where lands were non-transferable. More recently, additional Kuna *comarcas* of Mandungandi and Wargandi were established comprising designated territories and their associated political and administrative structures. The Kuna experience highlights the importance of indigenous self-governing institutions for management of internal conflicts within the community, and *vis-à-vis* external developers. Flaviano Martinez' paper on the Kuna peoples and conflict resolution reviews how the Kuna political, administrative and legal system interacts with the state of Panama, using case examples of conflicts with mines, tourism and other infrastructure projects to reveal the exercise of Kuna autonomy and decision-mak-

ing about developments affecting their territory and welfare.

A similar model of territorial rights combined with respect for cultural integrity and political and administrative power is advanced by indigenous peoples in Colombia, who recently won constitutional changes recognizing the multi-ethnic and multicultural character of the State. These gains were won following militant mobilizations and are at an early stage of implementation. Maria del Pilar Valencia examines these early experiences of indigenous institution-building and renewal following an earlier period of decline of traditional cultures and structures.

In Argentina, the Guaraní people in the province of Misiones experienced a different trajectory with respect to regional autonomy. Unlike the military conquest suffered by other indigenous peoples and communities in Argentina, the Guaraní enjoyed semi-autonomy, having never surrendered their independence to the Spanish Crown or to the Argentine State. Ariel Araujo traces the history of subsequent minoritization of the Guaraní people within their own territory through campaigns of militarization and forcible assimilation. The 1980s and 1990s were times of intense conflict with the government, military and developers, with the Guaraní seeking international pressure and action through the International Labor Organization and international campaigns. The current situation could hold positive or negative outcomes for the Guarani peoples, but they are poised to regain and consolidate their threatened autonomy and self-government.

As with the Guaraní, the Limbu peoples in Nepal have learned that historic treaties with the colonial powers which recognize their *kipat* traditional homelands and local autonomy provide no guarantee of continued territorial security. Through a series of integrationist administrative measures, divide and rule tactics and modern land reform, the "*kipat* was nibbled at, not swallowed whole," rendering the Peace and Conciliation Treaty of 1774 effectively nullified, and the *kipat* system abolished. Arjun Limbu highlights how contemporary international standard-setting to recognize the human rights of indigenous peoples provides a fresh impetus for the Limbu peoples to reassert their ancestral claims towards achieving a lasting peace.

Asia has been characterized as a continent of old peoples and young states. The social transformations in class, caste, and community structures unleashed by colonialism and state-building are traced by S. Bosu Mullick in "Conflict and Resolution between Indigenous Peoples and the State of India." The long-drawn conflict

between centralizing states and indigenous peoples over land and resources continues to the present day.

Mullick dissects this conflict between two different social and economic systems, the non-state lineage communities and the state system based on classes and castes. Tribal responses to their forcible incorporation into the State structure at different periods of the colonial encounter are analyzed alongside the changing State policies. The tribal policy of the post-independence Indian State has been often described as "internal colonialism" given that the "massive invasion of tribal land by outsiders occurred after 1947."

This macro-finding is substantiated by Ravi Rebbapragada's paper "Development: The Root Cause of Conflict in India" which focuses on mining in Andra Pradesh and the actions taken by grassroots communities. The Fifth Schedule of the Indian Constitution guarantees *Adivasis* protection for their lands, specifically prohibiting the granting of mining leases to non-*Adivasis*. This constitutional protection was routinely violated by the recent state-backed expansion of corporate mining developments, thus triggering a grassroots legal battle at the Supreme Court, which was successful.

Chalid Muhammad's "A Valuable Lesson from Rio Tinto: Conflict Resolution in East Kalimantan" details a failed negotiation process between the multinational mining corporation Rio Tinto and indigenous communities to address the negative impacts resulting from mining operations in East Kalimantan, Indonesia. The company simultaneously engaged in negotiations with the affected communities, thus providing a public semblance of corporate responsibility, while actively undermining the community organizations and blatantly violating all commitments made.

All the negotiations over a two-year period were in vain. The debilitating effects of such "bad faith negotiations" on the indigenous communities underline an urgent need for conflict resolution mechanisms involving the government, indigenous peoples and developers to negotiate legally binding agreements on all parties.

DEVELOPMENT AGGRESSION AND FREE, PRIOR AND INFORMED CONSENT

"Development aggression," which expropriates indigenous lands and resources to feed economic growth for the benefit of others, is itself a major source of conflict. This has given rise to the demand that development policies, programmes and projects affecting indigenous peoples be undertaken only with their free, prior and in-

formed consent.

In contemporary international law, indigenous peoples have the right to participate in decision-making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation, free, prior and informed consent.

The principle of free, prior and informed consent of indigenous peoples to development projects and plans affecting them is founded on the right of peoples to self-determination. Ted Moses, of the Grand Council of the Cree, states:

> *We have the right to benefit from the resources of the land as an expression of our right to self-determination. We may not be denied a means of subsistence; moreover, we may not be denied our own means of subsistence. We have the right to use our lands and waters, to live by our own means as we always have, and by whatever means we may choose. Self-determination protects our right to subsist, and it protects our right to subsist in the way we as indigenous peoples see fit…. If we consider the history of the world's indigenous peoples during the past 500 years, if we consider our history since our contact with Europeans, one terrible and tragic conclusion emerges as a central theme: the denial of our own means of subsistence by those who came to live on our land.*

In the Philippines, the Indigenous Peoples Rights Act (IPRA) passed in October 1997 recognizes ancestral domain rights. The implementation of this law has been impeded by a legal stalemate between the IPRA's recognition of "native title" and the continuing exercise of the "regalian doctrine," a legal fiction which presumes all Philippine lands to have fallen under the ownership and jurisdiction of the Spanish Crown, and to successor Philippine governments. Nevertheless, the recognition of ancestral domain and lands now puts a requirement for community consent on development projects affecting lands of indigenous cultural communities.

Free, prior and informed consent of indigenous peoples is required by law for exploration, development and use of natural resources; research-bioprospecting (Executive Order 247); displacement and relocation (the former is transfer of community due to natural calamities, while the latter is due to man-made activities); archeological explorations; policies affecting indigenous peoples

like Executive Order 263 (Community-Based Forest Management); and entry of the military. The definition of prior informed consent in the Indigenous Peoples Rights Act of the Philippines provides that:

- All members of the community affected consent to the decision;
- Consent is determined in accordance with customary laws and practices;
- Freedom from external manipulation, interference or coercion;
- Full disclosure of the intent and scope of the activity;
- Decision is made in language understandable to the community;
- Decision is made in process understandable to the community.

Free, prior and informed consent is now increasingly understood as an accepted principle applying to indigenous peoples in the development process. This was highlighted by the World Commission on Dams in its "Final Report Dams and Development: A New Framework for Decision-making," as a strategic priority to address the disproportionate impacts on indigenous peoples caused by dam-building. This principle underlines the procedural and substantive rights of indigenous peoples in the development process, and upholds the need for negotiated outcomes to land and resource conflicts. The implementation of free, prior and informed consent will go a long way towards addressing conflicts arising from the development process, even while efforts are made to fully realize the fundamental human rights of indigenous peoples.

Joji Cariño is the Policy Adviser and head of the of European Desk of Tebtebba.

Endnote:

[1]Special Rapporteur Mrs. Erica Irene-Daes, Final Working Paper on Indigenous Peoples and their Relationship to Land.

3

Indigenous Identity, Conflict and Conflict Resolution

Dorothea Hilhorst

Present-day conflicts, as recent studies note, are more about identity than about ideas. In the post-Cold War era, simmering "ancient hatreds" have come to the fore and inspire many outbreaks of violent conflict throughout the world[1]. This book is about the experiences of indigenous peoples with conflict and conflict resolution, and many of those related here are indeed about identity, about people asserting their rights to live as peoples. What then do these stories tell us about how identity motivates and affects the everyday practices around conflict and conflict resolution?

What makes people to become what they are? Conflicts over identity are often differentiated from conflicts over economic resources but can these be separated in practice? The papers in this book all testify to the integrated nature of identity. Identity is about culture and language, as much as it is about territory and resources. Identity for indigenous peoples is intimately related to land and livelihood. In the Cordillera of the Philippines, "land is life" (Joan Carling). Similarly in Nepal, the indigenous peoples' right to land is *fundamental* for their survival and development (Arjun Limbu). Ogiek culture in Kenya, says Sang Joseph, "springs from the land that helps

us maintain our sense of belonging to ourselves. Land is our life, our source of food and existence. Embedded in it is our social life, our status, security and dignity. In short, the land is our world."

To most indigenous peoples represented in this book, land represents life, both as a way of life and a means to survive. In this sense, identity is not restricted to the relation to the land. Henriette Rasmussen, for instance, brings out how unemployment fosters human indignity and misery and thus negatively affects the sense of identity of people. Identity politics for indigenous peoples is thus not just about a way of life but in many cases about sheer survival.

Threats to the indigenous peoples' way of life and the violence inflicted upon them likewise center around resources. All too often, they are confronted with incursions on their lands and resources, inspired by greed for the natural riches of their territories. Logging companies, plantations, agricultural settlers, mining companies and tourist enterprises enter indigenous areas, usually with permission or even active encouragement of government. It is in view of such violence and injustices that indigenous peoples in all parts of the world continue to redefine and reassert their identity as indigenous peoples.

Where lands, resources and rights are violated by national or foreign companies protected by or in alliance with state bureaucracies and legal systems, indigenous peoples organize around their indigenousness. They unite against instances of open, blatant racism such as in the case of the Gitxsan who are described by a judge as people that were "eking out an aboriginal life which was at best nasty, brutish and short." They stand together against the countless instances where seemingly neutral policies work in practice against their interests and well-being. Nellys Palomo Sánchez, for instance, denounces the human rights abuses that Indian peoples in Mexico endure under the pretext of fighting subversion and drug trafficking. In other words, being drawn into conflicts over their resources forges people to express and organize around their identity.

As different papers reveal, identifying as indigenous peoples has also been boosted in the last decade by the growth of an international movement of indigenous peoples, partly around the United Nations' process of drafting a declaration on indigenous peoples' rights. Arjun Limbu narrates how his people, after a long period of marginalization, have rediscovered their identity under the influence of these international processes. In international gatherings indigenous peoples find comfort in sharing their experiences and inspire and learn from each other how to assert their rights. One

might say that people have added to their identity as Gitxsan, Igorot, Ogiek or Inuit the identity of being *indigenous* and developed a sense of belonging to a global community of indigenous peoples.

In addition, indigenous identity gets renegotiated from within. Nellys Palomo Sánchez deals with the way in which indigenous women define their identity and challenge aspects of their culture. Other papers refer to processes within indigenous communities where leadership is not capable of defending their interests vis-à-vis parties attempting to get hold of their resources.

Identity as an integrated concept involves how people deal with conflict. The way in which people perceive conflict reflects the way in which they view the world, themselves, and their relations with other beings. Several papers elucidate this. Flaviano Martínez explains how the Kuna people in Panama associate conflict with broken equilibrium. Conflict resolution is thus geared towards the restoration of equilibrium, and in the case of an individual perpetrator, to his reincorporation into the community. The practices around conflict start from the notion that victims, perpetrators and judges must all continue living in the same community.

The Aymara indigenous people in Bolivia, according to Reynaldo Paredes Alarcón, view conflict as a relation. The conflicting parties are united on the principle of the relationship between them. The asymmetry between them can be resolved by creating complementary antagonism, symbolized by the complementation between highlands and lowlands that form the discontinuous territories of the indigenous peoples in the country.

Carlos Ochoa García shows how the Maya view conflict as the perpetuation of social memory of cooperation and dialogue as well as with the transformation of relationships. Hence, conflict is considered a property of social relationships that is about restoring order as much as it is about transformation. Indigenous peoples obviously are diverse in the way they define conflict. Yet the idea of it as embedded in relationships and the tension between restoration and transformation seem common themes in the way they perceive conflict.

Traditional views on conflict and practices on conflict resolution are modelled on conflicts within and between communities that are different, but where commonalities can prevail over differences and where the relations are relatively symmetrical in terms of scale, culture and resources. In these conditions, indigenous reparation or resolution of conflict appears often to be successful. Some authors also reflect on cases where resolution failed. Reynaldo

Paredes Alarcón discusses a practice of conflict among people in Bolivia. It involves a yearly ritualized fight called *tinku*, which is harsh and aggressive and serves to regulate ancient tendencies towards warfare into a rite favoring sedentary life over nomadic life, agriculture over hunting, and exogenous over endogenous conquest and combat. Alarcón relates how in 2000 the *tinku* overstepped the limits set for the ritual and turned into an inter-ethnic war among Lymes, Jucumanis and Cacachacas.

John Bamba talks about how ethnic violence in West Kalimantan, Indonesia can partly be explained by looking into the contradictory cultural contexts of the incidents. The conflicts occurring between indigenous Dayaks and Madurese settlers over land, debt or ''women-related'' issues are exacerbated, according to him, by cultural clashes in the ways the parties deal with and perform conflict. The Madurese have a tradition of using violence to settle dispute or resentment through the institution of *carok.* The Dayaks, on the other hand, used to have a complicated practice of headhunting where head taking was nonetheless regarded as a serious issue, affecting generations, to be cleansed for the sin of committing murder. These papers demonstrate that indigenous conflict resolution cannot always work. Sometimes, conflict gets out of control or becomes self-perpetuating in the sense that cultural responses to handle it evoke new rounds of violence instead.

The situation becomes much more complicated when indigenous peoples have to face (potential) conflict with parties that are highly asymmetrical in skill, power and resources. As Ravi Rebbapragada remarks, two diametrically opposed interest groups with grossly imbalanced power equations can be expected to co-exist without conflict, but not when people's resources are taken over through deception or without their consent. Much of the time, indigenous peoples have to respond to violations of their rights by governments or international companies. And all too often, they have to exert major efforts to be represented in conflict resolution processes or against practices of exclusion or marginalization. Juan León reports on the way in which indigenous peoples in Guatemala were excluded from peace negotiations between the government and revolutionary forces and how they were finally able to gain representation.

In reading this book one is struck by the willingness and tremendous endeavors of indigenous peoples to engage with parties, by the latter's rules, that threaten their resources, livelihoods and identity as peoples. The problem is that in many cases these parties do

not abide by their own rules. The history of indigenous peoples and national authorities is littered with *broken promises*. The case of the Guaraní people shows how the province of Misiones in Argentina evicted indigenous communities despite legislation on self-governance and semi-autonomy. The Kenyan government allocates indigenous land against a court order; the Philippine government fails to realize legislation granting indigenous peoples their constitutional rights; clauses acknowledging indigenous peoples' rights in the Guatemalan peace agreement have not been implemented; India's bureaucracy and judiciary fail to respect the country's Constitution.

The different papers of the book give many more illustrations of unfulfilled promises and unlawful treatment of indigenous peoples by state authorities. Hence, where indigenous peoples are prepared to engage in peaceful and lawful forms of conflict resolution to assert their rights, they often meet deceit or deception. In some cases, as in Burma, this brings them to the conclusion that there is no peaceful way out of the conflict.

Whether or not they are successful in their bid to protect their resources and identities, in the process indigenous peoples engage in and form new institutions and mechanisms to handle conflict**.** In Burma, the Karen formed the Karen National Association as early as 1881. The Kuna people successfully draw on their own General Assembly's Fundamental Law to negotiate with tourism properties and authorities (Flaviano Martínez). The Guaraní people in Argentina continuously seek new venues to protect their rights (Ariel Araujo). When their right to semi-autonomy and self-governance was eroded, their responses ranged from hunger strikes to petitioning the International Labor Organization (ILO) to seek justice. In Colombia the indigenous peoples set up new institutions called the Cabildos, which now operate in embryonic form but bear the prospect of developing new forms of governance that build on tradition yet respond to the challenges of present times (María del Pilar Valencia). A final example to mention is the Inuit Circumpolar Conference (ICC), which represents since 1977 all Inuit from Russia, Alaska, Canada and Greenland.

In all these cases indigenous peoples combine a wide range of strategies and establish new institutions that marry traditional and modern forms of conflict handling. Or, as Juan León eloquently phrases it, something new is born out of the old. These new forms of organization as they emerge and are lived and practised start to become part of what indigenous peoples are. It is through the every-

day practices of protecting their rights and handling conflict that their identity continues to be shaped.

In reading this book one becomes convinced that distinctions in conflict on identity politics, economics or failing states become impossible to maintain when looking into actual conflicts and practices of resolving these. Indigenous peoples' identity is an integral concept that encompasses all these aspects of life. It is through the daily responding to conflict situations that indigenous identity gets forged, defined, transformed and asserted.

Dorothea Hilhorst is a professor of Disaster Studies at the Wageningen University in The Netherlands.

Endnote:

[1] Mary Kaldor, **New and Old Wars Organized Violence in a Global Era**. (Cambridge: Polity Press, 1999).

Reference:

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4

Indigenous Peoples' Movements

Raymundo D. Rovillos

Social movements are generally defined as "the collective efforts by socially and politically subordinate people to challenge the conditions and assumptions of their lives… (These are) persistent, patterned, and widely distributed collective challenges to the status quo."[1] Usually differentiated from political parties, corporate interest groups or guerrilla movements, social movements "generally seek to reshape state policy rather than hold state power."[2]

The indigenous peoples' movements discussed in this book suggest that indigenous movements differ from other social movements in their goals, political orientation and forms of mobilization and political action. Their most distinctive characteristic is the centrality of ethnic identity as a mobilizing factor. The indigenous peoples' call for "putting history before us, and not behind us" is an explicit appeal to collective experience and memory as the basis of collective identity, consciousness and action. Thus history is revisited, ritual and other forms of identity markers are used as symbols, and cultural practices are politicized.

Identity as a mobilizing category is not devoid of any materiality. Indeed, "ethnicity cannot be politicized unless an underlying

core of memories, experience, or meaning moves people to collective action."[3] Most of the indigenous authors in this book narrate their common histories of displacement from their ancestral lands, domains or territories. For indigenous peoples, land is inextricably linked with their identity. "Land is life" because it sustains the economic and cultural activities of indigenous peoples. Land is thus the space and source of cultural reproduction: territory is identity.

Indigenous movements are fairly recent phenomena. During the first half of the 20th century, indigenous peoples in Latin America, Asia and Africa participated in revolutions and political movements but their participation was based on their class (as peasants) rather than on their ethnic identity. For example, Juan León explains that for a long time since the 1960s, the Maya peoples joined other marginalized sectors of Guatemalan society in an armed struggle. "Even so, prior to the onset of the peace negotiations, the major objectives of the revolutionary movement did not include proposals from the indigenous peoples themselves." It was in the late 1980s, during the peace process, when the Maya activists themselves presented their common agenda both to the government of Guatemala and to the Unidad Revolucionaria Nacional Guatelmateca (URNG).

In other instances, ethnic concerns are subsumed within the context of religious movements. In Mindanao, Philippines, the armed movement led by the Moro National Liberation Front (MNLF) and the Moro Islamic Liberation Front (MNLF) has articulated their struggle for self-determination largely within the framework of religion, Islam. As Rolando Esteban remarks in his paper, "Islam has increasingly homogenized Moro culture as it became the basis of identity formation… Islam has not only provided an ideology for the Moros but also provided a basis for the goal of an Islamic State."

Movements that are inspired by religion may also pose some dangers to indigenous peoples. Religious intolerance of difference can cause their marginalization. In Bangladesh, indigenous leaders see the rise of Islamic fundamentalism as a threat to their survival as a people. Islamic fundamentalism is intolerant of "other" cultures and seeks to homogenize them into "one world of Islam." This is especially difficult for the indigenous peoples of the Chittagong Hill Tracts (CHT) in Bangladesh since the majority of them are also Buddhists. Since the 1960s to the present, the CHT has been a scene of continuing violence (Roy).

Some indigenous leaders believe that indigenous movements should not be separated from broader social movements. Joan Carling of the Cordillera Peoples Alliance in the Philippines sums

up their lessons from decades of organizing and mobilizing work thus: "The major lesson learned from this political exercise is that genuine regional autonomy cannot be achieved if the national government is not truly democratic and independent." Carling believes that the clamor of indigenous movements for self-determination can only materialize under a nationalist and democratic regime.

However, as can be observed in many papers in this book, there has also been some tension between the ideology of nationalism and identity politics (Bom, Roy, Leon). A scholar has remarked that the problem with nationalism is that it remains captive to categories such as "progress," "reason," and "modernity," elements that are still alien to many indigenous peoples. He adds: "Obsessively concerned with the West and other forms of local elitism, nationalism fails to speak for its own people; on the contrary, it suppresses the politics of subalternity."[4]

Several cases cited in the papers illustrate this point. For example, nation-states' modernization programs have been designed within the framework of export-oriented industrialization. These growth-driven development projects, such as transnational corporate mining in India (Rebbapragada) and Indonesia (Chalid Muhamad), eco-tourism in Panama (Martínez), and hydroelectric projects in the Philippines (Carling), have displaced indigenous peoples from their lands, thereby causing or worsening poverty in these communities.

Nationalist movements, either of the Liberal Democratic or Marxist orientation, often fail to fully understand indigenous peoples' symbolic challenges to the status quo that offer alternative interpretations of individual and collective experience.[5] Juan León notes that one of the factors that led to the demise of the COPMAGUA, the national coalition of Mayas, was the yielding by its leaders to the political decisions of the URNG. In the process, COPMAGUA lost its autonomy and its strategic vision that planning must be based on the interests of the Mayan people themselves.

The left-wing political parties in Guatemala also failed to address cultural concerns and were often detached from representatives from their communities. Guerrilla movements usually could not provide land or justice, and frequently violated community cultural norms. Because of these, indigenous peoples sought alternative modes of social movement mobilization.

Another trend in contemporary indigenous movements is that they seek to break stereotypical representations of their identities as "marginalized," "poor" and "powerless." This shift in political ori-

entation from the periphery to the center was largely a result of indigenous peoples' recognition of their inherent source of power — their knowledge, spirituality, and values of collectivity and community solidarity. Even non-indigenous peoples (mainstream society) are now going back to indigenous knowledge(s), values and practices as a viable alternative to the world's social and environmental crises.

To better understand indigenous peoples' efforts in changing their lives and the world, it is important to use a paradigm that recognizes the role of social actors and the concept of "human agency." Norman Long defines agency in the following manner:

> *The notion of agency attributes to the individual actors the capacity to process a social experience and to devise ways of coping with life, even under the most extreme forms of coercion. Within the limits of information, uncertainty and other constraints that exist, social actors are 'knowledgeable' and 'capable.'*[6]

Within this framework, indigenous peoples become active "subjects" of social movements rather than passive objects. As actors, they are not treated as individuals that can be "aroused, organized and mobilized" for revolutionary and other political aims. Rather, indigenous peoples use their human agency to influence events, interpret and "socially construct" their social relations and their environments, and create their discourses in the light of these relationships. Thus, there can be multiple discourses and realities (as opposed to universal and particular discourses). This is because the construction of identities and the exercise of agency are influenced by different spatial (place) and temporal (time) contexts.

Indigenous peoples have expressed their voices and "human agencies" through their collective actions (movements) in a variety of ways. In turn, these movements use multifaceted and multilayered strategies to cope with their different conditions. What follows is a rendering of some of these strategies (as culled from the papers presented in this book).

Sanjay Bosu Mullick writes that indigenous peoples have gradually evolved a strategy of accommodation, in response to the challenges imposed by alien forces. Mullick posits:

> *Over the ages, indigenous peoples have developed and practiced a social mechanism in which they accommodate and mold*

> *foreign social, political and economic elements compatible with their basic values and aspirations into their own social system, and reject totally those that are incompatible. This has saved them time and again from compromising with or surrendering to opposing forces and in keeping their identity intact.*

An example of the strategy of accommodation or localization that Mullick cites is the Indian indigenous peoples' conversion to Christianity during the British colonial period. He maintains that the indigenous peoples somehow made the church work in their favor as they succeeded in getting back a major portion of their lost land. In addition, the converts are now "engaged in localizing the church by bringing in their traditional cultural ethos and practices."

A similar pattern of accommodation and localization can be seen in Latin America. Pilar Valencia informs us that in Colombia indigenous peoples have strengthened their claims over their resources by appropriating colonial property regimes, such as the *reguardos*. Introduced during the colonial times, the *reguardo* is a collective property under land deed. It was initially an instrument of domination by the Spanish crown. But over the course of more than a century, it has gradually become a tool for the defense of indigenous territorial rights.

These examples suggest that though time, indigenous peoples have selectively adopted various property regimes (primordial, colonial or modern) in their attempts to strengthen their claims over their territories. Above all, the strategy of accommodation and localization is a reflection of native agency.

Another strategy that indigenous peoples' movements have used is the revaluation of their indigenous institutions. Ariel Araujo writes that in 1983 in Argentina, "the indigenous peoples embarked upon a new process in which they reevaluated their traditional political institutions. This gave those institutions new momentum, and also led to the founding of political organizations to defend indigenous rights." Under a democratic system, institutions were created within the framework of provincial governments to which indigenous peoples elect their representatives. These institutions, generally known as the "Institutes of the Aborigines," are in charge of coordinating all the sectors of the State in the respective areas for purposes of implementing health, education, development, and housing programs as well as planning in indigenous territories.

A similar tact of creating local institutions of empowerment has been pursued by the Kuna peoples of Panama. Flaviano Martínez

notes:

> *The local assemblies and general assembly have provided the Kuna people with organizational self-empowerment. Thanks to these structures, they were able to confront external pressures from the State and/or from domestic and foreign private sectors seeking to embark on large-scale economic projects in our communities.*

Besides revaluating and strengthening their traditional institutions, indigenous peoples have also created "new" institutions of self-empowerment. These local, national and international indigenous peoples' organizations have become their instruments for policy advocacy and campaigns.In Nepal the Kirat Yakthung Chumlung (KYC) is working towards the restoration of the *Kipat* system, a traditional resource ownership and management system that was abolished by the state. In Kelian, Indonesia, communities affected by the large-scale mining of Rio Tinto have organized the Lembaga Kesejateraan Masharikat Tambang dan Lingkuran (LKMTL). Indigenous peoples in this country have actively participated in the formation of a national alliance of mining "struggle groups" — Mines, Minerals and People (MM&P). Multisectoral organizing with indigenous peoples as key players was also the approach followed by the Cordillera Peoples Alliance in the Cordillera, Philippines.

Legal rights protection is another strategy that indigenous movements have employed. In Australia the Aboriginal Legal Service System was created and developed by the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS). Authors Bellear, Bond and Leslie assess this mechanism as largely and generally effective and efficient in bringing conflict situations involving indigenous peoples "along a path which emphasizes non-violent legal and political strategic action across all levels of the executive, legislative and judicial arms of government." The experience of NAILSS also shows that indigenous intellectuals have "learned the rules of the game" created by government and corporations. As a result, indigenous peoples now know "how to beat them at their own game."

In other instances, indigenous peoples have taken the path of armed movements as the ultimate means to prevent and reverse their marginalized status. In Mexico the indigenous peoples have waged a non-Marxist social movement, the Ejercito Zapatista de

Liberacion Nacional (EZLN) or Zapatista movement. This movement takes up the discourse of human rights, democracy and autonomy as points of distinction from the old agrarian struggles.[7] In Burma indigenous peoples have formed their own political parties, the Karen National Association (KNA) and the Chin National Front (CNF). Liton Bom reports that these political parties have actively engaged in political struggle, employing different forms of protest — armed, legal, or both in the pursuit of their objectives.

During the last decade, indigenous movements have been internationalized, due in part to the push made by indigenous peoples themselves. Indigenous peoples sought international support and protection because they lacked political access at home. This was exemplified by the Cordillera peoples' struggle against the World Bank's Chico Dam project in the Central Cordillera region during the Marcos dictatorship (see Carling).

The internationalization of indigenous movements was also a result of international campaigns and processes. For example, the UN Decade of Indigenous Peoples has brought to center stage the debate and further discourse on indigenous peoples in all the bodies and agencies of the UN system. The Decade has undoubtedly mobilized several local/village level organizations to participate in these international processes, where indigenous peoples were able to voice out their local issues and concerns in the global arena.

International processes/instruments, such as the UN Draft Declaration on the Rights of Indigenous Peoples, have encouraged indigenous peoples to examine and reexamine their past, revitalize their indigenous institutions, assert their claims over their land and resources and their right to self-determination (read, for instance, Bom, Carling, Limbu). The convergence of local demands and international norms/standards has resulted in a new form of political syncretism that is local but not parochial.[8]

Indigenous peoples' movements have undoubtedly impacted on the local, national and global society. These have attracted public attention and opened spaces for discourse on indigenous issues in civil society, guerrilla movements and dominant institutions, and nation-states. These institutions are now forced to deal (in various levels of sincerity) with the issues and concerns of indigenous peoples. How much of these issues and demands are recognized and addressed depends largely on the strength of the indigenous movements themselves, as history and recent experiences have taught them.

Raymundo Rovillos is the Research Coordinator of Tebtebba Foundation and an Assistant Professor of History at the University of the Philippines Baguio.

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[1] Darnovsky, Epstein, and Flacks, (1995) cited in Brysk (2000), 33.
[2] Ibid.
[3] Esman, quoted by Brysk (2000).
[4] Radhakrishan (1992), 88.
[5] Kay B. Warren, **Indigenous Movements and Their Critics: Pan-Maya Activism in Guatemala** (Princeton: Princeton University Press, 1999), 5.
[6] Norman Long, **Battlefields of Knowledge: The Interlocking of Theory and Practice in Social Research and Development** (London and New York: Routledge, 1992), 23.
[7] Harvey, cited in Brysk, (2000).
[8] Alison Brysk, **From Tribal Village to Global Village: Indian Rights and International Relations in Latin America** (California: Stanford University, 2000).

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5

Gender, Ethnicity and Conflict Resolution

Raymundo D. Rovillos

In this book, Nellys Palomo Sánchez' paper tackles the gender dimension of conflict resolution, peace building and sustainable development in indigenous peoples' communities and movements. Here we get a glimpse of the dynamic interrelationship of class, ethnicity and gender in conflict resolution. She succinctly points this out when she remarks, "(W)e find ourselves enduring profound injustices, facing needs that tend to polarize us: between Indians and mestizos, men and women, rich and poor."

Palomo Sánchez validates the notion that women and men, as actors, experience violence and conflict differently, both as victims and as perpetrators, with differential access to resources (including power) and decision-making.[1]

The notion of "difference" presumes that indigenous women are disproportionately affected by conflict. In Mexico, militarization has resulted in the rape, death, displacement and prostitution of women.

The gendered nature of armed conflict and violence is most clearly manifested in the case of women combatants taken as prisoners and very often sexually abused or raped. In most cases, rape becomes an act of war and to "possess" a woman becomes a symbolic act of

domination.[2] In this situation, indigenous women are twice struck, first on the basis of their gender and secondly on their ethnic identification. Since women's bodies are often seen as both symbolic and physical markers of community identity, sexual violence against women may be seen as a form of humiliation of the entire community.[3] Close to conflict zones, prostitution increases at the service of the military men. It often includes rape, sexual abuse, sexually transmitted diseases and unwanted pregnancies. The experience of indigenous women in armed conflicts shows that sexual violence becomes an expression of deeply rooted racism and resentment.

The paper also confirms that women's role in conflict resolution transcends stereotypical representation of women as victims. This affirms the notion of human agency. As actors, women are not mere victims of violence/conflict; they are also peace builders, combatants, development workers and many more.

Yet women are not mere "healers" and nurturers of armed combatants or revolutionaries. They are also active leaders and members of armed movements. For these women combatants, participation in guerrilla movements was a crucial step towards their liberation. Palomo Sánchez explains the confluence of feminist and revolutionary goals in this manner:

> *The struggle for the rights of indigenous women runs parallel to the struggle for recognition of our peoples. It has been nourished by the essence and spirit of being an indigenous woman. Many of the demands incorporated into the Revolutionary Law on women Zapatistas are core concerns that have mobilized the women's movement. These demands have yet to receive a positive response under Mexican Law, but are being taken up today by Zapatista women insurgents and non-insurgents.*

It is important to highlight that for indigenous women who are mostly of rural backgrounds, joining the guerrilla movement has often meant progress and emancipation as it allows for new experiences, greater geographical mobility, solidarity and companionship.[4]

Palomo Sánchez' paper reflects the parallelism between the indigenous women's demands for equality and autonomy and the indigenous peoples' goal of self-determination. She argues:

> *Autonomy starts with us, in our homes, work, organization, community, and people. Autonomy is understood to be the right to be able to say things, not be subjugated, silent, or submissive.*

> *Women today are struggling and demanding the rights of their peoples, but they are also lifting up their voice to fight for their specific rights. Full autonomy will not be achieved if women continue to be subjugated within their own communities.*

The relationship between the women's movement (and the politics of feminism in general) and the indigenous peoples' movement is not necessarily harmonious. There are also tensions between gender and ethnicity, as we can glean from the paper of Palomo Sánchez. The paper reflects the growing gender consciousness among indigenous women. This consciousness has pushed them to interrogate the asymmetrical relations within their society and culture, and indeed even within the indigenous movements. Indigenous women activists are now defending their specific interests and are questioning certain customs and practices that violate their rights as women. Palomo Sánchez explains: "Indigenous women are working to protect the integrity of their culture but their perspective is not that of blind acceptance of established traditions." She adds:

> *Our participation as women and our integration in the struggle of our peoples had made it possible to open discussions on customs and practices. We suffer discrimination and daily human rights violations under the cover of alleged respect for "custom." Many of us are conscious that we need a law that protects men and women equally, and that we cannot continue being beaten by our husbands.*

While indigenous women activists and intellectuals challenge the gender "conflicts" within their communities, they are also the first to point out the possibility of reconciling these conflicts. Women's agency towards this possibility is articulated by Palomo-Sanchez: "Women can help create a climate of coexistence, accepting the fact that despite the growing hostility, aggression and violence, we need not be divided by our differences."

Raymundo Rovillos is the Research Coordinator of Tebtebba Foundation and an Assistant Professor of History at the University of the Philippines Baguio.

Endnotes:

[1] Caroline Moser and Fiona Clark, eds., **Victims, Perpetrators Or Actors?; Gender, Armed Conflict and Political Violence** (London and New York: Zed Books, 2001).

[2] APRODEV, (2002), 14.

[3] Strickland and Duvvury, (2003) 8.

[4] APRODEV.

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6

Indigenous Peoples and Peace Accords

Jack G. L. Medrana

Geopolitical units in the modern world usually appear in the form of nation-states that encompass several different societies within their boundaries. Oftentimes many of these societies and cultures have been helplessly pulled into the power sphere of a state when stronger groups overpowered adjacent peoples or far away territories. The modern nation-state formed all over the globe that was patterned after European political systems included other peoples that were different from the dominant groups that created the state. This has been the case for indigenous peoples who suddenly discover for themselves that they are under a foreign system, when before there was only their culture and law to live with.

Indigenous peoples will always continue to seek what is best for themselves. Their age-old struggle is being transformed anew with the emergence of an "indigenous movement" that is gaining strength in many places. With this comes the realization of a concept of indigenous peoples' rights, which has aided significantly in advancing their demands. The necessity of each group to maintain its existence and self-expression has consequently presented problems to the integrity of the state.

There are different sets of interests among the indigenous peoples and nation-states. This has been the cause of continuous strife between them. Indigenous peoples have persistently fought to guard their culture, institutions and stewardship over their territories and natural resources. To them the preservation of these is the best guarantee for their own well-being and survival. On the other hand, the state is preoccupied with how it should strengthen itself politically, economically and socially. It exerts its jurisdiction over what maximal extent of territories it can possibly incorporate and bring all the people on these lands under the state's law. From these territories it can exploit the natural resources, require people living and working on them to pay taxes, and make use of all their potentials to beef up its economy. Essentially it remodels all its constituents into homogeneity to conform to its standards. All of these, however, have placed indigenous peoples at a disadvantage.

The causes of conflict between indigenous peoples and the state are many. There are indigenous peoples who find state policies oppressive to them and thus cannot see themselves following, totally or in part, the rules of the state. Other causes include transmigration policies, relocation of one ethnic group to another's territory, conflicting notions of land use, ownership and access, and contradictions between state laws and customary laws. The resulting conflict often results in atrocities committed by the state apparatus towards indigenous peoples: massacres, "scorched earth" operations, and the disappearance and execution of people. These come with the desecration of their sacred sites and artifacts.

As the roots of conflict assume various forms, so do ways of conflict resolution. For possible ways of resolution to succeed there is a need to look into particular nuances of conflict and capacities to ensure peace at the local level. While many have found the conventional ways of peace building helpful, there is also a lot of potential in the indigenous methods of conflict resolution. Good experiences in the latter need to be documented and its possible interfaces with the modern practices of resolving conflicts.

An important instrument in conventional peace building processes is the peace agreement or accord. It appears in the form of a text that contains the conditions on the termination of conflict. In intra-state conflicts where the two opposing parties find it difficult to change the course of their situation, a third party intervenes for a possible solution by forming a peace agreement for them. It is characterized by transtextuality, meaning that provisions are stated according to the rules of international law. The international commu-

nity is always expected to be present in the realization of a peace agreement, from its negotiation, formulation and signing to implementation.

Generally there is no clear-cut recipe for a peace agreement, and its workability depends on an examination of the peculiarities of the conflict involved. The settlement of peace in most cases is not based on a single agreement but a compilation of these, and as such, the whole concluded set of accords should be taken into consideration. Usually the contents of peace agreements concern the issue of human rights, the practice of democracy, elements of amnesty and pardon, and the holding of free and fair elections.

In the light of indigenous peoples' participation, several points with regard to peace agreements are worth taking note of to see how indigenous peoples should navigate themselves within the process of such an agreement. One is to know the political context – in the national, regional and international dimensions – of a peace negotiation. Another is to identify the actors involved and the roles they assume in the process. Other things that need to be considered are: the extent of indigenous peoples' participation, the issues they are willing to compromise and those that are non-negotiable, the bodies responsible for implementing and monitoring the peace agreement, and sanctions for non-compliance.

Many of the peace agreements between states and indigenous peoples still have shortcomings that fail to satisfy the expectations of the latter; indeed the work towards a successful settlement is long and difficult. Among the most popular is the Guatemala Peace Agreements of 1996, a product of thirteen years of negotiation between the government of Guatemala and the Unidad Revolutionaria Nacional Guatemalteca (URNG). However, a civil society body was also involved in the meetings, and indigenous participation was channeled mostly through it. The peace agreement was moderated by the United Nations. The Accord on Identity and Rights of Indigenous Peoples signed in 1995 carried the ethnic dimensions of the issues negotiated.

In this book Juan León of Defensoria Maya, an organization for the rights of Mayan peoples, reviews how the Guatemalan peace process carried the agenda of, and involved indigenous peoples. The Accord, he says, is not a perfect embodiment of the Mayan vision, although it can be used as a springboard in the advancement of indigenous peoples' concerns in Guatemala. He emphasizes the necessity to seek other forms of redress should the implementation of the peace agreements fail.

Another well-known case that attempted to raise the indigenous agenda is the San Andres Accords of Mexico signed in 1996. Unfortunately, indigenous representation was minimal during the negotiations. The outcome unfavorably gave recognition to indigenous peoples only at the community level and did not embody the fundamental demands of indigenous peoples as originally expressed in previous meetings.

Other cases presented in this book include the peace accords of the Chittagong Hill Tracts (CHT) in Bangladesh, and those between the Gitxsan people and the Canadian state. A great criticism of the CHT Accord of 1997 has been its non-implementation, primarily due to the lack of political will of the committee entrusted with this task. Another drawback is its inability to provide for constitutional recognition of the indigenous peoples' self-government system in the CHT. In the Philippines, indigenous peoples in the Cordillera region and the state government still have to settle the issue of regional autonomy after the talks broke down. The Gitxsans of Canada are optimistic that they can exist within the constitutional framework of their state, provided that the government allows them a greater degree of access to their lands and resources.

Prescriptions for a good environment for peace building could contribute to a more favorable outcome of peace accords. First of all, there should be a cessation of armed hostilities by demobilizing government, guerilla, and other armed forces. Various international, regional, national and local civil society groups should pressure the parties involved in conflict to stop the war, for instance, by making them realize the high cost of this destructive activity. The civil society groups also have a role to play in the sustained advocacy and mobilization work that would maintain the peace building process. This was seen in the experience of the CHT and Guatemala where they ensured the vigilant monitoring of the peace processes. It also paved the way for a wider discourse on peace and indigenous peoples.

Arrangements for the actual conduct of the peace accords are vital. There should be democratic space for dialogue, and a third party mediator should always be present. The third party not only brokers the peace but also ensures that the provisions of the accord are well implemented. These had been helpful in the Guatemalan accords where a 1995 meeting of the Central American governments through a consensus-building strategy created a democratic space. The Norwegian government acted as the third party mediator during the talks.

In view of a perceived distrust between indigenous peoples' organizations, civil society groups, and the government, multitrack diplomacy is recommended to involve all sectors of society and stakeholders in the process. This is because peace accords, aimed at stopping violent conflict between parties, are supposed to be multilateral in nature.

An important component of indigenous peoples' participation is their empowerment so that they can negotiate effectively. Capacity building methods should be sensitive to indigenous practices. Indigenous peoples should have solid organizations with a clear political vision on what to negotiate and how to do it. They should be the ones to negotiate directly for their welfare and should have a bigger role in the talks. The function of advisers should be especially defined, and it should not diminish the potential capabilities of indigenous negotiators.

Historical principles and traditional procedures are the major instruments in providing the basis and framework to advance what indigenous peoples want to happen through the negotiation. These should be constantly upheld. Extensive political alliances are indispensable in gaining objectives, but the indigenous peoples' agenda should not be watered down by the thrusts of other groups.

Implementation of Peace Agreements should further be accompanied by substantial juridical, economic, legal, and constitutional changes. Concrete solutions should be sought to the problems of poverty, discrimination and repression. In the realization of peace and development, governments have to reorient structures under which indigenous peoples are discriminated against and oppressed. This should form an important element of the peace process. One way is to redefine state policies and programs to respond effectively to the needs of indigenous peoples and the rest of the country's citizens. This could be done by avoiding the assimilationist approach in nation building which denies indigenous peoples the practice of self-determination, and giving an equal regard to indigenous systems of governance and economics. The post-conflict healing process should give justice and rehabilitation to all victims of armed conflict. Indigenous issues as part of an agenda for peace is a new development that governments and civil society should now be considerate of.

Part of the dynamics of the peace process is its facilitation of consciousness raising among indigenous peoples, particularly in relation to their identities. The insecurity of being Maya or Jumma is replaced by something positive, a new outlook that gives them pride

in their identity and past experiences as a people, and helps them move towards the future with hope. Peace processes facilitate the revalidation of indigenous concepts and traditional systems that make possible the assertion by indigenous peoples of their fundamental rights.

Jack G.L. Medrana is a Researcher of Tebtebba Foundation and a medical doctor.

Chapter 2: Indigenous Stories from Four Directions

Asia

1

How the Indigenous Limbu Peoples of Nepal Lost their Land

Arjun Limbu

The Limbus are among the many indigenous peoples of Nepal who occupy its eastern part. Believed to be the first settlers, they are said to have descended from the first kingdom formed in the Kathmandu valley. The Limbus evolved their own distinct culture, language, script, and religion (*Kirat*) and established their traditional homeland popularly known as the *Limbuwan*.

The Limbus had remained autonomous, maintaining sovereignty over their territory centuries back. King Prithvi Narayan Shah formally recognized the Limbus' autonomy when he signed a peace and conciliation treaty with Limbu Kings in 1774. The treaty gave certain rights to Limbus over their lands. This paper examines how this peace treaty was implemented and how it failed to deliver what it promised the Limbu peoples.

Fundamental to the indigenous Limbu people is their right to their land, around which their survival and development revolve. Until 1964, the Limbus had historically held on to a land concept known as the *Kipat* system. *Kipat* is a communal form of land tenure, under which land is held on a tribal, village, kindred or family basis and it is usufructuary.[1] *Kipat* constitutes land of paddy fields and

pastures, as well as forest, water and mineral resources.[2] Under this system, land could not be bought or sold to members outside the group.[3] *Kipat* is defined as land cleared and occupied by first settlers; it is thus an inalienable land of *autochthons* or aboriginal inhabitants.[4]

This concept of land use and ownership had continued even after the unification of *Limbuwan* with the Gorkha (Nepal) state in 1774. Because of the "integrationist" approach of the state, the peace treaty, which united *Limbuwan* with Gorkha, inevitably led to the conflicts between the Limbus and the successive governments the dominant Hindu Bahun-Chhetri backed. The economic and political dominance of the Hindu Bahun-Chhetri is a product of the creation of the Hindu monocultural nation state that continues to serve as its patron. Despite the conflicts, the Limbus still managed to enjoy some local autonomy under the headmen called *Subbas*. The *Subbas* in the *Limbuwan* area had different administrative and judicial powers granted to them after the peace treaty.

The integration of the Limbus into the Nepal state likewise ushered in the introduction of the *Raikar* system, which directly undermined the principles of the *Kipat* system. This alienated the Limbus because the *Raikar* system had declared that all lands belonged to the state. This process of alienation of *Kipat* land rights and eventually, the dissolution of *Subbas*, continued until 1964 when the Land Reform Act was introduced.

In general, people who advocate "National Integration" support the government's move, saying the *Kipat* system is an obstacle to nation building. In this context, this paper expects to generate rational discussion on the issue of land and regional autonomy.

The 1774 Peace and Conciliation Treaty

Before the unification of modern Nepal, there were many small principalities in the region. One of the small principalities, Bijayapur, was ruled by the Sen dynasty and had a loose federated system with the *Limbuwan*. The Limbus were entertaining autonomy over their land under their chieftains within a federal structure with Bijayapur before the unification of modern Nepal by the Gorkha King Prithvi Narayan Shah in 1774. King Prithvi Narayan Shah conquered all the principalities of the region including the Bijayapur. After the fall of Bijayapur, Prithvi Narayan Shah was compelled to make a peace and conciliation treaty in 1774 with the chieftains of *Limbuwan* because of *Limbuwan's* autonomous status and its strategic location.



Map of Nepal

Susan Hangen, an anthropologist, thinks that in the process of conquering and consolidating Nepal in the late 18th century, Prithvi Narayan Shah failed to conquer the eastern region of the country (*Limbuwan*) so the signing of a treaty with Limbu Kings (Chiefs) that allowed them some autonomy was somehow a better option. The Nepali state initially allowed Limbus to maintain rights to their ancestral lands. They classify these lands as *Kipat* rather than including them into the *Raikar* primary mode of land tenure in Nepal.

The 1774 peace treaty clearly states:

> *...Take care of the land as you did when it was being ruled by your own chieftain. Enjoy the land from generation to generation as long as it remains in existence… remain under your chieftains and enjoy your traditional rights and privileges and your lands.*[5]

The Limbus accepted the treaty because it jibed with their indigenous concepts of land ownership and autonomy that they had been enjoying under the Sen dynasty.

ACCEPTING PEACE TREATY WITH RELUCTANCE

The peace and conciliation treaty signed by the Gorkha King Prithvi Narayan Shah was the first of its kind, which peacefully settled the conflict between the Limbu peoples and the Gorkhas during the unification of modern Nepal. The treaty was accepted and duly implemented by the Limbus in their territory. But the government accepted the treaty with reluctance. For the government, the treaty grants much power to the Limbus and power at that time rested on land and its resources. Believing that the state had a monopoly of land and resources, the government introduced a different legislation, which contradicted the spirit of the peace treaty. Those who introduced the new legislation had one obvious motive: to take control of the land of the Limbus. The new legislation sought that the *Kipat* system be abolished.

Likewise, the succeeding governments encouraged the Hindu Bahun and Chhetri (dominant Hindu ethnic groups), who had always been the favored class in Nepal, to settle in the *Limbuwan*. To top it all, Nepal was declared as a Hindu state that has to be governed according to Hindu constitutional-monarchical theories.[6] This outrightly denied the existence of indigenous peoples, most of them Buddhists or Animists. In fact, certain articles in the Nepali Constitution like Article 4, Section 1, is a "direct marring of the indigenous peoples' rights since it gave them a 'stateless' status."[7]

Initially the Bahun-Chhetri settled in *Limbuwan* with the permission of Limbu traditional headmen, *Subbas*. But the Bahun-Chhetri later on took away the authority of the *Subbas*. With the help of Hindu Bahun-Chhetri, the government was able to "internally colonize" the *Limbuwan*. As an intended government policy, internal colonization sought to dispossess the Limbus of their communal lands and impose on them an alien religion, culture and tradition.

According to Caplan,[8] the government implemented five main policies to alienate the communal land ownership of Limbus.

Firstly, non-Limbus, mainly the dominant Hindu Bahun and Chhetri, were encouraged to migrate to the *Limbuwan* and assured of fertile land to till. At the same time, the central government forced the Limbu-Subbas to allow immigrants into the *Limbuwan*.

Secondly, the *Subbas*, who were responsible in managing the land and other aspects of Limbus' life through customary laws, became the object of derision. The *Subbas*, whom the Limbus highly regard as the custodians of their culture and tradition and as a symbol of unity in their kinship, were made the central government's tax col-

lectors. As Caplan[9] noted, the "Shah (Gorkha) rulers did not create *Subbas* among the Limbus. They only absorbed the traditional headman into the administrative structure of the new state."

Thirdly, against the very concept and principle of *Kipat*, the government, in its own language, started to "legitimize" the *Kipat* land by imposing a royal decree. Caplan argues that the government insistence on documentary evidence of title to *Kipat* land provided the climate for the conversions of *Kipat* into *Raikar* land. The Limbus were not aware of the consequences of the new rules of registration of their ancestral land. This land registration policy divided the *Limbuwan* into communal land ownership and state ownership, which was against the spirit of the 1774 peace and conciliation treaty.

Fourthly, the government forced the *Subbas* to surrender *Kipat* land for the maintenance of revenue settlements, postal services and the army. The Limbus were not allowed to restore these lands by any other means.

Finally, due to the incessant resistance of the Limbus, the government was, at first, unable to convert *Kipat* land into *Raikar* land. The resistance of the Limbu people was inspired by their own culture and tradition, which firmly united them to safeguard any threat to their existence. The management of the *Kipat* system was based on customary laws, which gave the *Subbas* the authority and legitimacy to exercise both administrative and judicial power over their particular areas. This fact was well known to the central government. In an effort to erode *Limbuwan* unity, new administrative institutions were introduced, which somehow reduced the role of customary laws.

WEAKENING THE *KIPAT* SYSTEM

The government many times introduced various laws to weaken the influence of the *Subbas* and to abolish the *Kipat* rights of the Limbus.

As a result of the government's policy to encourage the Bahun-Chhetri to settle in *Limbuwan*, the number of non-Limbus compared to the Limbus in the area increased significantly. At first, local Limbus provided sub-holdings to the immigrants. Until 1886 these subholdings granted to the migrants were regarded as *Kipat* land, which the immigrants were supposed to use temporarily. But in the same year, the central government introduced a legislation allowing migrants to convert *Kipat* land into *Raikar* land. This disenfranchised many Limbus from their Kipat lands because they did not have

documents to show ownership over their communal lands. This government law made possible the conversion of lands, which, in effect, reduced large parts of Limbu-held *Kipat* land.[10] Once these lands were registered as *Raikar* land, it was impossible to convert them again into *Kipat*. This new law created huge problems for the Limbus as many of them did not have documents on their *Kipat* (communally owned) land. Non-Limbus ended up owning vast tracts of prime lands.

In 1913 the government tried to freeze the area of *Kipat* land by ruling that any new lands brought under cultivation by the Limbus would be converted into *Raikar* land. In similar ways in 1917 another legislation was proposed to convert into *Raikar* tenure all mortgaged *Kipat* lands, which were not redeemed within six months.

The government also attempted to weaken the *Kipat* system by introducing statutory Panchayats (new village committees appointed by the central government) in Nepal in 1926. This new system aimed to replace the local political and administrative institutions like the *Subbas* of *Limbuwan*. In 1948, the government introduced another legislation allowing the establishment of village Panchayats throughout the country. But this legislation was not implemented because of a revolution in 1950.

The government reintroduced the Panchayat system to the *Limbuwan* in 1953. The Limbus opposed the Panchayat system and succeeded in their campaign to retain their customary laws. Caplan[11] wrote, " The *Subbas* are often given credit for the fact that the system (Panchayat) was abolished in 1956." The Limbus were aware that the Panchayat system was a threat to the few remaining prerogatives of the *Subbas*, the Limbus' traditional persons in authority.

In 1964 the government introduced the Land Reform Act, which did not mention at all the status of the *Kipat* lands. In general, this Act planned to confiscate individuals' landholdings exceeding 1.8 hectares. Through this Act, the government abolished the *Kipat* system using an irrelevant clause, which equated the *Kipat* land system to landlordism even if the Act did not directly mention the status of *Kipat* landholdings. Certain groups hold the view that, if the government wanted to abolish the *Kipat* system, it should have come up with an Act, which dealt directly with the *Kipat* issue.

Successive governments have had a negative attitude towards the peace and conciliation treaty signed by King Prithvi Narayan Shah in 1774. The treaty was considered as standing in the way of national integration. Governments introduced various rules and regulations against the spirit of the peace and conciliation treaty

whilst keeping in mind that the abrupt confiscation of *Kipat* land may have created mutiny in *Limbuwan*. On this issue M.C. Regmi[12] said, "The process (of alienating the *Kipat* system) was gradual and characterized by a series of seemingly petty encroachments, often accompanied by minor concessions to the Limbus." Caplan illustrates well how the Limbus were alienated from their *Kipat* land. "*Kipat*," he said, "was nibbled at, not swallowed whole."

For the Limbu people, their relationship to their land also encompasses their autonomy over their traditional homeland. They were thus seriously concerned about the loss of their land, which also meant losing their autonomy over their homeland. As T.B. Subba,[13] another author, has opined, "Gradually, bit by bit, they lost their political autonomy, their *Kipat*, their language, their religion and their culture." That government as a matter of policy helped take away the *Kipat* land of the Limbus, including their land rights, clearly violated the 1774 peace treaty. The fate of the Limbus is a classic case of legalized land grabbing by the government itself.

DIVIDE AND RULE

The central government did not only coopt the traditional *Subbas* but also divided the Limbus. It appointed new *Subbas* in the *Limbuwan*, which reduced *Kipat* land on one hand and created conflicts between the traditional *Subbas* and government-appointed *Subbas* on the other.

The government clearly applied the classic "divide and rule" tactic. By appointing new *Subbas* for the Limbus, government was able to convert vast swaths of *Kipat* land into *Raikar* land. Bhattachan and Pyakuryal[14] note, "The rulers, following the East India Company's strategy of 'Divide and Rule,' divided the indigenous ethnic groups into several factions." The government granted the title *Subbas* by issuing royal decree to any of the Limbus who had paid an initial fee of Rs. 52 and surrendered 60 muris paddy land to the government as *Raikar*. Soon after this policy was implemented, big tracts of *Kipat* lands were converted into *Raikar*. The central government had exploited to its advantage the importance of *Subbas* among the Limbus.

The division of *Subbas* held great implications on the Limbus' unity. The newly appointed *Subbas* were often referred to as *Tiruwa Subbas* who held *Subba* titles because they paid government and they were considered as second-class *Subbas* among the Limbus. The appointed *Subbas* were more loyal to the central government and were

the main channel of state control within the territory, responsible for gradually extending Gorkha laws in *Limbuwan*.[15] Naturally, the central government's favor went to the appointed *Subbas*. Similarly, the traditional *Subbas* were more loyal to the Limbus. This position created conflicts and confusion among the Limbus, which eroded their unity and social integration. This disunity was costly to the Limbus in later years as they struggled to regain and protect their rights over their traditional land.

LIMBU RESISTANCE

The conflict between the Limbus and the government lies mainly in the government's failure to recognize the peoples' right to their land. According to Caplan, the conflict between the Limbus and the state emerged mainly as a result of historical confrontation over land. Due to the discrimination and the negative attitude of the government towards the Limbus on one hand and their simplicity, cordiality and liberality on the other, the Limbus always lose their rights to some extent in each and every move of the government in relation to land.

The Limbus were aware of their rights over their land and any encroachment on *Kipat* land was a serious threat to their survival. For these reasons, the Limbus opposed the government's policies from time to time. The Limbus' customary laws united them in effectively opposing government policies detrimental to their traditional land rights. As the *Kipat* system is deeply rooted in their way of life as it articulates their culture, the Limbus led by their *Subbas* had always resisted government policies peacefully. The *Subbas* had formed ad hoc committees on a district-wide and occasionally *Limbuwan*-wide level to protest against adverse legislation. They also advocated the renewal of the *Kipat* system each time there were changes in the center of power in government.

The Limbus of Ilam made a district-wide united front against a government-proposed legislation, which government eventually withdrew in 1946. A *Limbuwan*-wide ad hoc committee of *Subbas* with about forty-five members was formed to recommend that elements in the country's legal code and special regulations that contradict *Kipat* rules must be avoided. The committee of *Subbas* for the first time put the customary rules and a special law for the Limbus in their recommendations. But instead of adopting the recommen-

dations, the government issued an order reaffirming many of the regulations issued in the past and promised to resolve some of the discrepancies in the law.

Delegations of *Subbas* used to go to Kathmandu each time there was a change in government. A delegation went to King Tribhuvan in 1951 to seek a renewal of the *Kipat* system. Similarly, one last delegation of *Subbas* who went to King Mahendra for the renewal of the *Kipat* system was recorded in 1960. The King soon issued two royal decrees, which guaranteed the "traditional rights and privileges"of the Limbus.But these decrees did not change the government's policies towards the dispossession of *Kipat* land.

The government attacked the *Kipat* system from two levels. On one level, the government continued to adopt the policy of converting *Kipat* land into *Raikar*. It also introduced the Panchayat system at the local level, replacing traditional institutions as a result. These attacks eroded the opposition to the government policy. In 1964 when the government introduced the Land Reform Act, no powerful traditional *Subbas* and no permanent political organization could resist the tide of converting *Kipat* land into *Raikar*.

After the introduction of the Land Reform Act, Limbu individuals raised the issue of the *Kipat* system. But the government severely suppressed the efforts of these Limbus, whom it accused as separatists and communists. Even in 1968, Limbus opposed the abolition of the *Kipat* system and their delegates — Krishna Bahadur Thangden Limbu, Man Bahadur Panyangu Limbu and Dal Bahadur Khapung Limbu — were imprisoned for six months. Similarly, Bir Nembang Limbu, Prthivi Bahadur Maden Limbu and Ganga Bahadur Lingkhim Limbu were arrested and imprisoned for three years on the charge of distributing pamphlets, which sought to educate Limbus about their rights to their land and territory.

In 1972, Birjahang Jabegu Limbu submitted to the King of Nepal an appeal on the Limbu people's claims to their *Kipat* land. He distributed the pamphlets to *Limbuwan* to enlighten the Limbus about *Kipat* issues. He was then summoned and threatened by local authorities, warning him not to make any more appeals to the King.

In today's Nepal even after democracy was restored in 1990, the government has yet to show any interest to resolve the Kipat problem.

IMPACTS OF ABOLISHING *KIPAT* SYSTEM

The Limbu indigenous peoples' socio-economic, cultural, religious, educational and spiritual developments are associated with the *Kipat* system. The abolition of the *Kipat* system was not confined to land holdings. In fact, the *Kipat* is the nucleus around which the Limbus' survival and existence as a distinct indigenous group revolve. The Limbus enjoyed better economic life under the *Kipat* system because they had surplus agricultural production and they fulfilled their daily requirements by barter system in the *Limbuwan*. F.G. Stiller[16] pointed out that the Hat bazaar had developed in eastern Nepal *Limbuwan* region because of the surplus agricultural production there. Now, after the *Kipat* was abolished, 71 percent of Limbus are below absolute poverty line.[17] These facts reveal the negative impact of abolishing the *Kipat* on the socio-economic life of Limbus.

The abolition of the *Kipat* system and the introduction of the *Raikar* system have also introduced an alien system, which replaced the Limbus' customary laws. As a result, Limbus are neither able to adapt to their customary laws nor to the new system imposed on them. This brought difficulties, which hampered their traditional livelihood, adversely affected their way of relating with other people, and reduced their self-esteem.

The Limbus used to have traditional institutions that governed their social, political and economic life. They, for example, had the *Chumlung*, a traditional council, which existed centuries ago. Through the *Chumlung*, the Limbus would meet at a place and decide on any important matter, a practice which seems ancient.[18] This institution of the *Chumlung* suffered a serious setback after the Limbu kings came under the Gorkha rulers.[19] The role of the *Chumlung* as a tribal council diminished after the Panchayat system was introduced in *Limbuwan* in 1960.

The *Subbas* were the custodians of the tradition and culture of the Limbus. The *Subbas'* court was a more localized and tangible institution.[20] This court was empowered "with rights to hear cases of a civil nature involving damages not exceeding Rs.100, and with authority to impose fines of up to Rs. 25."[21] It became defunct in 1920 because of a government policy that weakened the power of the *Subbas*.

The heritage of the Limbus is on the verge of extinction. The imposition of state-sponsored alien culture and language has tremendously damaged Limbu culture and language. The government had imposed a policy of "one country, one language, one religion"

to make the country culturally and linguistically homogenous, consequently destroying unique and distinct cultural diversity in the process. This policy is inspired by the notion that indigenous peoples such as the Limbus can be integrated easily into mainstream society if the population is homogenous.

In no time the indigenous Limbu names of villages, hills, rivers, and mountains were translated into Nepali, the state language. This destroyed evidences of the remnants of the Limbus' homeland. In addition, more and more Limbus are migrating to other areas to seek better opportunities after being robbed of their land. As they migrate, the Limbus are in danger of losing their indigenous knowledge about the biodiversity of their territory. The Limbus' cultural identity and traditions also may yet disappear totally.

Phillippe Sagant[22] concludes that the *Kipat* system guaranteed the stability of clans and the preservation of traditional institutions. The abolition of the *Kipat* therefore did not only rob the Limbus of their land, resources and territory. It also threatened the indigenous Limbu peoples' very survival and existence.

THE *KIPAT* SYSTEM TODAY

The *Kipat* system had prevailed until the latter half of the 1970s. In the last 20 years or so, the state by introducing the Land Reform Act, had virtually set aside the 1774 treaty, which was once forged with the Limbus. The state, by registering the *Kipat* land in the name of individuals (Limbus and non-Limbus), has practically nullified the peace treaty.

The Limbus remained silent on the *Kipat* issue for the last 30 years mainly because of two reasons. First, the nation-building process via the assimilation theory, which the government adopted, has pushed the Limbus to the edge. The assimilation theory, practiced elsewhere, was advocated in Nepal by both Western and Nepalese scholars and development practitioners, who had been influential in reinforcing such monolithic notions of nation-building and national integration.[23]

Some Limbus were able to register some of their *Kipat* lands. But they are also becoming landless. The land dispossession of the Limbus still continues. Bhattachan and Pyakuryal[24] wrote, "Although during the last three decades no serious violence has been reported, tension is mounting up due to the ongoing displacement of the indigenous people by the Hill Bahuns."

Second, the traditional organization of Limbus based on

Chumlung and *Subba* institutions was replaced by state-imposed institutions. State-imposed institutions soon weakened the Limbus' own social and political organizations. Weak and divided as a result, the Limbus failed to raise the *Kipat* issue and demand their rights in the new context.

In Nepal, there are only a handful of Limbus in the political, educational and bureaucratic levels of the state because they are not given equal opportunities. The Bahun and Chhetri of Nepal, who are more privileged, occupy most of the bureaucratic positions. For example, 92 percent of bureaucratic positions are held by high castes who comprise 26 percent of the country's population.[25]

HOPE AND LASTING PEACE

But hope is not lost on the Limbu peoples after all these years. They are now asserting their land rights. Thanks to the United Nations Draft Declaration on the Rights of Indigenous Peoples, indigenous peoples such as the Limbus are reclaiming old grounds. Encouraged by the UN Draft Declaration and by the common aspiration of indigenous peoples worldwide to reassert their land rights, the Limbus, once again, have revived their struggle to restore the *Kipat* system in a new dimension.

The Kirat Yakthung Chumlung (KYC), an indigenous Limbu peoples' organization, for example, clearly put forward its views about the *Kipat* while presenting comments on the "UN Preliminary Working Paper on Indigenous Peoples and Their Relationship to Land." The KYC states: "For the Limbus, the demand for the right to land, territory and resources is also associated with the right to self-determination or territorial autonomy on the one hand and proportionate representation in decision/policy-making levels and reservations in employment, education and human resource development on the other."

The Kirat Yakthung Chumlung is trying to create mass awareness on indigenous peoples' rights. The guiding principles of their movement to resolve land conflicts are:

1. The non-alienability of *Kipat* lands should be protected and ownership should be resumed;
2. Possible conflict between state and Limbus should be avoided and an amicable solution should be explored;
3. Indigenous peoples should have opportunities to enjoy basic human rights;

4. Discriminatory laws and constitutional provisions should be modified or amended;
5. Socio-economic, cultural, spiritual development of Limbus should be supported and implemented;
6. National integrity should be strengthened in the true spirit of the people; and
7. Injustice and misdeeds of the past should be corrected and redressed.

The KYC is working towards restoring the *Kipat* system and having it considered legal as it was before. The government has not formally introduced any law to abolish the *Kipat* system. It is documented that "…the treaty of 1774 was not abrogated nor was any legislation introduced to extinguish or terminate the rights of the Limbus on *Kipat*." [26] Theoretically, then, the Limbus still have legal grounds to challenge the issue of *Kipat* in court.

The protection of indigenous peoples' lands and other resources is essential not only for their survival, but also for their peaceful coexistence and relationship with other communities. In fighting for their rights, indigenous peoples need not resort to violence. They can always take the way of peace. All they need is to become aware of the issues and advocate for their rights on the local and national levels by pressuring states to abide by what have been agreed upon. On the international level, indigenous peoples' organizations should join hands with other indigenous peoples' and human rights organizations. The KYC hopes that together with such other organizations, they can demand the creation of a UN Convention on Rights of Indigenous Peoples in relation to land, territories and resources, which should protect them from human rights violations and state repression.

CONCLUSION

The Limbu peoples of Nepal believe in peace and peaceful resolution of their issues such as the *Kipat* and regional autonomy, which was the same main reason why they readily signed the peace treaty with the Gorkha State in 1774. Unfortunately, the successive governments of Nepal have not been sincere in implementing the historic peace treaty. This paper has shown several examples about how the government acted against the words and spirit of the treaty. At the same time none of the government legislation directly deals with the *Kipat* land issue.

The Kirat Yakthung Chumlung asserts that the Limbus' rights over *Kipat* land and their survival are interrelated. Without land rights and the regional autonomy, which they enjoyed before, their social, cultural and economic situation deteriorates. The Limbu peoples also believe that the *Kipat* land rights documented by the royal decrees are still valid. The Limbus and the government just need to find the proper mechanisms to address and resolve the issue.

The KYC also believes that the Limbus need the help of other indigenous peoples worldwide. The KYC is thus willing to link up with international organizations and cooperate with other indigenous peoples' organizations the world over and share strategies and lessons on how to effectively resolve problems like the land issue of the Limbus.

Arjun Limbu is the General Secretary of Kirat Yakhtung Chumlung.

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2

Ethnic Violence in West Kalimantan

John Bamba

For the people of Indonesia, the closing of the second millennium was marked by tremendous tension, riots, and ethnic wars. A country that was once described as the "Emerald of the Equator," where diverse cultural identities combined harmoniously suddenly became the center of international attention for what is best described as the "tragedy of humanity." The majority of Indonesians have grown weary of the escalating chaos, frustration and violence happening almost everyday. From western-most Aceh to the east in Papua, hostilities and killing happen almost everyday especially over the last five years. Massacres no longer shock the public. Various levels of conflict have become so common that "to ask people to stop killing would be useless."[1]

People are progressively disparaged by small and large scale violence that continues to ravage Indonesia: a pickpocket is burned alive by an angry mob; a thief cuts off the hand of a tourist for the gold ring; on a larger scale, the gang rape of Chinese women in Jakarta; rebellion in Aceh; protracted ethnic war between Dayak-Madurese-Malay in West Kalimantan; scores massacred in East

Timor; religious wars in Maluku and cold-blooded hostilities in Papua.

This paper focuses on the violence that pervades the history of West Kalimantan. Drawing international attention again is the conflict between the Dayaks, the inhabitants of Kalimantan, and the Madurese transmigrants from Java. The objectives are to seek an explanation for the causes of conflict from a grassroots perspective, to clarify the cultural context of the incidents, and to offer a better approach in the formulation of solutions to the violence. This paper is neither a human rights violation assessment nor a human rights protection campaign. It has no intent to justify who is "right" and "wrong" because violence has so devastated the nation that no one can be exempt from the toll it has taken.

ETHNIC CLASHES IN WEST KALIMANTAN

Kalimantan: Land and People

Kalimantan, home of the indigenous Dayaks, is the third biggest island in the world. It occupies 28 percent of the Indonesian territory with an area of 743,374 square kilometers. It is the only island in the world that "feeds" three countries – Indonesia, Malaysia and Brunei Darussalam.

Kalimantan is also the home of the second largest tropical rainforest in the world after the Amazon. Dr. Kartawanita and his colleagues at the National Biological Institute found 203 plant species on just 1.6 hectare plot in Kalimantan.[2] Altogether, there are 11,000 species of flowering plants,[3] ten genera and 270 *dipterocarp* species, 221 wild land animal species including 92 bat species and 15 sea mammal species, 14 different types of primates and 549 bird species found in this island.[4] It is "a veritable garden of Eden, a tropical cornucopia of sights, sounds and smells…"[5]

Dayak ethnic groups number about 3.5 million. In the 1970s, the Dayak population was estimated to be 2.2 million and in 1961, they were about 2.25 million. The Dayaks comprise less than a third of the island's population recorded at 9.1 million in 1990. The remainder are mostly Muslims, especially Malays, Bugis, Banjars, Javanese, Madurese and a significant number of Chinese.

The ancestors of the Dayak are believed to have come to this island between 3000-1500 BC. There are still dozens of ethnic groups and hundreds of sub-groups with varied languages and traditions found in different parts of the island. Some Dayak sub-ethnic groups



Map of West Kalimantan

especially the Iban, Kenyah and Kayan are known to outsiders while others such as the Kanayatn, Sa'ban and hundreds of others are unheard of, even to other Dayaks. Diverse as they are, they share similar cultural characteristics and are thus collectively called Dayaks.

The Dayaks depend mainly on land and forest resources for their livelihood. To them the land is sacred and must be protected, respected and conserved. They have a system called *adat* that defines resource management. Alcorn & Royo define *adat* as follows:

> *Adat refers to the cultural beliefs, rights and responsibilities, customary laws and courts, customary practices, and self-governance institutions shared by an indigenous group prior to incorporation into colonial or post-colonial state. The specifics of adat are location-specific. They vary from place to place and they adapt to new situations over time…the term adat is used as noun, and as an adjective. It confers legitimacy to actions. Adat*

> *has legal, religious, moral and cultural aspects. Adat governs behavior between individuals, as well as within and between families, communities and outsiders. Adat also governs the relationship between people and nature, and nature is viewed as an active agent in that relationship. Performing adat refers to doing an adat ritual ceremony, such as prayers and offerings when preparing new swidden field.*[6]

The *adat* also extensively sets the rights over the land and resources as well as the sustainable utilization of resources. Most rights over natural resources are communal and apply to lands for farming, for sacred places such as burial grounds and ritual sites and for fruit gardens inherited from ancestors. Utilization of natural resources has always been sustainable largely because farm practices are based on indigenous knowledge. The use of forest farming, for example, is done on rotation basis allowing a fallow period and the regeneration of forests. Usually located on hills, protected areas like sacred sites of ancestral settlement and burial grounds are respected by members of the community and cannot be cleared for any reason. For the Dayaks, it is better to have farming areas or fruit orchards a bit further than to destroy an area that they consider sacred.

There are also individual rights over resources, obtained through inheritance or barter and in some cases, as an *adat* fine. People can also claim rights over their rice fields (*ladangs)* planted to crops such as rubber, rattan and fruit trees.

Outsiders, even the government, seldom recognize the Dayak system of management of the environment as well as their rights over land and natural resources. The government, for example, perceives Dayak practices as primitive and unproductive**.** Foreign and domestic companies have cut down trees in logging activities and subsequently converted the logged-out lands into huge monoculture plantations, particularly for palm oil. This trend, facilitated by the government, began in the 1970s and all the while totally ignoring the rights of the Dayaks over these lands.

Madura: Land and People

Madura is a small island north of Java covering an area of 5,304 square kilometers. It is one of Indonesia's "overpopulated areas" as defined by the state in its "transmigration" plans. Compared to Kalimantan, Madura is only 0.71 percent in terms of land area but

its population — roughly 2.9 million — is almost as large as the Dayaks in Kalimantan. Madura's general condition is quite challenging because of the soil's poor fertility. This encouraged the population to take chances in the "transmigration program" of the government. Today, a significant number of Madurese are found in Kalimantan, numbering about 100,000 or 2.75 percent of the total West Kalimantan population. The majority of the Madurese in West Kalimantan live in towns and coastal areas and work in the service sector as well as in the informal economy while a significant number of them also work and live in the interior areas.

The first wave of Madurese migration to West Kalimantan was recorded in 1904, brought about by Bugis, Malay and Arabic merchants who needed coolies. Waves of migration followed after the *kolonisasi* or the Dutch Resettlement program brought in Madurese to populate Kalimantan with the intent to thin out inner Indonesia's "overpopulation." In later years, the Madurese moved to Kalimantan voluntarily but the majority would join the government's transmigration program, replicating the earlier *kolonisasi*. This program started in the 1930s and moved populations from Java or Madura island to the less populated islands of Irian Jaya and Kalimantan. The transmigration program offered several incentives including "deforestation rights" to their chosen settlement sites.[6]

The Madurese are known as hardworking people, brave, confident but easily enraged especially when it involves women.

Dayak-Madurese Ethnic Wars

> *Everybody stands up against everybody, and nobody knows the reason why… People do not think anymore to ask other people to stop killing, since this would be in vain. The only request and hope they still have is to ask their fellow…not to kill in a terrible way.*[7]

Throughout the history of Indonesian independence, there have been 14 major clashes between the Dayak and Madurese; two of them (1979 and 1997) claimed hundreds, even thousands of lives. In 1999, the Madurese clashed with the Muslim Malay in Sambas District. Immediately after this, the Dayaks joined the Malays, after one Dayak was murdered by Madurese. Malay-Madurese disputes also rocked Pontianak in October 2000 killing 11 people. (Please refer to Appendix A for brief descriptions of Dayak-Madurese clashes).

As it is almost impossible to obtain data about the exact number

of people killed after each ethnic war due to the government cover-up, the clash of 1997 (Dayak-Madurese) and 1999 (Malay-Madurese) have the most casualties because of the prolonged battles.

There are at least three important characteristics noted in each clash. First, these were triggered by violent responses of the Madurese against the Dayak. In the recorded cases, 11 out of 14 incidents resulted in either homicide or were proven to be premeditated homicide. Second, all the violent encounters first happened in Sambas and Pontianak, the concentration of Kanayatn Dayak and Sambas Malay, except the one in Tumbang Titi in 1994, which was a minor dispute. Finally, all the conflicts were related to land, debt or women-related issues, except the one in Tumbang Titi (1994) and Pontianak (1993).

Past conflicts also show a battle between the Dayaks and the Chinese between 1967-68 and between the Malay and Madurese in 1999-2000. These are described below.

Demonstrasi *of Dayaks Against Chinese in 1967*

Following an abortive coup of the Indonesian Communist Party (PKI) in Jakarta in 1965 in which several army generals were killed, members of Sarawak People's Guerilla Force or PGRS were marauded along the West Kalimantan and Sarawak border. The PGRS members were pro-PKI composed of Sukarno's deserted army officers and disgruntled Chinese in Sarawak. The Indonesian military faced serious problems in fighting the rebel force as the PGRS was believed to have been backed by the Peking government and some Chinese communities. The military, with the concurrence of the governor of West Kalimantan at the time, J.C. Oevang Oeray, a Dayak, decided to use the Dayaks to cut off Chinese support to the PGRS movement which the military claimed was becoming a "Viet Cong-type terrorist band." In October 1967, a Dayak chief and nine other villagers were found dead following an attack by the PGRS. Rumors spread among the Dayak that they were killed by the Chinese. The Dayaks retaliated by driving all the Chinese out of West Kalimantan. Over 50,000 Chinese were driven out from the interior areas peacefully until October 1967. However, the "peaceful" action went out of control. The carnage left around 3,000 Chinese dead in West Kalimantan.

The Dayaks have never clashed with the Chinese, before 1967. In later years, it became obvious that the mass execution was the result of a military strategy. Accounts show that the Dayaks did not intend to destroy properties or kill Chinese during the *demonstrasi* since

they used a "special language" called Code of "2B" which meant "not to burn or *bakar* and not to kill or *bunuh.*" Oevang Oeray himself admitted that the massacre of the Chinese was not part of any plan and labeled it as "excess." Hulten in 1992 confirmed in his eyewitness account that the bloodbath was instigated by a small group of Menyuke Dayak, a Kanayatn Dayak sub-ethnic group in the subdistrict of Darit, well known for their belligerence even to this day.

The 'Religious Dimension:' The Malay-Madurese Clashes in 1999-2000

In every Dayak-Madurese clash, suspicion always emerges whether religion plays a part. This theory is based on the observation that warring ethnic groups seem to consistently represent Christian and Muslim communities. The "religious dimension" of the conflict has been played well by both the Madurese and the Dayaks. While the Madurese seem to have taken efforts to play up religious issues in order to invite support from other Muslim communities, the Dayak seemed clever enough not to fall for the trap. This is clearly seen from the Dayaks' selective destruction on Madurese properties in which they always exempt the mosques. On the other hand, the Madurese's deliberate efforts to provoke religious sentiments were shown by attacks on a boarding house and office of Santo Franciscus Assisi High School in 1997 and an attack on a church in 1993, which both belonged to Catholic communities.

Certain groups rejected the "religious motives" in the conflicts. The first clash between the two Muslim communities (Madurese and Malays) drew the attention of many analysts who later concluded that religious differences were feeble arguments. The conflict between the Dayaks, predominantly Catholic Christians, and the Muslim Madurese was consistently in the news until the 1999-2000 event. The Malay violence against the Madurese in 1999 was so huge that in terms of the number of Madurese driven from the interior district of Sambas, it was far bigger than the incident with the Dayaks in 1996-97.

Another confrontation between Malays and Madurese in October 2000 in Pontianak claimed 11 Madurese lives, burned two houses and destroyed Madurese pedicabs and cigarette kiosks. The four-day battle prompted the authorities to impose night curfew and turned Pontianak into a ghost town as all roads were blocked by the two warring groups. It was triggered by a petty argument between a Malay motorist who overtook a Madurese bus on the Kapuas bridge.

Most people were surprised to see how the violent Malay culture

Table 1 : *Number of Casualties in Dayak Madurese (1997) and Malay-Madurese (1999) Ethnic War*[8]

No	District	No. of Refugees		No. of Houses Burnt		Estimated No. of People Killed	
		1997	*1999*	*1997*	*1999*	*1997*	*1999*
01.	Pontianak City		16,758		Mostly in Sambas District		
02.	Pontianak District	15,000	3,653	1,161			
03.	Sambas District	6,000	3,790	1,668			
04.	Sanggau	3,122		225			
05.	Back to Madura		15,000				
	TOTAL	24,122	39,201	3,054	2,145	Between 500 and 2,000	Between 186 and 500

was very similar to the Dayaks. There is some truth to the belief that the 1999 clash has been widely misunderstood as a conflict between the Dayak and Madurese. The most logical reason for this perception is that the majority of West Kalimantan Malay are in fact Dayak descendants or Dayaks who converted to Islam. On the other hand, while the Dayaks were involved especially after the murder of Martinus Amat, a Dayak, the Malay violence certainly has its own origin and context.

ANALYSIS OF THE SOCIO-CULTURAL CONTEXT OF THE CONFLICT

There are various factors causing sustained ethnic violence in West Kalimantan. Although triggered by independent incidents caught in a cycle of retaliation and counter-retaliation, a complex web of root causes has sparked protracted ethnic wars. These have claimed hundreds of victims and brought on serious consequences on the political, social, cultural and economic life of the people. Human Rights Watch/Asia noted three main arguments offered by analysts, namely, Marginalization Argument, Political Manipulation Argument and Cultural Argument;[10] while a team of researchers from the University of Tanjungpura in Pontianak cited demographic, ecological and economic factors as the causes of the conflict. For this team, the socio-cultural dimension is only a supporting factor.[11] This cultural dimension is the focus of this paper.

While the socio-cultural aspect is widely discussed, it is, ironically, often misunderstood. This is not to discount the impact of certain state policies (i.e. concerning transmigration) and how these account for much of the reasons behind ethnic conflict. It is believed that the cultural dimension, especially for the Dayaks, is more than just a matter of identity. It could, in fact, clarify the "root of the problem."

Two themes in the Dayak and Madurese culture shall be given focus here: the *carok* tradition of the Madurese and the "head-hunting" tradition of certain groups of Dayaks. These aspects of tradition have to be contextualized since the Madurese have become popular for their "quick-temper"[12] and their typical use of deadly weapons while the Dayaks have been projected as headhunters.

The Madurese tradition of *carok* and the Dayaks' tradition of headhunting are succinctly discussed here. A fuller understanding of *carok* and headhunting would require more extensive study of their historical importance and ritual context.

The Madurese' *Carok*

The saying, which goes *"Ango'an Potea Tulang, Etembhang Potea Mata!"* (literally: better white bones than white eyes), is a Madurese philosophy which more or less has the English equivalent of "It is better to die with honor than to live in infamy." This very famous saying among the Madurese could partly explain the driving force behind various Madurese "controversies" including *carok* tradition. The philosophy of putting primacy on pride (personal honor) in Madurese life is manifested in what many people see in the Madurese as hard-working, self-confident, consistent, and transparent. The value of pride for the Madurese is also manifested in the tradition to use violence to settle dispute or resentment. *Carok* is defined as:

> *…the practice of settling disputes violently, usually with sickles,….carok is a premeditated settling of scores that target a perceived wrongdoer or, in case of feud, his family….The term has come to denote virtually any attack or homicide by persons of Madurese extraction, be they on the island, in East Java, or elsewhere in Indonesia….Historically, carok has been known to take the form of a formal scheduled duel in the presence of witnesses….Today, carok is usually a surprise attack, often from behind, with the victim often unarmed.*[13]

It is said that the various injustices caused by colonialism in the Madurese communities forced them to seek justice in their own way. Historical accounts show that, like the Dayaks, the men of Madura were used by the Dutch as special troops (*barisan)* to fight against their fellow Javanese.

Some would argue that this violence resulted from the *devide et empera* policy of Dutch colonialism. Studies show that the *carok* is expressed in greater intensity if it involves the disturbance of Madurese pride and their women. The following is a quote from H.M. Sulaiman, a noted Madurese political figure in West Kalimantan :

> *Carok is for the sake of pride. The Madurese pride over their wives. Those who disturb someone's wife will certainly be killed. When a man goes back to his house and finds his wife with (another) man, both of them will be killed and cut to pieces. An amount of Rp5,000.00 (about US 60 cents) could cause someone to kill. Not because of the amount but the pride. If someone has Rp5,000.00 debt and he refuses to pay back and even challenges the lender, he will instantly be killed. Someone who owes Rp10 million will not be killed if he/she confess(es) that he/she could not pay the money back and asks for a rescheduling.* [14]

The above statement concerning a woman's infidelity contradicts what Smith (1997) found in his research about the Madurese. According to Smith, a husband is not likely to kill his wife and the man with whom she has an adulterous relationship because the husband cannot survive living alone and taking a new wife is not easy. The complicated problem of finding a wife in Madurese island is illustrated by Smith's conversation with K.H. Zawawi Imron, a Madurese poet, who describes a requirement in finding a wife when he was a youngster:

> *…in nearby Dungkek (eastern tip of the island) a man could not marry if he has never engaged in carok. A man who makes advances on another's wife simply must be challenged in some way.*[15]

The clashes in 1977 and 1996 are certainly considered very serious by the Madurese as they directly relate to women issues. The other cases shown earlier would be more related to the issue of "pride." As it is, the wars with the Dayak were triggered by humili-

ation (*todus*). The crimes committed by Madurese[16] who were caught red-handed such as the cases of stealing in 1952 (from the Dayak) and in 1999 (from the Malay) could be considered as a disturbance of Madurese pride. A similar outlook appeared in the cases over a refusal to settle a land certificate dispute in 1968, complaints over a paddy harvest in 1982, and a grass issue in 1976. On the other hand, there is one case that was triggered by a small communication problem such as the ones in 1993 and 2000.

Most Madurese intellectuals argue that the present violent means used to settle personal issues has been improperly adopted by migrant Madurese uprooted from their native culture where the tradition has become irrelevant due to education, the influence of Islam teachings and rule of formal laws. Nagian Himawan, the Chairman of the Association of Madurese Students of West Kalimantan (HIMMA), says:

> *The tradition of carrying sharp weapons and carok culture in fact exists only as part of Madurese history which through the process of its civilization is no longer attached to the Madurese identity. If it still exists in West Kalimantan, it is more likely due to misunderstanding and limited education.*[17]

On the other hand, the social support given to *carok* has, in a way, perpetuated this violence. As noted by Dr. Latief Wiyata in his dissertation, the support given to "killing" for the sake of revenge not only by the communities but also by law enforcement authorities such as the police, judges, and lawyers who accept bribes from perpetrators has become common. Moreover, reports show that military forces did little to stop the unrest. In fact, it has been noted that the military capitalized on the unrest in an effort to strengthen their position.[18]

In the present context, *carok* appears to be the driving force behind the violence in the 14 Madurese-Dayaks ethnic wars. The deadly manner in which *carok* was used to settle disputes perhaps explains why the Madurese are always involved in repeated violent conflict with the Malays and with the Dayaks since the 1950s. This very special attack-to-kill manner of *carok* has invariably sparked severe responses from both the Dayaks and the Malays as it contradicts the dispute settlement means, using *adat* or customary laws.

Therefore, we clearly see the influence of *carok* and how its social acceptance plays a pivotal role in the Madurese choice of violence as a response to settle their problems. The Madurese reputation to

quickly resort to violence as a solution has been widely recognized even by the Madurese themselves.

While it is possible that *carok* has been exaggerated and misinterpreted by migrant Madurese due to limited education and lack of connection with their homeland, this violent means of settling disputes has sparked stern reactions from the Dayaks who have differing cultural values concerning dispute settlement.

The Dayak's Headhunting

Anthropological accounts show that the Dayaks have a headhunting tradition. The most misunderstood perception about headhunting is that it is some kind of barbaric game played by the Dayaks to "cut off their enemy's head," as Cable News Network (CNN) reported in 1999, to be preserved as souvenirs. With the headhunting tradition reduced in this simplistic context, one is trapped in a mindset that sees indigenous peoples as savages.

So what is the issue on the "headhunting" and why is it always associated with the Dayaks?

Not all Dayak sub-ethnic groups in Kalimantan have headhunting traditions. In West Kalimantan, a Dayak sub-ethnic group in the Ketapang district does not have this tradition. Headhunting, which has appeared in public discourses and widely publicized especially by Western analysts, focused on headhunting as a means to "increase pride" among certain Dayak sub-ethnic groups such as the Iban, Kayaan, Kenyah, Taman and Uud Danum in the past.

Thus, headhunting in this paper is discussed according to its traditional purposes: the "proactive" hunting for heads to increase pride and the "reactive" beheading of the enemy's head resulting from winning of a duel. The act of taking heads in the past was mainly motivated by the following: a search of bride price and new territories; as offering to spirits in the construction of longhouses; or during the death of aristocrats. The beheading of enemies was done solely from a fair duel between two fighters or in a tribal war.

Sub-ethnic groups with social structures that put a premium on personal reputation also practiced headhunting. These feudal societies gave credence to upholding aristocratic positions. In these communities, adulthood was measured by whether a man has been involved in headhunting or not. Marriage likewise demanded a similar requirement. To marry a woman, a man should provide human heads as bride price to prove his manhood. The construction of new

longhouses would also spur headhunting since it was believed that a new house needed spirit guards. The heads could be taken from a person from the lowest rank (e.g., the slaves) to complete the ritual. In the case of the death of an aristocrat, a similar interpretation applies whereby a spirit guard would serve the aristocrat in his life in the other world. Proactive headhunting was done in groups or individually.

"Headhunting" in its literal sense is not really practiced since there was no act of "hunting for heads," at least in the understanding of the Kanayatn Dayak living in Pontianak and Sambas Districts. It was used more as a defense system to protect the community and their village from enemy attack. The following explanation was derived from this writer's conversation with Timanggong Maniamas Miden, the Chief of Bukit Dayak (one of formerly known as the Kanayatn) in Pahauman, Pontianak District:

> *Beheading enemy in the past was self-defense. It was more in territorial and collective context rather than individual. In the past there were outsider(s) who wanted to invade another village. This was mediated through peaceful means such as dialogue or agreement. However, if it did not work, the community of the invaded village would choose from them the strongest person to face the invader. The chosen person was called Pangalangok or Panglima. If the Panglima was successful in defeating the enemy, he/she would cut off the enemy's head and would bring it to the village as a proof that the problem was solved. However, the Panglima and the entire community had to perform a special ritual called Notokng for seven generations to cleanse themselves from the sin of committing murder.*[19]

This reveals how the Kanayatn Dayak regard murder as a serious issue, even if the head taking was committed by a member of their own community. It also describes how the Kanayatn Dayak value the life of a person even if it was the life of an enemy. It also shows that killing, for whatever the reason, is a transgression and must be punished according to customary (*adat*) laws. In this case, the obligation to perform a ritual for seven generations is a major consequence. They believe if such ritual was not performed, the spirit of the enemy would disturb them or that it might cause sudden death or misery on the relatives of the killer and the entire community. This philosophy of giving value to life is very much interwoven in the Dayak's *adat* tradition.

The *adat* fines imposed on a murder case in this community illustrates how human life is valued. Besides four different types of fines — each for the heirs of the victim, the *adat* chief, deputy chief — and to avoid revenge in whatever form, there are 30 other different fines, each representing the human body from hair to foot. For example, the mouth is paid with a gong, hair with a cable, male sexual organ with a firearm, knee with a hammer and so on.[20] This system of punishment could also be found among other Dayak sub-ethnic groups in Kalimantan.

It appears contradictory therefore that the Kanayatn Dayak who value life, even that of their enemy, would kill the Madurese in an unimaginable magnitude and in such gruesome manner. Some believe that this is because of the Dayaks' principle that "once a Dayak's blood was shed, the entire community must participate in revenge.'"The Dayaks hold the view that "an offense against an individual is a crime against the tribe."[21] This view becomes questionable, especially for the Kanayatn Dayak in constant skirmishes with the Madurese since *adat* laws must be applied instead of revenge and more bloodshed. One explanation is that the Dayaks point to the Madurese as the aggressor. Ironically, where government intervention is evident, peace agreements often in their token form follow after every clash.

The State's Policy and Responses

The Indonesian government's policy toward the diversity of cultures in Indonesia is represented by the state's slogan of *Bhinneka Tunggal Ika* which is printed in the State's Symbol of the garuda bird. The slogan which means "Unity in Diversity" has been applied by the New Order government under Suharto in an effort to integrate the indigenous peoples. The use of other state slogans would follow the same motive to suppress cultural differences "for the sake of unity." The slogan *Persatuan dan Kesatuan* or "Unity and Oneness"[22] has become the military code and has been applied as a justification to refrain from maintaining ethnic cultural, social, political and economic diversity. It has been unduly used to suppress various differences that exist within the communities and has become a potential source of frustration. *Bhinneka Tunggal Ika* has been used in this manner by downplaying diversity and overemphasizing unity. This policy has resulted in uniformity of speech, thinking and acting and manifested in all aspects of daily life. The success in creating this "uniformity," at least among the majority, is clearly

seen through the views of different figures from politicians to religious leaders, from bureaucrats to legislators, from intellectuals to human rights activists.

Below are statements made by key religious and political figures about the importance of *Persatuan dan Kesatuan* (Unity and Oneness) for the people of Indonesia. Dr. William Chang (1997), a Catholic priest and an anthropologist, reaffirms the importance of unity for the existence of Indonesia as a unitary state:

> *… Indonesia is unitary state which has one national flag and one national language. This unity is very important for the development of the whole country. Because of multi-cultural situation and the varied background of the people.* [23]

Sambas District Head Tarya Aryanto advised his people on what to do in the 1997 war between the Dayaks and Madurese in Sanggau Ledo:

> *Without Persatuan dan Kesatuan it is impossible to enjoy what have been wanted and dream(t) of.* [24]

Quite surprisingly, Prof. Dr. Baharudin Lopa, Secretary General of the National Commission of Human Rights, also believes that *Persatuan dan Kesatuan* is the only solution to the cultural differences that trigger ethnic wars in West Kalimantan:

> *… there are differences in the cultural aspect. There are different characteristics. But these kinds of differences could be overcome if we see there is a more important need. That is, the need for Persatuan dan Kesatuan …. To put the need for kesatuan as the prime goal, the need for persatuan. Because what is the benefit of maintaining an aspect of culture if it would destroy persatuan….Because whatever the culture, wherever it is, there is no positive culture if it causes split. The culture we want is the culture of the nation's Persatuan dan Kesatuan.* [25]

It is on this basis that peace agreements are conducted, ironically not by the people at the grassroots, but by other state elements. The first statement made by the Dayak *Adat* Council already mentioned this while the Madurese representatives mentioned *Persatuan dan Kesatuan* in three out of their five statements. Following are the statements by the representatives of the two ethnic groups:

> *First, that the Dayak peoples keep on maintaining and increasing the Persatuan dan Kesatuan of the Indonesian nation based on Pancasila…*[26]
> *That the Madurese maintain the Persatuan dan Kesatuan of the nation through participation in restoring security and peace in respective areas. Second, maintain good relationships with the fellow Indonesian, especially with the Dayak peoples and not cause clash and conflict that could destroy the nation's Persatuan dan Kesatuan and not disturb the stability of the security. Third, obey laws and regulations such as not carrying sharp weapons, not to spread rumors that could break the nation's Persatuan dan Kesatuan and not to put the laws in their own hands. Fourth, that all the Madurese seriously understand religious values, because religious teachings (Islam) do not promote creating enemy/clashes, but unity and brotherhood….*[27]

All the 14 ethnic wars settled by the government were led by the military through peace agreements signed by ethnic representatives who were not even involved in the wars. The war in 1976 was even marked by the construction of a peace monument for the Dayak and Madurese in Samalantan.[28] However, as many conflict resolution theories suggest, this kind of problem solving through suppressing resentment might be a palliative action but does not really bring on any long-term nor substantive changes.

HEART OF THE MATTER

Although I believe that cultural differences play a major part in prompting violent clashes between the Dayaks and Madurese, these would result in outright conflict if there are no compelling triggers that feed on the repeated hostilities. In this case, the roots of the clashes could be categorized into three points as follows.

At Cultural Level

Different Value of Life

The gap in understanding the issues between the policy makers on one hand, and the perpetrators of the conflict on the other, has created a vicious cycle of conflict.

From a cultural perspective, it is clear that there is a grave disagreement between the Dayaks and Madurese and the way they value human life. While the Madurese value a soul as "two and a

half cents (*benggol*)"[29] as compared with their pride, on the other hand the Dayaks value it as seven generations of moral responsibility with more than 30 different kinds of *adat* fines. These cultural differences between the two are widely discussed yet publicly ignored.

The practice of carrying sharp weapons is yet another matter. For the Madurese carrying a knife or a sickle is a symbol of pride but for the Dayaks, it is a violation of ethics and *adat* since weapons are not supposed to be carried when entering someone's house. This in itself defines the "underlying" tension especially for the Dayaks who see this "carrying of knives" as an insult.

This tension becomes greater when land issues are involved particularly the Dayak's displacement as a result of Madurese settlements. On one hand the survival issue justifies why long-held values, in this case the "high regard for life" among the Dayaks can be compromised and on the other, the "equally marginalized" Madurese see violence as a means of resolving disputes.

Different 'Means' of Solution

For the Dayaks, disputes can be resolved through dialogues. Through *adat* laws, there are recommended ways of arriving at agreements. For the Madurese, the appropriate solution is *carok*. In many cases, the demand for *adat* settlement was turned down by the Madurese. When the demand for *adat* was not properly fulfilled and the police was slow in upholding the law, this would inflame the tensions. Disappointed, the Dayaks then took the law into their own hands. Resorting to these means has become frequent over the decades, creating a chain of violence.

At State Policy Level

State Policies towards Indigenous Peoples

The Indonesian government does not recognize the existence of indigenous peoples in Indonesia. Officials argue that all "original" Indonesians are "indigenous." The state goes on to say the "indigenous peoples are not relevant in Indonesia…it is romanticizing to say that there are indigenous peoples." Added to this is the view that what Indonesia has are vulnerable or isolated groups of communities. This and other statements are gross violations of the Indonesian Constitution. Article 18 of the Constitution states that the "so-called governing localities that have their own traditional structures and have special characters are to be respected and recog-

nized by the State of the Republic of Indonesia along with all their positions, regulations and traditional rights." This is an explicit recognition of the indigenous peoples.

Similarly, there are also inconsistent legislations. The Agrarian Law of 1960 failed to give protection to the indigenous peoples' land rights. In addition, the Constitution clearly states that the rights of the *Masyarakat Hukom Adat* (literally, "Customary Law Communities," the term used by the government to refer to the indigenous peoples or *Masyarakat Adat)* are recognized by the state as long as they do not violate national interests. This law negates the special character of the indigenous peoples.

The government's apprehension in recognizing the rights of indigenous peoples in Indonesia is based on their assumption that it will lead to state disintegration. As the international community and the UN recognize indigenous peoples' rights to self-determination, the Indonesian government argues that this policy could jeopardize fragile Indonesian unity because it could trigger the demand for independence by various regions in Indonesia. One of the opportunities available for the indigenous peoples in Indonesia is the newly adopted Peoples' Assembly Decision (TAP MPR) No. IX / MPR/2001 about Agrarian Reform and the Management of Natural Resources in which the rights of indigenous peoples (*Maytarakat Hukum Adat)* "are recognized, respected and protected" (Article 4.j.). However, this policy will be very dependent on specific laws and regulations that will be formulated by the government at later stages.

Wrong Solution

The clash of these two contradictory cultural values is widely accepted but the solutions offered are formal agreements that are signed by non-participants to the conflict. This constitutes a "token peace agreement" that is further counteracted by forced relocation, separation and violent shooting by military personnel. It is like the efforts done to kill an unwanted tree by cutting some of its branches and yet cause the pruned tree to grow even healthier. The root of the problem itself, like the roots of a tree, are hidden deep in the ground and are not touched. The vicious cycle of violence between the Dayaks and Madurese in West Kalimantan which started in 1952 clearly illustrates the huge gap between the problem and the solution.

Culture of Violence

The history of Indonesia is characterized by strong oppressive regimes. From the upheavals in the history of kingdoms to the struggle

for independence and stability, regime successions are all heavily marked by violence – as commanded by dictators or authoritarian governments. When Suharto toppled the Sukarno government, some generals were killed and half a million or more communist and communist-related people were executed. When Suharto was forced to step down, scores of people were massacred, hundreds of others gang-raped. When Indonesia invaded East Timor one-third of the East Timorese were slaughtered and similar violence happened when East Timor was freed. The lesson learnt by Indonesians is the lesson of violence characterized by heavy militarization.

At the state level, differences are suppressed causing "Indonesia to undertake a state of political emergency in less than 32 years."[30] Justice, tolerance and harmony remain impressive slogans as basic human rights were believed unsuitable for Indonesian culture.[31] In the Suharto government, the country must "become one race, one culture, one language, one mind and one behavior." The statement of the Secretary General of the National Commission of Human Rights clearly demonstrates how such cultural differences are suppressed in Indonesia because these could cause the split of nations and destroy unity.

'Ignorant' State

Indigenous peoples are not recognized in Indonesia. According to the state, there are only "vulnerable groups, alienated communities and tribes, or forest squatters in Indonesia." All Indonesians are "indigenous." Therefore, the Dayaks and other indigenous peoples cannot claim their rights over their land and natural resources on the basis of being indigenous. The state repeatedly asserts that "the government as the ruler has all the right to own and manage the resources and the government wants the land to be converted to palm oil, industrial tree plantations, and sites for transmigrants." The government wants the timber felled by logging companies.

The people's protests expressed through negotiations, dialogues, and letters were not given much importance since there was no violence involved. When grievances were channeled through riots, clashes or ethnic wars, the government treated them as the acts of provocateurs rather than the legitimate expression of discontent at the government's failure in addressing the people's needs. It has encouraged the people to turn to violence as a means for expressing their demands and aspirations. On the other hand, the government's "ignorance" or refusal to acknowledge the validity of the people's demands has in the long run spawned further violence.

At Resource Scarcity Level

Problem of Identity

Dayak culture is dependent on the existence of land, forests and their surrounding environment. On one hand, the majority of the Dayaks are still subsisting on their indigenous systems, but on the other hand the surrounding environment is increasingly being degraded. Water pollution, forest degradation, land conversion to commercial use by big companies and the destruction of longhouses, local institutions and indigenous religion have created serious problems of identity among the Dayaks.

The deteriorating quality of resources that would sustain their cultural identity has further created frustration and anxiety over their future. As a Dayak youth would say, the clash with the Madurese is "…to show that we [the Dayaks] were once great warriors."[32] These clearly reflect the worries of the young generation who seek expression or relief through prostitution and crimes such as robbery, looting, theft as well as addiction to alcohol and gambling.

Competition over Resources

For centuries the Dayaks and Malay had privileges over the management of natural resources in West Kalimantan. This was seriously disrupted by the influx of transmigrants, both government-sponsored and voluntary, now claiming management and ownership over the natural resources. The number of government-sponsored transmigrants alone has reached 133,055 people who occupy 532,220 hectares of land.[33] On the other hand, the total number of Madurese living in West Kalimantan is almost 100,000 people.

While it is understandable why people from densely populated areas of Java and Madura move to Kalimantan for better livelihood opportunities, this has also created new problems for the areas that now host them. Both the Dayaks and Malays, who are indigenous to the place, demand that the Madurese "should move out" of West Kalimantan. Although both the Dayaks and Malay say the reason for this demand is the Madurese's notoriously violent demeanor, it cannot be denied that the competition over natural resources and job opportunities plays a major part. It can be seen from the fact that five of Dayaks clashes with the Madurese were triggered by land-related issues. These clashes caused by competition over natural resources are not new in the world.[34]

CONCLUSIONS AND RECOMMENDATIONS

Searching for the root of the problem is like searching the roots of a tree - it needs careful digging and cutting of the roots causing the problem. Once the roots are found, decision must be made on how to destroy them. However, as history has shown, it is not as simple as it appears to be since many times, the branches are mistaken for the roots.

Culturally, the Dayaks and Madurese have conflicting values on settling disputes related to human life. While the Madurese value a life as cheap as a *benggol* for the sake of pride, the Dayaks put seven generations of moral obligation to ease the burden that result from the act of taking someone's life. This is the "first root" we have to deal with.

The "second root" is how the doctrine of *Bhinneka Tunggal Ika* or Unity in Diversity is applied or if it is appropriate in Indonesian society. A shift is in order, from the Suharto government's misappropriated concept of "unity" to a new paradigm of looking at diversity as an empowering dynamic. However, this could only be achieved if differences are positively perceived as channels of cultural expression.

While it is illogical to separate Madurese from other ethnic groups in West Kalimantan—in other words to chase them out as demanded by the Dayaks and Malay—a solution must be formulated to allow these ethnic groups to exist harmoniously or at least without ending up in violent conflict. This is the "third root" that must be addressed.

The other "root" of the problem deals with justice and respect over the existence of indigenous peoples and their distinct way of life. To negate the existence of indigenous peoples as communities in Indonesia is an outright denial. The government could defend their policies of non-recognition of the indigenous peoples in Indonesia using the abused slogan "all Indonesians are indigenous" but this will only reinforce the reasons for the repeated clashes and riots since these result in people's marginalization, oppression and exclusion.

As long as there is no change in policies regarding the indigenous peoples, one will continue to witness the violation of human rights and the indigenous peoples such as the Dayaks, Malay, and even Madurese resorting to violence to assert their rights over lands and resources. They can also turn their opposition on companies operating and exploiting their natural resources in the name of development. In this respect, the statement of President Abdurrachman

Wahid (Gus Dur) regarding indigenous peoples whom he refers to as "*Adat* Communities" hopefully could serve as a foretaste of the government's intention to change its policies. Gus Dur says, "*Adat* communities are weak because they have been intentionally weakened so that the state and the business sector can be strong. Therefore, *adat* communities' demand must be heard, including their declaration that adat communities are the legal owners of natural resources."[35]

So far, solutions applied by the government have been limited to repressive means, dialogues and peace agreements by figures who do not represent the warring groups or by token acts such as building peace monuments. The repressive way is effective for immediate relief but it only adds to the frustration and resentment.

Therefore, I suggest the following steps to be undertaken in West Kalimatan in order to allow peace building among the different ethnic groups.

First, through education**.** Ethnic violence could be minimized only if the cultural differences are understood and accepted as a component of the natural dynamics of civilization. Therefore, proper understanding of the culture of the respective ethnic groups should be promoted to develop respect, tolerance, understanding and acceptance of differences. This is a long process of reformation of the school and university curriculum, educational approaches and methods.

The centralized system of the current educational system should be changed into local-based and -oriented education system to allow schools and universities to promote local culture and ethnic reconciliation. At the same time, the government should also increase the educational level of the people especially those who are involved in repeated disputes so that violent solutions in the name of cultural values are not applied; these should be based instead on positive and beneficial social interaction. The more people are educated, the less tendency for them to see violence as an option in their interaction with other ethnic groups.[36]

Education here is not defined as formal education only. The popular versions of education can vary. The initiatives taken by several NGOs in West Kalimantan in cooperation with the British Council in a project called "Voices of the Next Generation" promote ethnic reconciliation by facilitating children of different ethnic backgrounds to express themselves in dramatic performances, visual arts, and story-telling. This is a clear example of how non-formal education conducted outside school and university buildings can be quite ef-

fective. The initiative taken through the children could also serve as an effort to heal the trauma between generations resulting from the repeated ethnic wars. Similar initiatives could also be taken among the students of different ethnic groups in the form of regular dialogue or discussion forums.

Second, through resettlement of selective refugees. The Madurese refugees who are now living in various public buildings in Pontianak are living in dehumanized conditions, in the midst of unemployment, prostitution (children and adults) and destitute surroundings. Most of them are seriously depressed due to the loss of their family members, private properties and their questions on self-identity. A compromise may yet be reached in solving the refugee problems caused by both the refusal of the local Malay and Dayaks to accept the return of the refugees and the non-acceptance of communities chosen as relocation areas. The local government and all ethnic representatives should establish a Commission of Truth and Reconciliation to discuss, agree upon, implement and monitor the Madurese refugees' resettlement based on criteria and procedures agreed upon. The refugees should be resettled step by step based on criteria determined by the respective communities.

Third, the government should immediately change its policies towards indigenous peoples in Indonesia by ratifying international conventions on indigenous peoples such as International Labor Organization Convention No. 169 and abide by them through state legislation. This should be immediately followed by changes in policies in forestry, agriculture, land and mining programs. As Gus Dur states above, the indigenous peoples' declaration that they are the legal owners of natural resources must be recognized and reflected in all policies formulated by the government in both local and national levels.

The transmigration program as practiced in colonial times and upheld by recent Indonesian governments should be stopped. This program has created confusion both for the transmigrants and the local communities. The transmigrants become socially disoriented due to new environments while the local communities become confused with the abrupt appearance of new cultures and values introduced by uninvited guests. The reactions to the Madurese's *carok* tradition demonstrates how the local communities experience the confusion.

The diversity of cultures could only be accommodated in a State that is prepared to nurture and honor the similarities and differences inherent in all cultures. The current Republic of Indonesia as

a unitary state has failed to accommodate the intrinsic dynamics in the regions. Although the federal state does not guarantee an ideal form of state that could tackle all the complicated problems that Indonesia presently faces, the government should take the initiative to allow the public to discuss other forms of state that might be appropriate to Indonesia's circumstances. For a country with diverse cultures and ethnic groups, a federal state is one of the most viable solutions for Indonesia.

John Bamba is the Executive Director of the Institut Dayakologi based in Pontianak, Indonesia.

Annex: *List of Madurese-Dayak Clashes*

In 1999, the Madurese clashed with the Moslem Malay in Sambas District. Immediately after this, the Dayaks joined the Malays, after one Dayak was murdered by the Madurese. Malay-Madurese clashes also rocked Pontianak in October 2000 killing 11 people. The following are brief descriptions of each Dayak-Madurese clash.

1952. A Dayak fish trap that belonged to Pungjin was stolen by a Madurese and sparked clashes between the two ethnic groups.

1967. In Toho, Pontianak District, the father of the Toho Subdistrict Head (Dayak) was murdered by a Madurese farmer.

1968. In Sungai Pinyuh, Pontianak District, a Dayak Sungai Pinyuh Subdistrict Head was killed by a Madurese when he refused to arrange the latter's land certificate since it was a Sunday. Thirty Madurese were killed.

1976. A Dayak was killed by a Madurese when the victim reminded the killer not to cut grass that had grown on the victim's land.

1977. In Sambas District, a Dayak policeman was killed by a Madurese in a wet paddy field when he reminded the Madurese to advise his brother, Maskat, not to hang around with his sister.

1979. In Nyarumkop, Sambas District, a dispute over a debt caused a Dayak to be attacked by three Madurese. Two other Dayaks were injured. In Salamantan of the same district, in 1982, a Dayak ex-policeman was murdered by a Madurese in a wet paddy field. The victim complained about a Madurese cutting his rice that was ready for harvesting. Ten years later, in 1992, a Madurese raped the victim's daughter. In Salamantan, in 1999, a Dayak was killed by a Madurese. A clash between the Malay and the Madurese in Sambas was immediately followed by the Dayaks joining the Malay to fight the Madurese in retaliation for Amat's death.

1983. In a land dispute in Sungai Ambawang, Pontianak District, Mr. Djaelani, a Dayak, was murdered by a Madurese.

1993. A Dayak working in a comics rental stall was beaten by a group of drunken Madurese gangsters.

1997. A Dayak boarding house in Pontianak was set on fire by a group of Madurese, apparently an extension of the clash in Sanggau Ledo. At the same time, two Dayak girls were attacked and stabbed by a group of Madurese. The incident was followed by a roadblock set up by Madurese to find the Dayak travelers. A Dayak was killed in the roadblock incident that triggered the Dayak in the interior areas to do the same to the Madurese.

In Tumbang Titi district, a Dayak was stabbed by a Madurese working on a road construction in 1994. A repeat of this event was seen in Sangau Ledo, Sambas District in 1996 when a Dayak was stabbed by a Madurese.

Endnotes:

[1] Ignas Kleden, "State Violence and Horizontal Conflict (Nation-State vis a vis Ethnic Nationalism)," **The 12th INFID Conference,** Paper No. XII.II.1, (1999).

[2] Hurst.

[3] Muller, 23.

[4] Cleary and Eaton, pp. 18, 192.

[5] Ibid., 70.

[6] J. Alcorn and A. Royo, **Indigenous Social Movements and Ecological Resilience: Lessons from Dayak of Indonesia** (Washington DC: Biodiversity Support Program, 2000), 4.

[7] **IWGIA Document No. 57**, (1986).

[8] Ignas Kleden.

[9] This number must have been misprinted in Edi's book (2000) as the number of Madurese returning back to Madura island is not possible in such a number. Although there is no exact data, it is believed the number does not exceed 5,000 people.

[10] "Indonesia Communal Violence in West Kalimantan," **Human Rights Watch/Asia** 9 No. 10 (c) (December 1997): 16.

[11] "Konflik Social di Kalimantan Barat: Perilaku Kekerasan Antar Etnik Dayak-Madura dan," (Pontianak:Tim Peneliti Universitas Tanjungpura, 2000), 14-16.

[12] Glenn Smith, "Carok Violence in Madura: From Historical Conditions to Contemporary Manifestations," **FOLK, Journal of the Danish Ethnographic Society** 39 (1997): 58.

[13] **Kalimantan Review 5** (5 April-5 May 2000): 8.

[14] Op. cit., 57-75.

[15] Wiyata, 68-69.

[16] The general belief among other ethnic groups about the significant numbers of Madurese jailed for their involvement in crimes has produced more stereotypes of the Madurese as criminals. Although there is no data that support this indictment, people believe that most crimes are committed by the Madurese. The general sentiment is expressed in a saying that for the Madurese other people's land is "God's land" (Tanah Tohan) or the other person's chicken is "God's chicken" (ayam Tohan) and thus, they feel they are entitled to take other people's belongings without feeling guilty of any offense. Cfr: statement by Dr. Chairil Effendy, a Maay scholar and Prihamzah, a Malay prominent figure, about the Madurese in **Kalimantan Review** 45 (May 1999): 4-6.

[17] _____ **Kalimantan Review** 55 (5 April-5 May 2000): 9.

[18] Down to Earth, (1997).

[19] As told by Timanggong (Chief) Maniamas Miden of Dayak Bukit (previously called Kanayatn) to the writer, following the Dayak Madurese clash in 1997 in Aur Sampuk, Pontianak District.

[20] Nico Andasputra and Vincentius Julipin, eds, "Hukum Adat dan Adat Istiadat Kematian Dayak Kanayatn," **Mencermati Dayak Kanayatn** (Pontianak:IDRD), 77-86.

[21] See for example: **Sydney Morning Herald**, February 22, 1997; and **Human Rights Watch/Asia**, (1997)

[22] While Persatuan in Indonesian language has the appropriate equivalent of Unity in English, Kesatuan is something rather ambiguous since it was coined from military term. Oneness is used here as Kesatuan comes from the word satu (one) plus a prefix ke- and suffix –an to form a noun Tarya Aryanto, Sambas District Chief, in **AKCAYA**, January 9, 1997

[23] Cap Chang, O.F.M., **The Dignitiy of Human Person in Pancasila and the Church's Social Doctrine:An Ethical Comparative Study** (Philippines: Claretian Pub), 28-29.

[24] Tarya Aryanto, Sambas District Chief in **ACKAYA**, January 9, 1997.

[25] **AKCAYA**, 16 February 1997.

[26] Statement by Dayak Kanayatn Adat Council in Nyaru' Sumangat Ritual in Belado Village, Kepayang, Sungai Pinyuh Subdistrict, 23 February 1997.

[27] Statement by Madurese prominent figures in Nyaru' Sumangat Ritual in Belado village, Kepayang, Sungai Pinyuh Subdistrict, 23 February 1997.

[28] This monument was destroyed by Dayak angry mobs during the war in 1997.

[29] Prof. Parsudi Suparlan, in an interview with ISAI Team on August 27, 1999, "Orang Madura Menghargai Nyawa Cuma Sebenggol (The Madurese Value a Life with a benggol)," in Edi, (2000), 153.

[30] According to Kleden, the state of political emergency is a social construct imposed by the Suharto government through the banning of books, the forbidding of broadcast or discussion of inter ethnic and religious conflict.

[31] In Suharto's view, human rights without duty is impossible. Because in some Indonesian ethnic cultures, it is impolite to talk about rights since it implies selfishness, absoluteness, belligerency and an unwillingness to compromise. According to Suharto,"…human rights must go hand in hand with duties and basic responsibilities. Human rights alone without duties will cause disorder, while duties without rights will end up in stagnation…." See: Lubis, (1993), 131, 147.

[32] **Asiatimes**, 20 February 1997.

[33] John Bamba, "Dayak Self-Governance Within the Indonesian State: Challenges and Responses," paper presented at The 8th Conference of the International Association for the Study of Common Property (Bloomington, Indiana University, USA, May 31-June 4, 2000), 30.

[34] Dixon, (1991) and (1994).

[35] President Abdurrachman Wahid's opening speech at the National Conference on Natural Resources Management, Jakarta, 23 May 2000. See: **NRM News**, II No.2, (July 2000)

[36] This suggestion made is by no means underestimating the possibilities of those who are educated to use violence to achieve their interests. It is an undeniable fact that many educated people use violent means to achieve their political interests by engineering riots, ethnic clashes and social unrests. However, this writer believes that the level of education is contributing in some way or another to the critical ability of people to seek alternatives to solve their problems.

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3

Conflict and Resolution between Indigenous Peoples and the State of India

Samar Bosu Mullick

The present territory under the Indian nation-state has been the homeland of the world's largest population of indigenous peoples. Of its 5,653 communities, 635 are indigenous, and of these about 200 are found in northeast India.[1] The history of these peoples is marked by a long-drawn conflict with the State that has resulted in perpetual dispossession and destruction of their ancestral resources and, consequently, a great deal of suffering and cultural degradation. Be it the Aryan Rashtra (state), Islamic sultanate, British Raj or the modern Indian nation-state, a mixture of aggression and paternalism has always characterized the official policy towards the indigenous peoples. The richness of their lands and the availability of cheap labor have prompted the policy of aggression while paternalism springs from the view that indigenous peoples are "primitive and noble savages" who need to be civilized.

The indigenous peoples, however, have never accepted such treatment passively as they have resisted it for centuries with "tooth and nail." Until the end of the colonial era, the State resorted to brutal force in its attempt to resolve this conflict. The period of independence ushered in a new time of hope and aspiration for the

indigenous peoples to fulfill long-cherished dreams. The Indian state adopted certain constitutional measures and a policy of integration and less interference to try to bring an amicable settlement to the indigenous problem. But with the passage of time, it retreated gradually from its earlier positions. Already, it has responded to the indigenous demands for identity and autonomy with diplomacy rather than pragmatism. For the last half century of democratic polity, no steady tribal policy has ever been formulated. As a result, the State's initial "integrationist" policy has degenerated slowly into a hidden policy of "assimilation."

Generally the indigenous peoples of India have had a brutal past and face a bleak future. However, a prudent present can change the course of history and a bright future of cooperation and coexistence could become a reality.

HISTORICAL BACKGROUND

The Indian state is essentially characterized by the closely entwined vested interests of the ruling classes and castes. The prevalence of semi-feudal relations along with caste-based capitalism today signifies the social strength of this ruling caste-class combine. The present conflict between the State and the indigenous peoples is rooted in the history of the growth of these ruling classes and castes, and any possible proposition for its resolution demands a change in this power structure that has developed over the centuries, nay, millennia.

In the main, the history of the indigenous peoples in India has been the history of conflict between two different social systems. It involves the struggle for existence by the non-state lineage communities against state societies. The struggle of the indigenous peoples against the emergence and growth of the castes/classes goes back to the period when "state formation" began to take place in the Ganga-Ymuna Doab region in the middle of the first millennium BC.[2]

The indigenous peoples of South Asia generally saw two waves of colonization. The first came with the entry of the Indo-Aryans (said to be from Southern Russia) around 1500 BC. The Indo-Aryans superimposed themselves over the native Dravidians who were then occupying the Indus city-states (what is Pakistan today) along the Ganges. The second wave of colonialism came with the Westerners, specifically the British colonizers, who by 1757 had established a firm control over the subcontinent. The British government however initially did not rule the region directly; it administered the area



through the East India Company until 1857 when it was ceded to the British crown. This started the drawing and redrawing of the geo-political divisions of the Indian territory that would have significant impact on the indigenous peoples to the present.

In the first wave of colonization the Aryan invaders initiated the process of a centralized political organization first in the northern Gangetic plains, later expanding their influence to the south and eastern regions. Empire building in the north during the pre-Christian period (Mauryan empire 321-185 BC) began with the destruction and subjugation of the pre-Aryan societies in India. Composed basically of "peasants" with a subsistence economy and a hunting-gathering orientation, the large, conquered non-Aryan population was forced to share their surplus agricultural production. The invaders imposed the Varna system, a hierarchical structure that included the lowly Shudras and untouchable Panchamas. This created divisions and would later be transformed into the closed hierarchical caste system.

Those who declined to be part of the new Varna society retreated into the mountains. They reclaimed lands and founded settlements

where they revived the structure and organization of their earlier societies.[3] This process would be repeated over the centuries: first, displacement; then, settlement; and then displacement once again. This response by indigenous peoples to state aggression may be classified as "retaliation and retreat." Their conflict with the state intensified with retaliation and was finally resolved with their retreat.[4]

In the meantime, the hunting-gathering communities already living in the mountainous regions remained isolated from the invading power. Throughout the medieval period, the ever expanding boundaries of the State brought the indigenous peoples more and more within the ambit of its power. Many of them were given the lowly status in the caste system and the rest joined the increasing number of outcasts. Only a small section of the non-Aryan stock, including migrating communities, could protect themselves from the onslaught of state aggression.

In the following period of feudalism beginning in the 7th century, Hindu higher castes and Muslim invaders brought, albeit marginally, even such remote and peripheral regions under State rule. The so-called adventurers belonging to the Hindu warrior caste migrated into the hilly and forested areas, and formed primary states. These states became the harbinger of sanskritization among the lineage (or descent groups as opposed to castes) societies. The centralized feudal states under the Hindus and Muslims had no serious stake in the low-yielding rocky lands of the indigenous peoples. They also lacked the strength to subjugate them completely. Both kinds of states were content with irregular tributes given by the people. They did not disturb the indigenous social system to any considerable extent.[5] Rather, the medieval state system sought to preserve tribal autonomy.[6] Thus, in this period, the response of the indigenous peoples may be termed as "conflict and compromise." The conflict with the state was not acute and the people compromised with the state as a way of resolving it.[7]

British colonialism, however, drastically changed all previous equations between the indigenous peoples and the State. Colonial rule not only altered the "basic design" of the caste-based Indian villages; it also initiated a radical change in the basic structure of the indigenous communities. It involved not only a simple question of imposing a new type of land revenue administration. What was at issue was far more fundamental — the basic value by which economic life in the village had been governed in the past.[8] Initially, the British treated both the caste-based core society and the egalitarian

peripheral society of the "tribes" on the same plane. This had the effect of destroying the social system of the indigenous peoples and ruining them economically. They were turned into serfs and tenants, and their communal lands, declared as *terra nullius,* became private property and occupied by the colonial state.

For the first time, the indigenous peoples' domains were brought under state power under an alien legal and administrative system. A regular army, police and prison system characterized the implementation of laws, which were unacceptable to the indigenous peoples. Regions were opened first to mercantile and then to industrial capitalistic exploitation, and the resulting commercialization of forests, mining activities and industrialization exposed the indigenous peoples in these areas to exploitation and oppression.

The indigenous peoples' response in this period may be termed as "confrontation and submission." Tribal revolts erupted against the colonial state and continued throughout the 19th century, but these ended in their gory defeat. Submitting to the will of the British Raj, the indigenous peoples at this stage almost gave up their millenarian dreams, adopting many of the colonizers' social and political institutions. Many became Christians, enrolled their children in western-oriented schools and above all adopted colonial political institutions. The State tried to resolve the conflict by evolving a paternalistic tribal policy. It enacted agrarian laws to protect whatever small portions of land still remained with the people and set up a separate and less complicated administrative system to govern them.

POST-INDEPENDENCE

By the time of independence in 1947, the process of political subjugation of the indigenous peoples was almost complete except for a small population in the easternmost fringe of the modern Indian nation-state. However, the imminent end of colonial rule encouraged them to aspire for the restoration of precolonial political conditions. When colonialism expired, indigenous peoples throughout the world asserted their identity and staked a claim to a share in the resources of the state.[9] India was not an exception to this worldwide trend. On the issue of autonomy, three types of demand emerged:

1. Continuation of the relative autonomy the indigenous peoples enjoyed in the princely states during the colonial period;

2. Separate statehood within the Indian union; and
3. Sovereignty or restoration of precolonial power exercised by the peoples as their natural right.

The new State was thus confronted with the question of formulating a general policy that would satisfy its own interests and at the same time pacify the indigenous peoples.

During the colonial period, the indigenous communities, labeled as tribes on the basis of their "backwardness," were supposedly sought to be "isolated so that they could be protected." Various theories such as on isolation, assimilation and integration were formulated to define the relationship of the tribes, non-tribes and the State. A good number of colonial officers (mostly upper caste Hindus) preferred the second but ultimately the State worked out constitutional arrangements in favor of the third. However, the influence of the assimilation theories did not fade away.[10]

The new nation-state did not fulfill the dreams of the indigenous peoples. It did not undo the changes the colonial state brought about. Thus, instead of resolving the conflict, it kept it alive, which aggravated in succeeding years. Granting some concessions to pacify a section of the people, the State formulated a set of five principles known as "Tribal Panchsheel" (Five Principles of Tribal Policy). These principles aimed to create a "space" for the indigenous peoples to retain their cultural identity. But this did not address adequately the question of their political autonomy. In addition, the liberal leaders and Constitution framers during the formative period of the new Indian nation-state that became the "world's greatest democracy" took a paternalistic stand. During the Constituent Assembly, Pandit Jawhar Lal Nehru made the following statement:

> *I completely agree that the tribal areas and the tribal people should be protected in every possible way, and the existing laws – I do not know what those laws are, but certainly the existing laws should continue and maybe should be added to when the time comes …I should like to say and (am) quite sure the House will agree with me, and indeed, the House in accepting the first objective resolution, made this point even clear then – that every care should be taken in protecting the tribal areas, those unfortunate brethren of our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible to protect them from possibly their rapacious neighbors occasionally and to make them advance…I think, however, that it is not a question of my desire or someone else's desire. I*

> *think it is bound to be the policy of any Government of India because that is likely to be an acceptable principle of Indian politics today and I do not think any government, even if it was not keen on this issue, would very well go against it.*[11]

This declaration was also a response intended to assure Nichols Roy of Undivided Assam and Jaipal Singh of Chotanagpur-Bihar who asked Jawhar Lal Nehru to make a definitive statement on this issue in his capacity as a member of the Interim Government in charge of the tribal areas. The assurance however proved to be false. In the hands of what he termed "rapacious neighbors," the tribal peoples have suffered over the years without any redress of their age-old grievances. The five principles of the Tribal Panchsheel and its reflection in the recommendations of the Dhebar Commission (1960) remained a pious hope. What the state processes promised, the state mechanism took away. In fact, in the process of framing the Constitution of India, a section of the non-tribal statesmen in the Constituent Assembly revealed their true sentiments when they questioned their tribal counterparts, "Do you want for eternity that aboriginal lands should remain inalienable? That is how some of the demands vital to Adivasis are ridiculed."[12] (Adivasis is a collective term for many indigenous peoples of India.**)**

On the issue of political autonomy, the new State failed to come up with any lasting solution. The Sixth Schedule of the Constitution, which merely provides for district-level autonomy, fell far short of the people's demand and, moreover, was meant only for the north-eastern states of the country. The Fifth Schedule, designed for the rest of the country, provides autonomy for the people. As a result, the conflict between the State and the indigenous peoples worsened with the passage of time as the non-tribal population virtually invaded the indigenous territories and turned these into internal colonies of the powerful caste-class combine in the country.

The post-independence period is marked by a conspicuous paradox between state policies and operations with regard to tribal interests. The Constitution of India reflects a liberal ideology but the bureaucracy and judiciary hold a "pragmatic view."[13] This contradiction can only be explained in terms of the changing objectives of the ruling castes/classes. During the colonial period, more "Englishmen were willing to trade in more power for money while more Indians were willing to trade in more money or goods for power."[14] Now, the desire of the already politically powerful Indians, mostly belonging to the upper castes, is to make money in the fastest pos-

sible way. Nirod C. Choudhuri, in his famous book on India, **The Continent of Circe,** predicted that the "Hindus' insatiable greed for money… their passion for money" would be the cause of the failure of the indigenous plan for industrial revolution in India.[15]

True to this prediction, the upper caste Hindus' pursuit of money has become much of the motivation that has led to their encroachment on indigenous territories. This is evident in the senseless exploitation of natural wealth, both of forestlands and minerals, the bankruptcy in public sector industries and the height of corruption in the administrative level. They demand tribal lands not for any economic and social cause but to make "quick bucks." If this were not the motive, then land laws would not have been flouted so blatantly, leading to the displacement of indigenous peoples in such large numbers during the last half century of independent rule. Tribal areas rich in natural wealth figured first in the priority list for exploitation.

This phenomenon is often described as an instance of the functioning of "internal colonialism."[16] What C. Furer-Haimendorf experienced in Andhra Pradesh can be generalized for the rest of the country: "It is only fair to admit, however, that in the period 1917-47, the condition of the tribal populations in the East Godavari Agency Tract was relatively favorable, and the massive invasion of tribal land by outsiders occurred after 1947."[17]

THE CASE OF JHARKHAND

Jharkhand is a typical case of an indigenous peoples' movement fighting for autonomy and identity. Its goal is for a separate multilingual, multiethnic state (province) in the Indian Union.[18] Although it has a long history of struggle against state aggression, its present condition provides a good case study to understand the policies of the modern Indian nation-state.

The conflict between the colonial state and the indigenous peoples of Jharkhand continued even after independence. The latter's dream of recovering their lost autonomy shattered in 1956 when the State Reorganization Commission turned down their demand to carve out Jharkhand as a separate province on the ground that it would harm the economic interests of the neighboring states. The State blatantly disregarded the electoral verdict of the people in successive Assembly and Parliamentary elections since 1952 when they voted in the Jharkhand Party as the overwhelming majority. The ruling Congress Party not only denied their political demand but

also adopted treacherous means to dissolve the very political party the indigenous peoples formed for the first time. In the following years the aggression against successive Jharkhand political parties the people set up became more and more violent and heinous. Leaders were coopted, corrupted or killed. The Election Commission also disapproved the use of the figure of the Cock, the extremely popular electoral symbol of the Jharkhand Party.

The political conflict in Jharkhand also has economic roots. With its own identity during precolonial times, Jharkland is rich in natural and mineral resources that have always been a magnet for outsiders and remain so today. The region was opened up to both private and public sector investment, bringing in a huge influx of people, which accompanied industrialization, mining activities and urbanization. Tens of thousands of indigenous peoples were displaced from their ancestral lands and many of those who protested lost their lives. Throughout the 1960s and 1970s, police firing on unarmed people was commonplace. But by the mid-1970s, the people reorganized once again and a new phase of resistance movement started, becoming a formidable force within a decade. An overwhelming majority of the people became mobilized on the issues of autonomy and identity, and the demand for a Jharkhand separate province was raised on both the electoral and popular fronts.

In the meantime, a new alignment of forces took place. Economic policies of the State changed; the policy of globalization was on the anvil and a New Economic Policy was in the offing. The central government opened up dialogue with the movement's leaders, but this went on inconclusively for more than a decade. This period reveals the State's most crafty and dishonest dealings with its own people, dividing the movement through cooptation and, in some cases as is widely believed, the killing of its leaders. And when all these failed to suppress the popular clamor, it created a deformed child, the 28th province of the Indian nation-state called Jharkhand.

Jharkhand is carved out of Bihar. The indigenous population of Jharkhand is a minority, with the Scheduled Tribes constituting only 27 percent of its population. The remaining areas of the original Jharkhand in West Bengal, Orissa and Madhya Pradesh were left out. Had these been included, the indigenous population of the new state would have comprised the majority. This action served two purposes: firstly, it succeeded in dividing the indigenous peoples of the Jharkhand cultural region and secondly, by having a small state with no predominant ethnicity, it gave the State an easier hand to exploit the area's rich resources.

The new state is now under the control of the Bharatiya Janata Party (BJP), the party of Hindu chauvinists and petty bourgeoisie. Currently the government's ruling party, the BJP, with its affiliate organizations, has already started creating a permanent divide between the Christians and non-Christian indigenous peoples. It has undertaken a massive propaganda campaign to make people believe that privatization, globalization and sanskritization are going to bring peace and sustainable development in the region.

RESOLUTION OF CONFLICT

The indigenous peoples have taken remarkable initiatives and made significant gains in the last 50 years to resolve their conflict with the State. First of all, they have disproved the early predictions that "the aboriginal's last act will be squalid, instead of being tragic. What will be seen with most regret will be, not his disappearance, but his enslavement and degradation."[19] Secondly, they have been able to assert vigorously their identity and their demand for autonomy.

The State, on the other hand, has responded to these indigenous assertions with uncertain policies. While Nehruvian liberalism dominated the early years of independence, the succeeding years saw more and more stringent and restrictive policies in the face of a strong peoples' movement. The State has given the indigenous peoples only a limited space in the democratic process for the articulation of their aspirations. The Constitution provides for both Parliamentary and Assembly seats for the Scheduled Tribes to ensure their participation in the country's democracy. But this has proven futile, as instead of allowing a united indigenous voice to emerge, it has divided the people and coopted their leaders into parliamentary politics.

Further on the issue of identity, the State has showed little inclination to keep its earlier promises. Even after almost half a century of simmering "tribal discontent," it has not recognized either the indigenous peoples' languages (they have been fighting for the recognition and use of Adivasi mother tongues) or their traditional faiths. It has ignored indigenous spirituality and their symbiotic relationship with nature, completely alienating them from their forests. The rapid and increasing loss of ancestral lands and water resources has greatly aggravated the loss of indigenous identity.

While the last 50 years of Western democracy in India has exposed the indigenous peoples to new institutions and political ideas, the interaction has been quite erratic and inconsistent. The indig-

enous peoples played a political role but it was insignificant. The tribe-state relationship was flooded with accords and agreements that did not work. Problems arising out of the basic issues of identity and autonomy for indigenous peoples could not be resolved on the democratic plane, and ironically the State frequently resorted to violent means to force them into democratic forms of governance. Its integrationist approach to bring them into the country's political process has failed, and in response more and more people are joining the path of direct confrontation and armed struggle.

However, as we have seen in the course of the historical struggle of the people against a much stronger state power, the strategy of confrontation has led only to temporary submission, with the conflict remaining unresolved. On the part of the State, neither paternalism nor sanskritization could disarm the indigenous peoples successfully and permanently. The indigenous peoples have consistently declared that they do not need to learn democracy, but rather that others could learn from the democratic values they practice, to make democracy work in the country. They also assert that they do not need protection from the rest of the people or even "protection from the ministers." As Jaipal Singh states, "We do not ask for any special protection…we want to be treated like every other Indian."[20]

But the State has not responded to this call positively. The task of resolving the conflict is basically its duty, and its neglect to do so shows its inclination to deny the indigenous peoples justice and their rights. The State's non-recognition of their existence and presence in the country confirms this position.

The indigenous peoples, on the other hand, have always tried to resolve the conflict peacefully. Responding to the challenges of the time, they have gradually evolved a strategy of accommodation. This was the only way they could survive in the face of all the odds while remaining vigilant in their long-term goals and aspirations. The use of this strategy finds illustration in the folklore of the Mundas, among these the Ballad of Soso Bonga. This tells the story of Singbonga, the Supreme Being, and the Hasurs who challenge his scheme of things on earth. Hasurs, a blacksmith community, continuously burn their furnaces to smelt iron day and night, causing the destruction of nature. Realizing the metal's benefits to human beings, Singbonga asks the Hasurs to light their furnaces only during the day or in the night, and thereby save his creation. In order to make them understand this, he takes the guise of a scab-ridden boy and plays marbles with their children. While the children play with iron marbles, he uses an egg to hit the target. And lo and behold, the iron marble

breaks into pieces.

As in this story, the indigenous peoples, in the process of interaction with alien forces, have over the ages developed and practiced a social mechanism in which they accommodate and mold foreign social, political and economic elements compatible with their basic values and aspirations to fit their own social system, and reject totally those that are incompatible. This has saved them time and again from compromising with or surrendering to opposing forces and in keeping their identity intact.

While it has sometimes failed, working only partially or not at all, the indigenous peoples have withstood the floodwaters of colonial invasions many times in the past by adopting this strategy. An example is their experience during the British colonial rule. When the colonizers embarked on their suppression efforts, the indigenous peoples started becoming Christian converts "with religious interests." In the process, they somehow made the church work in their favor as they succeeded in getting back a major portion of their lost land. Although some of them left the church, many were able to convince the missionaries to work with them in demanding the colonial government to approve certain tenancy acts favorable to them. Those who stayed on in this faith also took advantage of the modern educational and health systems the government set up. These would later help the indigenous peoples build the confidence to provide leadership to movements for liberation. Now they are engaged in localizing the church by bringing in their traditional cultural ethos and practices. These are the people who are most capable today to fight foreign forces.

Another example is their acceptance of the Constitution of India. Jaipal Singh extended his unqualified support for it, and with the active support of Ambedkar, the architect of the Indian Constitution and champion of the untouchable and depressed classes, made the basic law of the land embody the Fifth and Sixth Schedules to protect and promote tribal interests. Until now it is the only weapon available to the indigenous peoples with which they can challenge the State.

The successful implementation of this strategy depends on the people's economic, political and cultural strength. While they are economically impoverished, they still have lands and some forests in their territories, which can be consolidated and made more productive through cooperative efforts. Politically they are powerless, but their traditional political system is still in place and can further be strengthened. Culturally their ways of life face fierce challenges

but they have retained their worldview, languages, arts, belief system and close relationship with nature. These are their strengths, which can be promoted with the use of the principle of accommodation.

This strategy finds its echo in the call of the United Nations for a new partnership between government and indigenous peoples. The historic UN Draft Declaration on the Rights of Indigenous Peoples has rightly pointed out the way to reach such a goal. Article 3 states: "Indigenous peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development." There is, however, a deep-seated fear in the state apparatus that the recognition of indigenous peoples' rights to self-determination and sovereignty will lead to a process of "balkanization." However, experience shows that this fear is unfounded.[21]

The most unfortunate fact in Indian politics today is the resurgence of Hindu fundamentalism that comes in the guise of so-called "cultural nationalism." Its adherents do not recognize the indigenous cultures and believe that the survival of indigenous peoples as distinct peoples goes against the national interest. The present government has already planned to take concrete action in this direction. Discussions have started for the amendment of the Fifth Schedule of the Constitution to give the State a free hand to lease out ancestral lands to mining companies without any legal impediments. The New Forest Act will flush out people living inside forests and with the use of paramilitary forces restrict their access to these areas. The Land Acquisition Bill, pending state approval, is going to help the State acquire these lands with ease in contravention of existing protective laws. Any opposition to these is quelled with the might and power of the State.

Conflicts are resolved in two ways — by compromise between two parties or with the routing of either one. In the Indian context though, the conflict between the State and the indigenous peoples is far from being resolved. Although indigenous peoples all over the country are gradually drifting towards armed resolution of the conflict, the doors for a dialogue have not yet closed; the democratic space for its resolution has not yet been exhausted. The need of the hour is the mobilization of civil society to help advance the demands of the indigenous peoples and urge the government to adopt a tribal policy of recognition of their rights to self-determination and to be culturally different from the mainstream society.

To bring about a lasting solution to the conflict between the State

and the "first nations" of the country, the Indian government should take serious consideration of the following:

- The Government of India should recognize the existence of the indigenous peoples in the country and respect their right of self-identification;
- Indigenous peoples' interests are an integral part of the national interest. Therefore, these should no longer be sacrificed in the name of so-called national interest;
- Indigenous peoples are also eager to develop. No plan for national development should be conceived without taking their notion of development into consideration. The nation cannot develop at the cost of their destruction;
- All Constitutional safeguards for the indigenous peoples should be implemented in the spirit of the law and with honesty and transparency;
- Autonomy should be provided at different levels to the full satisfaction of the indigenous peoples' political need for self-determination;
- All protective land laws and land restoration acts should be implemented honestly and to the utmost satisfaction of the indigenous peoples;
- Ownership, access and management rights to forests should be given back to the indigenous peoples based on historical facts and present requirements;
- All kinds of displacement involving the indigenous peoples should be stopped immediately;
- A national tribal policy should be formulated that is legally binding on all the states (provinces).

Samar Bosu Mullick, also known as Sanjay, was a political activist in the Jharkhand movement for autonomy. Currently he is involved in the indigenous peoples' struggle for regaining rights over forests. He is a guest lecturer at the Xavier Institute of Social Service, Ranchi. He is also a Research and Study Consultant with the William Carey Study and Research Centre in Calcutta.

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4

Conflict Transformation in the Naga Struggle

Phyobemo Ngully

The Nagas, roughly estimated at three million, are indigenous peoples living in a contiguous region of about 65,000 square kilometers bordering China in the north, Myanmar in the east, and India in the south and west. Belonging to the cultural stock of the Tibeto-Burman group, the Nagas historically never came under one unified administrative rule. They lived in villages, which were either self-contained and self-reliant sovereign republics much like the Grecian states, or ruled by chieftains with circumscribed functions and authority.

The independence of the Naga peoples continued even during the colonial years under the reign of the British Empire. As some of them would later humorously say, "The whites only did two things in Naga — they called the Naga nation 'tribes' and they brought Indians to Nagaland." The Nagas enjoyed sovereignty and lived in isolation in harmony with nature in their villages. Beautiful, awe-inspiring and rich in flora and fauna, their land consists of lofty hills and low valleys guarded by the rugged Patkai mountain ranges. The Nagas, a fiercely independent people with an in-born love for freedom, hold a strong spiritual and cultural bond with their home-

land. For them, to die for their land would be the greatest honor and to fail to defend it would mean disgrace worse than death. Today this remains the spirit, which continues to fuel their struggle for independence and their homeland.

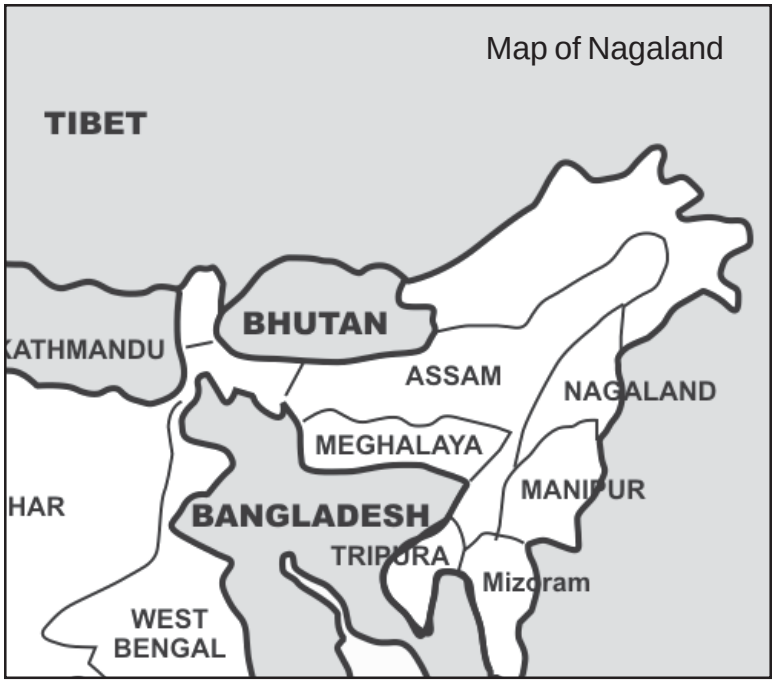
HISTORY OF CONFLICT

The Naga peoples have long been fighting for an autonomous "unified Naga territory," but this has been met consistently with state repression. The advent of colonialism, which brought significant changes in South Asia, did not exempt the Nagas from its sweeping reach. The Naga homeland, while not wholly conquered by the British colonizers, was divided along the so-called India-Burma boundary through the Treaty of Handabo in 1826 without the knowledge of the Naga peoples.[1] The British-imposed political division was for the colonizers' convenience and the Naga peoples felt its impact only at a later time.

In 1832 the British invaders colonized a portion of the Naga territory, and the opening of a "direct route" between Assam valley and Manipur paved the way for Naga-British contact. This "contact" was basically extractive, and the Naga peoples put up a fierce resistance.[2] Foreign rule threatened their love of freedom, forcing them to wage a struggle against political and military domination. However, through ruthless military campaigns, the British gradually succeeded in subjugating and administering some parts of the Naga territory.

British colonization led to the division of the Naga peoples' land, distortion of their history, destruction of their institutions, and violations of their basic human rights, spawning the beginnings of a long-standing conflict. In 1879 about one-third of Nagaland came under British rule, and the rest was designated as "no man's land" which was later partitioned between India and Myanmar (Burma). The portion placed under India comprises the present Assam, Arunacha-Pradesh, Manipur and Nagaland states. The eastern part under Burma is composed of two administrative units called Kachin state and Sagaing Division, formerly known as the Naga Hills.[3]

As the British colonial regime withdrew from Burma and India, the Nagas once again began to assert and demand their independence from both countries. Aware of their strategic geopolitical situation, the Nagas made a firm stand to defend their territory and their distinct identity. In 1929 they brought their position before the British Statutory Commission led by Sir John Simon, declaring that they



be left free to determine their own future on the basis of their status before the British colonizers came. They refused to become a "crown colony" as proposed by Sir Robert Reid under what came to be known as the "Coupland Plan," named after the British constitutional expert Sir Reginald Coupland who advocated the plan. Their demand was nothing short of independence.

The conflict continued into the decolonization period. After the Western colonizers left, the Nagas reasserted their pre-British status through the Akbar Hydari-Naga Agreement signed in 1947. Drawn up on the initiative of India, the Agreement was acceptable to the Nagas on the basis of certain clarifications. However, it was never implemented since the Government of India later declared it did not have anything to do with it. The resulting distrust felt by the Naga peoples has since influenced their outlook and attitude towards India. Nonetheless, in their desire to see that the conflict would not aggravate, the Nagas met with Mahatma Gandhi, the Father of India, on July 19, 1947. At this meeting Gandhi said:

> *Nagas have every right to be independent, we do not want to live under the domination of the British and they are now leav-*

> *ing us. I want you to feel that India is yours. But if you say, they are not mine, the matter must stop there. I believe in the brotherhood of men, but I do not believe in force or forced unions. If you do not wish to join the Union of India, nobody will force you to do that.*

Thus sensing that any ambiguity would result in a serious conflict situation, the Nagas declared their independence on August 14, 1947, establishing a fact of no small importance, namely, that their struggle was not one of secession from India. This was communicated by cable to the Government of India and to the United Nations, which is said to have "acknowledged the news." But just when Nagaland was on the verge of becoming a sovereign nation, India announced the next day its "tryst with destiny" with the proclamation of its own independence.

The necessary but legal steps, which the Nagas took to make clear their position on independence, were viewed by certain Indians as signs that they were out to sabotage India's "security environment." It thus became evident that both India and Burma chose to follow the British colonial legacy. The Nagas' response was a struggle to defend the status quo, that is, a free and independent Naga nation through the dictum of non-violence. In a show of political solidarity and affirmation of their stand, the Nagas conducted a plebiscite on May 16, 1951 that resulted in an overwhelming 99.9 percent vote for an independent Naga nation. The Government of India subsequently unleashed a policy of aggression and forced occupation on Nagaland. Resisting this political hegemony and military campaign, the Nagas declared a war of defense on March 24, 1956. Bloody clashes ensued which were compounded by joint military operations by the Indian and Burmese governments. The Indian Government has recently constructed in a border area a 6,000-kilometer highway that leads to Burmese territory.[4]

The armed conflict came to a halt in 1964 with the signing of a Ceasefire Agreement. Prior to this, the Indian Government created a new administrative unit called Naga Hills Tuensang Area, placing it under the Ministry of External Affairs. Then Indian Prime Minister Jawaharlal Nehru entered into a 16-Point Agreement with certain Naga sectors in December 1963, with the aim of creating a State of Nagaland within the Indian Union. The Naga peoples never accepted this decision and instead condemned it as treachery. While through their vigilance they were able to get the government to sit down with them for peace talks, this was seen only as a temporary

victory. In the long run it proved to be divisive. As noted in **The Telegraph**, "This Statehood policy was primarily a piece of *real politik*, dividing Nagas into moderates and rebels, and deepening the chasm between the Government and society and within society itself."[5] After two years, the Indian Government unilaterally abrogated the Agreement and resumed its political and military campaigns.

The Nagas in the Burmese-occupied territories did not fare any better. Military repression continues, and they have been deliberately denied social services and contacts with the outside world. The "Naga Hills" unit of administration was abolished during Gen. Ne Win's regime when Naga territory was again subdivided without the Naga peoples' consent. During the British rule in India, the Naga Hills district was declared an "excluded area;" it never became part of India's claim and was administered by the British Governor. The military regime of Ne Win employed divide-and-rule tactics, partitioning this land between Burma's Kachin state and Saga.

Sandwiched between India in the west and Burma in the east, Nagaland is a landlocked territory, a peculiar geographical feature that both countries have taken advantage of.[6] Instead of bringing peace, these moves by both Burma and especially India have only added fuel to the already existing conflict. Obviously, nothing substantial emerged from the ceasefire even after six rounds of talks between the Government of India and the Nagas between 1964 and 1967.[7]

Today, the situation of the Nagas remains grave and alarming. The haunting memories of the Matikhru massacre;[8] the abominable acts of rape and torture by the 1st Maratha Regiment and the 8th Mountain Division of the Indian Army at Yankeli Baptist Church; the nightmares of Oinam where hundreds of men and women were tortured in the monsoon rain and two women gave birth in front of elements of the Indian Army; and other untold tortures, rapes, burning of villages and the turning of the Church of Jesus Christ by the Indian Army into a military camp have left wounds unhealed and permanent damage to our lives. In the words of D. Dizotuo, "…this period of colonialism leads to the abuse of our sovereignty…the Nagas have lived a life at gunpoint in the shadow of genocide."[9]

These are the past and present situations of the Naga nation. Indeed, the great obstacles that the Nagas confront today resemble those many indigenous peoples of the world face: our survival is threatened by systematic developmental aggression, distortion of our history, colonization through forced occupation, militarization,

policies and designs aimed at submerging us in the "mainstream' dominant culture and population.[10] All these inevitably lead to further escalation of the conflict.

CONFLICT TRANSFORMATION

The Naga peoples' suffering and pain have been greatly misinterpreted by various sectors, but despite this they have courageously continued to struggle for their rights to freedom, respect, equality and justice. In this endeavor the Nagas, under the aegis of the Naga Peoples Movement for Human Rights (NPMHR), have initiated a process of a transparent "people-to-people dialogue."

We realize that if we allow the existing confrontational attitude to prevail, it will only enhance the lack of understanding and mistrust between the Naga and Indian peoples. Accusations and counter accusations only worsen the conflict and stall the ongoing political process. What is required at the moment is a concerted collaborative effort from both sides to bring about better understanding and respect between the two peoples. We recognize that both sides need to have the will to listen and to comprehend the needs and interests of the other in order to bring about a mutually acceptable solution.

It has taken all these years and a great loss of human lives for the Government of India to realize that the Indo-Naga problem is fundamentally political in nature, and thus a genuine solution can only be arrived at through negotiation and dialogue based on mutual respect and dignity. The Ceasefire Agreement entered into between the Government of India and the National Socialist Council of Nagalim (NSCN) on August 1, 1997 has facilitated the opening of a space and the opportunity for constructive dialogue in seeking an honorable solution.

However, even after three years of ceasefire, we are yet to witness any concrete development, the lack of which threatens the very survival of the fragile peace initiative. These, together with the Indian Government's refusal to give recognition to indigenous peoples such as the Nagas, have to be dealt with internally. India's stand on indigenous peoples has been consistent with its position on International Labor Organization (ILO) Convention No. 169. Despite its optimistic attitude during the drafting of ILO Convention No. 107 or the Indigenous and Tribal Population Convention in 1957, the Indian Government refuses to acknowledge the application of the later Convention. Convention No. 169 affirms certain fundamental rights of Indigenous Peoples and Tribal Peoples in independent countries.

While recognizing the limitations of the current peace initiative, we feel the need for constructive intervention by the people towards consolidating the peace process. For any positive outcome to emerge from the peace effort, negotiation and dialogue must take place at various levels of civil society, thereby creating a better understanding and evolving a process of interaction and dialogue. We recognize the distinction between the Government of India and the Indian population and realize the urgency for Indian intellectuals and democratic rights and civil society groups to participate and contribute to the peace process. For any viable political solution to emerge and lead towards a "sustainable peace," it must transcend the confines of the negotiating room and engage the people. Civil society has to contribute responsibly towards forming public opinion and broadening the people's participation.

We believe that in doing so, the relationship between the Naga and Indian peoples will be mended, and an acceptable way will be found towards resolving the conflict between them. The outcomes should safeguard the vital interest of both sides. We do not expect that the exercise will be simple and pleasant. Our struggle and history, precious to us and therefore defended with desperate heroism for over half a century, clashed with India's geopolitical imperatives. We want to try to help the Indian people to understand that we are not and cannot be a threat to India. But if India will needlessly choose to crush us, it will win only to lose more than she can afford.

Our struggle emanates from our ancestral homeland and its history. While remote and virtually meaningless to the Indian people, it is of great importance to us for it defines who we are. It represents the daring resolutions of our elder pioneers who chose to be true to what they believed most deeply to be the right, natural and honorable course for their people. This was to declare Naga nationhood and they paid a price for it. We honor them for their courage and sacrifice as we honor those who have sustained the struggle to this day with the same courage and sacrifice.

However, there has been a denial of the legitimacy of our claims and of the facts of the Naga struggle, and this has heightened the determination of the Nagas to defend their stand. The price they have paid for doing so constitutes the heart of what the Government of India and the media call "Naga insurgency." The Nagas call it their struggle for freedom, human rights, honor, and identity. We fully understand and appreciate India's overriding concern for its territorial integrity, bequeathed by the British on their departure in 1947.

We realize this is an issue no nation treats lightly, least of all India with her multiracial, multicultural and multiethnic composition. But without giving the simple recognition the Naga case deserves on grounds of its unique antecedents, it is inevitable that struggles, in various forms, will constitute part of the overall fight for recognition of Nagaland. Ironically, India branded us as secessionists, anti-national, hostile and worse, adopted the unwise principle of armed aggression. We want the people of India to understand that we are not against the Indian nation. We are not trying to secede from a union we did not agree to be a part of. We are a neighbor of India, admittedly a tiny one, but with a distinct identity, history and territory.

We are confident that the Indian population will positively respond to this conscious effort for creating a better understanding and relationship between the Naga and Indian peoples. We further hope that this would contribute towards bringing greater transparency and accountability in the peace process. It is in this context that the Naga Peoples Movement for Human Rights has launched the "Journey of Conscience" — a journey to touch the soul of India for conflict transformation. It started with the journey to Delhi on January 25, 2000 and continues to this day.

CONCLUSION

Our experience in this conflict shows that nongovernment organizations play an important and dynamic role in conflict resolution. They must keep afloat on uncharted waters to look for new channels that would lead to the settlement of conflicts. During the process, they must create a proper atmosphere congenial for the contending parties. They must realize that their role would be futile and equally unprofitable if they limit themselves to placing blame on one side or the other. Nongovernment organizations must go on building bridges across the chasm. For a "war to end war" or a "conflict to end conflict" is an absurdity in itself.

We are aware that violence may sometimes appear to be a shortcut towards peace, but it leaves deep scars and the costs are too high. Therefore, in peace building, nothing can be won by fighting which cannot be achieved by political struggle and negotiation. Peace building must be based on the spirit of "give and take" to bring sense and order into any extremely difficult and complex problem. There will be no end to malignancy unless a human being learns to treat another as one.

Peacemakers have the thankless task of bringing opposing sides together. This could be most challenging especially when the contending parties have engaged not only in political but also in violent armed struggle that has left people with much bitterness, mutual hate and suspicion. Obstacles are bound to arise with severe criticism and misinterpretation, but any peace achieved through such challenges would only teach us worthy lessons.

Phyobemo Ngully is with the Naga Peoples' Movement for Human Rights.

Endnotes:

[1] A. Muivah, "Nagaland: The Continuing Quest for Sovereignty," **Indigenous Peoples of Asia, Many Peoples, One Struggle** (Bangkok: AIPP, 1966).

[2] Ibid.

[3] S. Luithi, "Naga Women: A Struggle for Human Rights," **IWGIA Document No. 88** (1998).

[4] <Http://www.ahrchk.net/mainfile.phph/2002 vol 12>.

[5] Ranabir Samaddar, "From Ceasefire to Hostilities," **The Telegraph**,27 November 2000.

[6] A. Muivah, "Nagaland: The Continuing Quest for Sovereignty," **Indigenous Peoples of Asia, Many Peoples, One Struggle** (Bangkok, 1966).

[7] Ibid.

[8] On September 6, 1960 the 16th Punjab Regiment entered Matikhru village, separated the men from the women and children, and began torturing the men while the others, helpless, looked on horrified. When evening came, nine men had been beheaded and burned along with the village.

[9] D. Dizotuo, "Letter from Nagaland – Violations of Human Rights," **IWGIA Newsletter** 51/52 , October-December 1993.

[10] NPMHR, "Nagas in the International Year of the Indigenous Peoples – A Prerogative" (December 1993).

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5

The Cordillera Peoples and the Movement for Regional Autonomy

Joan Carling

The Cordillera Region in the Philippines is composed of the mountain ranges of northern Luzon spread over a land area of some 1.75 million hectares or 17,500 square kilometers. Rich in natural resources, it serves as the headwaters for some of the country's major river systems such as the Chico, Agno, Amburayan, Abra, Abulog and Apayao rivers. The region abounds in mineral deposits, particularly gold and copper, which can be found in a mineral belt that traverses the entire mountain region. Primary gold reserves are estimated at 1,964,060 metric tons and primary copper at 960,634,900 metric tons. It is also known for its forest endowment of hard wood and other highly valued varieties of tree species. Forests occupy approximately 68.6 percent of the Cordillera's land area, but this had been reduced to 46.3 percent by 1997. While generally fertile, only a small percentage of land is devoted to large-scale agriculture because of rugged terrain and very steep slopes prone to erosion.

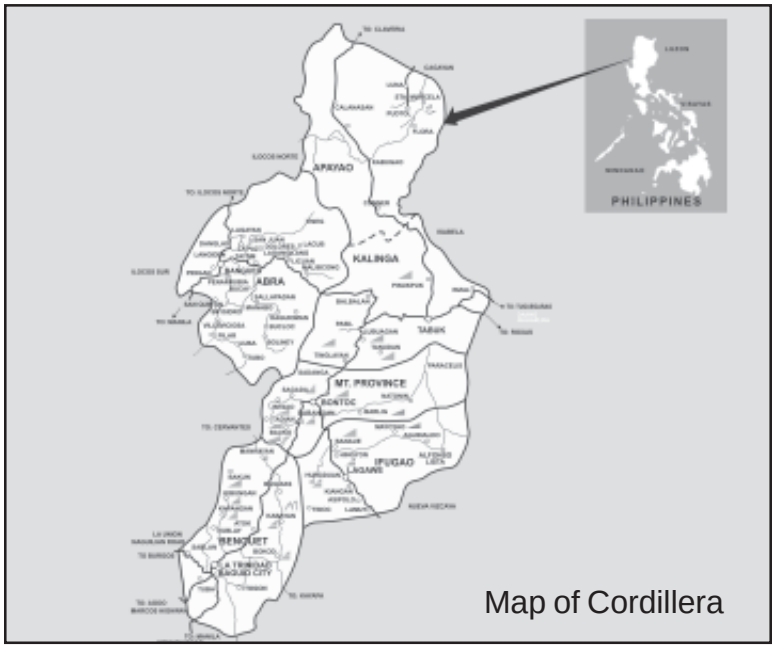
THE CORDILLERA INDIGENOUS PEOPLES

The Cordillera Region is the ancestral homeland of the indigenous peoples collectively referred to as Igorots, which means "people of the mountain." Seven major ethnolinguistic groups, namely the Kankanaey, Bontok, Kalinga, Ifugao, Tinggian, Apayao or Isneg, and Ibaloy, inhabit the region. While these are the popular references to the indigenous groups in the Cordillera, there are those who prefer to call themselves by the name of their core village or *ili*. *Ili* is a self-identifying group of indigenous people, occupying a defined territory as their ancestral land and practicing their own indigenous socio-cultural systems. *Ili* also means homeland, shared by a tribe/s or clan/s.

The culture and ways of life of the Cordillera indigenous peoples have both common and diverse characteristics. The commonality can be seen in their concept of ownership of ancestral land and its collective management. Their symbiotic relationship with their land and environment is strong, with land generally equated with life itself. Subsistence economy largely prevails in the remote villages. The people collectively perform the agricultural cycle from planting to harvesting, observing indigenous rituals and practices. They also follow indigenous ways in managing communally owned lands and resources, such as forests, rivers and other water bodies. Community unity, collective work, mutual cooperation and assistance, selflessness and upholding the common good are the underlying values which villagers and tribes live by for peaceful coexistence.

The Cordillera indigenous peoples have their own traditional socio-political systems, such as decision-making by consensus where the opinion of elders is given a premium. Placing great importance on the cycle of life from birth to death, they perform certain rituals that uphold the sanctity of life and view death as a process where one joins the spirit world. Although these cultural systems are now rapidly disintegrating due mainly to external as well as internal factors and developments, the indigenous peoples remain closely linked to their lands, and their defense of these continues to prevail.

The Cordillera region, although predominantly inhabited by indigenous peoples, has a significant presence of a non-indigenous population roughly estimated at 15-20 percent of the total population. They mostly live in the city of Baguio and in the town centers. A fairly large number of Cordillera indigenous peoples can also be found in boundary areas adjoining other regions of northern Luzon, namely the Ilocos and Cagayan regions.



BRIEF HISTORY

Before the advent of colonialism in what is now known as the Philippine archipelago, the people of the Cordillera Region were communities or villages of tribes and clans. Spanish colonization from 1521 to 1896 succeeded in subjugating most of the people of the islands which eventually formed the Philippines. However, within these islands were communities that remained unconquered, among them the Igorots of northern Luzon, the Aetas of central Luzon and the Moros of Mindanao in southern Philippines. Throughout the 300 years of Spanish colonization, they retained their indigenous systems and ways of life. The Spanish colonizers were interested from the very start in exploiting the gold of the Igorots who traded it for food and other basic items with lowlanders. They conducted several expeditions into the Cordillera but were effectively rebuffed by the strong resistance of the Igorots.

However, from 1899 to 1945, the American colonizers who took over from the Spaniards were able to extend their rule over the Cordillera region. They opened large-scale mining activities in areas where indigenous peoples mined on a limited scale, such as in the province of Benguet. In different parts of the region, they established

schools and churches which appropriated lands for their use. They also introduced commercial production of tropical vegetables. They established the city of Baguio and within it, Camp John Hay as a rest and recreation center for American soldiers and miners. American colonization started the swift process of the integration of the Cordillera indigenous peoples into the mainstream economic and political systems put in place by colonial rule in the Philippines.

NATIONAL OPPRESSION

Since the formation of the Philippine State after the American colonization in 1946, the Cordillera region has always been regarded as a resource base for exploitation in the name of "national development." Under the legal framework of State ownership of public lands and resources, successive Philippine administrations have institutionalized the outright denial of indigenous peoples' rights over their land and resources.

Through the years, the Philippine government has enacted oppressive and deceptive laws, decrees and policies, which violate the rights of indigenous peoples and have facilitated the plunder of their natural resources. Forest areas have been leased out to commercial logging companies, mining patents granted to corporations and individuals, and large dams constructed along the Agno river in Benguet, causing the dislocation of entire Ibaloy communities. Presidential Decree 705 issued by the late strongman Ferdinand Marcos officially declared all lands 18 degrees in slope as public lands, thus virtually making the Igorots squatters on their own land. This law remains in effect to this day, despite the passage in 1997 of the Indigenous Peoples Rights Act (IPRA), which purportedly aims to recognize the ancestral land rights of indigenous peoples.

The Cordillera indigenous peoples suffer other forms of national oppression. Disregarding their traditional socio-political systems, the government has implemented several programs aimed at their further assimilation into the country's western-oriented economic and political system. Government neglect to deliver basic social services, especially in the remote villages, has led to their further marginalization. Political misrepresentation by indigenous politicians has aggravated corruption and entrenched political dynasties in the region. And in many interior villages and communities, militarization has become the order of the day. The government employs divide-and-rule tactics, military operations and psywar activities to quell local resistance. Militarization in the Cordillera is

characterized by the massive, sustained recruitment of paramilitary forces and deployment of indigenous soldiers and large army and police formations. Its main objective is to combat the insurgency movement, secure the natural resources for "national development" and suppress the growing peoples' struggles to defend their resources and livelihoods.

RIGHT TO SELF-DETERMINATION

The national oppression of the Igorots by the Philippines State has triggered the struggle for the right to self-determination in the Cordillera region. Self-determination, as defined by the United Nations, is a right vested in peoples and include, but is not limited to, the right to determine their own socio-economic, political and cultural development in accordance with their needs and capabilities. The recognition of this right is a matter of social justice because of the history of systematic discrimination, oppression and exploitation of indigenous peoples. It provides a political and economic means to protect and develop their distinct ways of life in oneness with their land. With this right they can determine their own path of development, safeguard and manage their land and resources collectively, as well as enhance their traditional cultures which are in contrast to the Western political, economic and cultural system that continues to prevail and dominate in Philippine society.

One variant of this right is the formation of a separate state, i.e., secession. However, in the Cordillera region, the Igorots have come to recognize the Philippine State and consider themselves Filipinos, because of the strong social ties and common history they share with the rest of the Filipino people. The establishment of a separate state has not been expressed as a collective aspiration by the Igorots. Although the Cordillera Peoples Liberation Army, a paramilitary group, has called for the setting up of a "Cordillera Nation," this has not gained any popular support. What the Cordillera peoples assert is the recognition of their basic rights as indigenous peoples to maintain control over their land and resources, practice and develop their own cultures, and determine their own path of development as distinct peoples within the Philippine State.

CORDILLERA REGIONAL AUTONOMY

Based on their history and particularities, regional autonomy would be the most appropriate form through which the Cordillera indig-

enous peoples can exercise collectively their right to self-determination while abiding as part of the Philippine nation. They have historically continued to occupy their ancestral domain while remaining part of the larger Filipino society. Regional autonomy is a political arrangement within the State, under which a specific territory of indigenous peoples can exercise self-rule to a much higher degree compared to other regular regions or territories of the State. Under this set-up, self-rule, guaranteed by the nation's basic laws, institutionalizes distinct powers and functions in a regional autonomous government and its peoples.

The kind of regional autonomy the Cordillera peoples envision is one that guarantees their collective rights as indigenous peoples as well as their human rights and fundamental freedoms. One of its basic features is the recognition of the territorial integrity of the Cordillera Region as their ancestral domain and their right to collectively control, manage and develop these territories and their resources. The six provinces now comprising the Cordillera Region, namely Abra, Mountain Province, Kalinga, Apayao, Ifugao, Benguet, and the city of Baguio, approximate the initial territory that a future Cordillera Autonomous Region should cover. This can be expanded if neighboring villages and towns in boundary areas primarily populated by indigenous peoples opt to join an autonomous region.

The exercise of self-rule would be inherently weak and inadequate if there were no territorial integrity and patrimony to speak of. Thus, it is necessary to guarantee the right to the ancestral land — the lifeblood of indigenous peoples — for their continuing survival and development. The recognition of the right to self-determination is inseparable from the recognition of the right to ancestral lands.

Self-rule would also mean democratic governance based on the collective interest and welfare of the people to ensure their political empowerment. This is in contrast to the prevailing political system of traditional politics that is based on patronage, personal gain and self-interest of those in power. Self-rule would provide the Igorots the avenues to exercise collectively the full range of their rights as indigenous peoples and to pursue their collective interest in the economic, cultural and social arenas.

This form of regional autonomy also recognizes existing diversities in the cultures and lifeways of the different ethnolinguistic groups in the Cordillera. Each group can further exercise democratic self governance based on their own particularities and traditional sociopolitical systems and customary laws. For non-indigenous people

living in the Cordillera region, their democratic rights would be guaranteed by the regional autonomous government. This is to avert reverse discrimination and to ensure equality and justice for all residents in the region. It is the duty of the regional autonomous government to foster and promote unity and cooperation among the various indigenous groups and non-indigenous Filipinos for peace, security and development.

In sum, Cordillera regional autonomy, if it is to be meaningful, should have the following scope and basic characteristics:

- Recognition of ancestral lands of the various Cordillera indigenous peoples, and their ancestral proprietary rights to the disposition, utilization, management and development of these lands and resources;
- Recognition of the domain or territory of the Cordillera Autonomous Region and the Cordillera peoples' prior rights to these lands and resources as well as the rights of disposition, utilization, protection, conservation, management and development;
- Recognition of the right to economic prosperity and genuine social development, including the right to appropriate education, health and other social services;
- Respect for indigenous cultures and the right to pursue cultural development;
- Recognition of the indigenous socio-political systems and their political integrity;
- Protection of civil liberties, human rights and fundamental freedoms;
- Recognition of the democratic rights of non-indigenous residents in the Cordillera region.

BIRTH OF STRUGGLE

Because of national oppression, as evidenced by the State's integrationist approach and lopsided development policies, and worsening marginalization, the Cordillera indigenous peoples are asserting their right over their ancestral territories and resisting attempts to expropriate these and their resources. In the late 70s to early 80s, the Kalingas and Bontoks united to stop the World Bank-funded Chico dam project, waging a struggle that took various forms in-

cluding armed resistance. This struggle gained both national and international attention and support. The same happened with the commercial logging operation of the Cellophil Resources Corporation which gravely affected the Tinggians and Kankanaeys of Abra and Mountain Province during the same period. Because of these struggles, the call for an Igorot mass movement for the defense of their lands was raised and echoed throughout the region.

This eventually led to the establishment of the Cordillera Peoples Alliance (CPA) in 1984 with the aim of defending the ancestral domain of the Igorot peoples and in addition to achieving self-determination. The founding members were village and tribal leaders, elders, women, students and professionals. The CPA is now a multisectoral alliance of more than 130 organizations spread across the region, mainly village/community organizations and those of elders, women, youth, students, and human rights groups. Soon after its formation the Cordillera Peoples Alliance started conducting public information and education on indigenous peoples' rights at the village, national and international levels, particularly at the United Nations. This campaign raised the awareness of the general public on the rights and issues of indigenous peoples.

After undertaking a series of studies to determine the most appropriate form for self-determination, the CPA launched a campaign for Cordillera regional autonomy. The characterization of Cordillera regional autonomy, as presented earlier, was the substance of the advocacy campaign. The initial phase called "Regionalization and Beyond" aimed to place all the six provinces in northern Luzon, mainly populated by indigenous peoples, and the city of Baguio under one administrative region to be called the Cordillera Region. This would serve as a preparatory step towards achieving regional autonomy. This campaign gained the support of Cordillera politicians which led to the formation of the Cordillera Administrative Region in 1988. Prior to this, the Cordillera provinces were part of different regions, in particular Regions I and II in Northern Luzon.

In 1987, the CPA also conducted a strong national lobby for the inclusion in the Philippine Constitution of the right to self-determination through regional autonomy for the Cordillera indigenous peoples. The Filipino people then had just ousted the dictator Ferdinand Marcos and installed Corazon Aquino, and hope was high that the new government would be people-centered and would uphold the exercise of democratic rights. With this prevailing public perception, the CPA too was hopeful that regional autonomy could be realized.

The CPA succeeded in its lobby as the 1987 Philippine Constitution recognizes the right to regional autonomy for the indigenous peoples of the Cordillera and the Moro people of Mindanao. The Constitution provides for the process by which this would be established. A Cordillera Regional Consultative Commission (CRCC), whose members would be appointed by the President based on recommendations of indigenous peoples' organizations and individuals, would draft an Organic Act for the Establishment of a Cordillera Autonomous Region. The draft Organic Act was then to be submitted to the Philippine Congress and once enacted, presented in a referendum to the residents of the Cordillera Region. By a simple majority vote, the provinces that favor the Organic Act would constitute the Cordillera Autonomous Region.

STATE VERSION OF CORDILLERA REGIONAL AUTONOMY

Inspite of the government's acknowledgment and recognition of the CPA's role in the inclusion of the Constitutional provision on the right to regional autonomy, CPA leaders were not appointed to the CRCC when it was formed in 1989. Most of those chosen were traditional politicians and government officials in the Cordillera with only a few progressive indigenous individuals, some of whom decided to leave the CRCC when it tried to reformulate the provisions on self-rule and control of resources. At this stage, it was evident that the Aquino government was a government of the elite, landlords and capitalists. It had already turned its back on its promises to the people and even declared total war in the countryside, which resulted in widespread dislocation and human rights violations of indigenous peoples. It was then not surprising that CPA was not included in the CRCC and branded as local terrorists.

The draft Organic Act produced by CRCC incorporated the recognition of the rights of the Cordillera indigenous peoples, including their control over the region's land and resources. However, as expected, Congress watered this down and included a provision subjecting the exercise of regional autonomy under the national government's control and approval for "national interest, security and development." This provision was contrary to the very principle of self-governance as it gives the national government the authority to decide on major matters concerning the Cordillera Region. It advocated a top-down governance with the setting up of regional structures but without the political empowerment of the indigenous peoples and guarantees of control over their land and resources. In

fact, there was even no attempt to repeal existing oppressive laws that violate the rights of indigenous peoples to their land and resources as a matter of social justice.

When the Organic Act was submitted to a plebiscite in 1990, the CPA campaigned actively for a boycott or NO vote, calling the Organic Act a farce that did not embody indigenous peoples' aspiration for self-rule. The Organic Act was overwhelmingly rejected by a NO vote and a significant percentage that boycotted the referendum. It was only the province of Ifugao that gave it a majority vote, and as a result no regional autonomous structure was set up. In 1997, Congress enacted another Organic Act for the establishment of a Cordillera Autonomous Region. The second Organic Act contained even weaker provisions on self governance. The CPA again campaigned against it. For the second time, it was rejected by the people of the Cordillera. Thus, to this day the indigenous peoples of the Cordillera have yet to attain regional autonomy.

LESSONS LEARNED

The major lesson learned from this political exercise is that genuine regional autonomy cannot be achieved if the national government is not truly democratic and independent. The political and economic agenda of those in power will always prevail in setting up a regional autonomous structure under their control and administration. As such, regional autonomy for the peoples of the Cordillera would simply be a tokenism, devoid of the substance of self-rule. The national government's claim to ensure "national interest and development" merely means protecting the access by the ruling elite and their foreign partners to the region's resources and political dominance over indigenous affairs.

The national government's version of regional autonomy is a deceptive political mechanism for the further dominance by the ruling elite. This uses a sector of the indigenous population as puppets to divide and rule the indigenous peoples of the Cordillera region. The very essence of self-governance that guarantees the full exercise of indigenous peoples' collective and individual rights will never be provided by a State that continues to systematically violate the democratic rights of its citizens and exploit their human and natural resources to advance its own vested interests.

Thus the CPA believes that while it has succeeded in enshrining in the Constitution the right to regional autonomy for the Cordillera peoples, genuine regional autonomy as the expression of the exer-

cise of self governance and collective empowerment can only be achieved if genuine national democracy and independence prevails in the country. For regional autonomy to flourish, a fundamental transformation of the Philippine State needs to take place for it to become truly a government of the people and by the people. It is therefore imperative for the Cordillera indigenous peoples to cooperate and work hand in hand with the other democratic sectors of Philippine society. Without this, regional autonomy will not prosper.

Another lesson is to build regional autonomy from the grassroots to the municipal, provincial and regional levels. The collective capacity of indigenous peoples must be strengthened and further developed to ensure the dynamic exercise of self governance and democratic participation at all levels and spheres of governance. Capacity building for collective political and economic empowerment includes awareness raising; strengthening the positive elements of customary laws; enhancing traditional values of cooperation, mutual assistance, accountability, peaceful co-existence and resolution of conflicts; collective conservation, management and development of their resources and environment; developing subsistence economy and other forms of sustainable livelihood activities; democratic participation in decision making; recognizing the role of women and respecting their rights and welfare; enhancing and respecting diverse indigenous cultures.

This requires a long and complex process that brooks no shortcuts, but without this the creation of a regional autonomous government would just fall again into the hands of vested interest groups and individuals who feel no accountability to the Cordillera peoples. While they have already disapproved two Organic Acts for the creation of a Cordillera Autonomous Region, this does not necessarily mean the Cordillera indigenous peoples are against regional autonomy. Some people admittedly voted "NO" because of misinformation on what the Organic Act can or cannot provide, mistrust in the national government which formulated the law, fear of discrimination particularly by non-indigenous residents, and the view that it is another imposition on the people that does not truly recognize their indigenous rights.

Genuine regional autonomy remains an aspiration of the Cordillera indigenous peoples. That they continue to assert and practice their distinct ways of life, culture and spirituality and to defend their lands and resources from exploitation can already be deemed

an exercise in self-determination. The need remains to continue to conduct widespread information and education campaigns on Cordillera regional autonomy and self-determination to enlighten the wider public on what true regional autonomy entails.

CONTINUING STRUGGLE

Inspite of the Indigenous Peoples Rights Act which is supposed to provide for the recognition of indigenous peoples' rights in the Philippines, indigenous peoples continue to be disenfranchised from their lands and resources, marginalized, and their collective and individual rights, violated. In addition, the implementation of genuine regional autonomy in the Cordillera has taken a backseat since the government has been busy formulating and implementing laws, policies and programs to hasten economic liberalization and globalization as well as to combat terrorism. Under this national thrust, indigenous peoples have little choice but to actively defend their territories and assert their civil and political rights under growing political repression and economic deprivation.

At present, the CPA continues its campaign for the "Defense of Land, Life and Resources" in the face of globalization which is leading to large-scale exploitation and expropriation of indigenous lands and resources. The struggle for regional autonomy has then taken on this form. The land, being the material base for the exercise of self-determination, must be secured if regional autonomy is to be attained. Without it and the resources therein, regional autonomy, which would ensure the Cordillera indigenous peoples' collective survival and development, would not flourish.

The Alliance is also advocating the repeal of the Philippine Mining Act of 1995 that has liberalized the country's mining industry. This law has opened up the region to numerous mining applications by multinational companies, which cover almost half of the region's 1.8 million-hectare area. Corporate mining in the Cordillera has led to the loss of livelihood sources, dislocation of indigenous communities, depletion of water resources and environmental destruction. Clearly a case of development aggression, it violates the collective rights of indigenous peoples to their land and resources and thus their right to self-determination.

At the same time, the CPA is working against the building of megadams, one of these the San Roque Dam, which will inundate Ibaloy ancestral lands and cause great ecological damage. The dam is also a big debt burden to the Filipino people as payment for the

loans used to erect it will only benefit foreign banks and investors. Eco-tourism projects are another campaign. These deny indigenous peoples access to portions of their ancestral lands and resources designated for tourism and so-called biodiversity protection; these also lead to the commercialization of their cultures. The CPA is further actively involved against the privatization and inappropriate delineation of ancestral lands facilitated by government laws and policies. These have caused tribal conflicts with some escalating into tribal wars. The Alliance promotes the indigenous system of peaceful conflict resolution.

But more than launching campaigns, the CPA is building the capacities of indigenous communities through organizing, awareness building and education, trainings, mobilization and facilitation of appropriate socio-economic projects. It helps communities in their collective endeavors to address their issues and concerns, including political struggles. It engages in lobby and advocacy work to advance indigenous rights, welfare and interests. On all levels the CPA is working to establish solidarity and cooperation with other indigenous peoples and sectors within and outside of Philippine society to advance their common aspirations for the true exercise of indigenous peoples' and other human rights, genuine national freedom and democracy, and global peace and security based on justice and equality.

Joan Carling is the Chairperson of Cordillera Peoples Alliance.

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6

The Mindanao Crisis

Rolando Esteban

Mindanao, the southernmost island group in the Philippines, has long known turmoil that has time and again erupted into armed conflict. To some individuals and groups, from media to Congress, the spate of events in some parts of Central and Western Mindanao particularly in early 2000 had reached crisis proportions that called for immediate decisions to ease the situation.

But what is the crisis about? It is about the ongoing war between the Armed Forces of the Philippines (AFP) and the Moro Islamic Liberation Front (M1LF) in some parts of Central Mindanao.[1] It is also about the protracted negotiation for the release of the hostages in the hands of the Abu Sayyaf Group (ASG) in Basilan Island in Western Mindanao.[2] Though not united organizationally, the MILF and the ASG are one in their aspiration for an Islamic state in Mindanao. Compounding the situation is Moro National Liberation Front (MNLF) head Nur Misuari's hint of an "option,"[3] should the Jakarta peace accord between the Government of the Republic of the Philippines (GRP) and the MNLF fail. Such an option is reportedly the return to the call for secessionism and consequently a return to arms.[4] In brief, the crisis is about the Moros' aspirations for

an Islamic state in Mindanao.

But to the students of Mindanao history, peace advocates and informed members of the Philippine Congress, the crisis has a history of its own. Viewed from its proper historical context as well as from a holistic perspective, it is only the most recent of events that relate to a much larger problem. It is but a moment in the history of the Moro struggle for self-determination for which the Spanish colonizers, for lack of a better term, called *guerras piratirias*, because some Moro acts at the time partook of the nature of piracy.

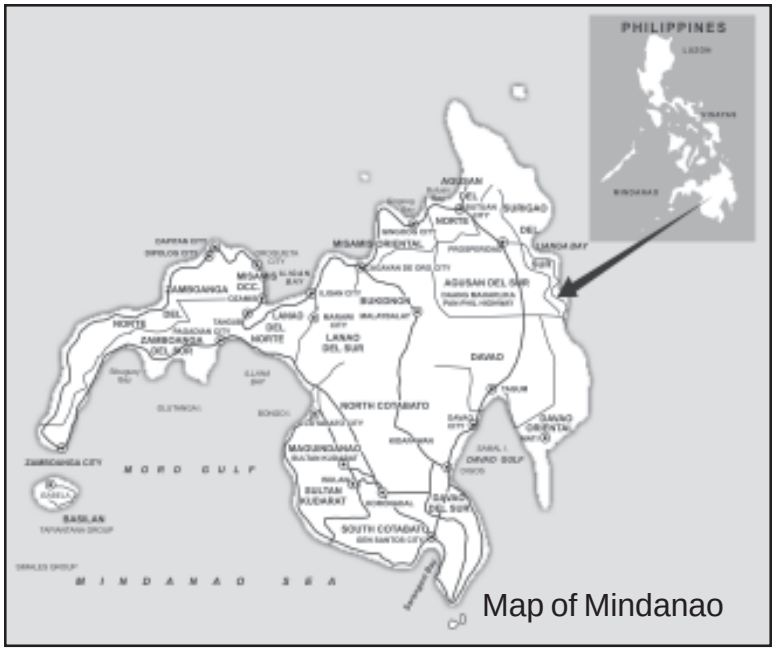
As a problematique in colonial policy, however, it was the American colonialists who invented a name for it — the "Moro Problem,"[5] because, according to General John J. Pershing, the Moros caused the Americans "the most trouble."[6] Sans its negative connotations, this American legacy best describes some aspects of the conflict in Mindanao. Among progressive groups, it was called the "Moro Question,"[7] particularly from the 1970s to the 1980s, which acknowledges the Moros as one of the tri-peoples of Mindanao, the others being the non-Muslim indigenous peoples or Lumads and the Christian Filipinos.

The notion that the conflict in Mindanao constitutes a crisis gives it a sense of contemporaneity and immediacy. It has given opinion and policy makers common cause for calls for a ceasefire and a reconsideration of the Moro Question — once more.

A CHRONOLOGY OF EVENTS

A more productive discourse on the Mindanao crisis is to situate it within the larger canvass of the Moro Question. Towards this, the following chronology of important events would be helpful.[8]

- *1968:* Organization of the MIM and MNLF. The Moro struggle for self-determination took a crucial turn with the radicalization of some Moro leaders who organized the Mindanao Independence Movement (MIM) in 1968. Among these were Datu Udtog Matalam of North Cotabato, former Congressman Rashid Lucman of Lanao del Sur and former Senator Domocao Alonto, also of Lanao del Sur. It was an offshoot of the intra-class struggle among the Moro political elite and Christian politicians, as well as a response to the Moro outcry over the Jabidah massacre where some Moros, recruited and trained reportedly for covert operations in



Map of Mindanao

Sabah (claimed by the Philippines as part of its territory), were massacred. Also in 1968, some Moro youth members of the MIM founded the Moro National Liberation Front and the Bangsa Moro Army under the leadership of Nur Misuari.

- *1971:* MNLF split from the MIM. Realizing that the MIM lacked direction, the MNLF broke away from the MIM and elected Misuari as Chair.
- *1974:* Declaration of Bangsa Moro independence. The Central Committee of the MNLF issued a manifesto declaring on April 28, 1974 the independence of the Bangsa Moro Homeland in Tripoli, Libya, with 13 Moro ethnolinguistic groups for a people, namely, the Badjao, Iranun, Kalagan, Kalibugan, Jama Mapun, Maguindanao, Maranao, Molbog, Palawan, Samal, Sangil, Tausug and Yakan.
- *1973-1976:* The Mindanao conflict. From 1973 to 1976, the MNLF engaged the Armed Forces of the Philippines in combat. Negotiations to end the conflict, mediated by the Organization of Islamic Conference (OIC)

through the Quadripartite Ministerial Commission,[9] culminated in the signing of the Tripoli Agreement between the GRP and the MNLF on December 26, 1976.

- *1977-1984:* MNLF splits into groups. In 1977, traditional Moro politicians like Rashid Lucman, former Senator Salipada Pendatun and Macapanton Abbas left the MNLF and formed the Bangsa Moro Liberation Organization (BMLO). In 1982, Dimas Pundato broke away from the MNLF and set up the MNLF-Reformist Group. In 1984, Hashim Salamat also split up from the MNLF and organized the Moro Islamic Liberation Front. In 1994, Commander Pendi Colan separated from the Selatan Kutawato State Revolutionary Command (SKSRC), an MNLF group based in Cotabato province, and established the SKSRC-Reformist Group. Other splinter groups are the Mujahideen Commando Freedom Fighters or the Abu Sayyaf Group and the Islamic Central Command.

The splits occurred after the signing of the Tripoli Agreement, as some MNLF groups were amenable to autonomous rule for the Muslims, which the Marcos government tried to establish. However, the MILF, and later the ASG, separated from the MNLF with the establishment of an independent state as a goal.

THE TRIPOLI AGREEMENT

The Tripoli Agreement is considered by the MNLF as the cornerstone of autonomy for the Moros in Mindanao. Its salient provisions are:[10]

- Establishment of "Autonomy in the Southern Philippines within the realm of the sovereignty and territorial integrity of the Republic of the Philippines," that is, for 13 provinces in the Mindanao, Sulu, Palawan Region (MINSUPALA) and all the cities and villages therein;[11]
- Foreign Policy, National Defense and Mines and Natural Resources to remain within the "competence of the national government;"
- Declaration of a ceasefire and the creation of a Ceasefire

Committee, and establishment of the Shariah Courts and a Joint Committee to resolve the details of the Agreement;

- Establishment of schools, financial and economic systems, representation and participation in political affairs, special regional security forces, legislative assembly either to be discussed with the GRP or fixed later; and,
- Establishment of a provisional government immediately after the signing of the agreement in the areas placed under autonomy, the officials of whom would be appointed by the President of the Philippines and that would prepare the elections for the Legislative Assembly and administer autonomy in "accordance with the agreement."

A chronology of events from December 27, 1976 to May 4-8, 1977[12] shows that President Ferdinand Marcos took steps towards the implementation of the Tripoli Agreement, a move which, according to Misuari, was unilateral. Misuari raised an 8-point complaint, that President Marcos:[13]

1. Declared "conditional" rather than "complete" amnesty;
2. Neither released all MNLF prisoners nor repatriated all MNLF refugees;
3. Created two executive councils instead of one;
4. Refused the Autonomous Government representation in all organs of the Philippine Government;
5. Refused to withdraw the AFP from the autonomous region;
6. Refused to grant full control over mines and resources;
7. Wanted a plebiscite on the geographic coverage of the Autonomous Government; and
8. Deployed large contingents of the AFP to the areas of the Autonomous Government.

The knottiest of issues was the interpretation of the crucial provisions of the Tripoli Agreement. The first pertains to the central powers of the state that the GRP could not grant. While the Tripoli Agreement states that the central government retains control over foreign affairs, national defense and mines and natural resources,

the MNLF wanted control over them. The second pertains to the mode by which the geographic coverage of the Autonomous Government would be determined. While the Tripoli Agreement recognizes the Constitutional processes that the GRP has recourse to, such as a plebiscite,[14] the MNLF believed otherwise. To the MNLF, the Agreement was "mandatory" and the GRP should "overcome all Constitutional impediments" to it.

In the opinion of constitutionalists like former Dean of the University of the Philippines College of Law, Atty. Merlin Magallona,[15] the same issues bedeviled the Regional Consultative Commission that drafted the Organic Act for autonomy under President Corazon Aquino. Speaking on the Constitutional provisions that restrict autonomy, Magallona declared that the powers not granted by the central government remain with it. As the same issues were governed by similar provisions in the 1973 Constitution, it could be gleaned that the Autonomous Government created by virtue of the Tripoli Agreement would not be given powers over foreign affairs, national defense, and mines and natural resources. Compounding these Constitutional constraints are the open clauses in most of the provisions, implying a condition of negotiability, which the MNLF believed were interpreted against their favor.

Disagreements over these issues, including the other breaches of the Tripoli Agreement by the GRP as seen by the MNLF, made the latter reject the Regional Autonomous Government (RAG) created by President Marcos by virtue of Presidential Decree 1618 in 1979.[16] Meanwhile, Misuari refused offers of political posts in the RAG,[17] reverted to the goal of independence and resumed the armed struggle. From 1976 to 1987, however, the MNLF would weaken due to splits, as some members formed new groups or surrendered due to battle fatigue, while traditional Moro politicians accepted autonomy.[18]

The first attempt at solving the Moro Question in contemporary times did not succeed in persuading the Moro combatants to return to the fold of the law and accept the RAG. To the assessment of some, the RAG in Central Mindanao was a failure: it was powerless, lacked funds, and was ineffective in delivering basic services to the Moro masses.[19] In a symposium conducted for the purpose of drawing lessons from the RAG experience, none of its officials came. However, given the same limited powers, funds, personnel and serious problems of peace and order, the RAG in Western Mindanao was deemed more effective. According to Einorita Tugung, RAG-Western Mindanao Governor, and two other officials who attended the symposium, the RAG had provided housing, built schools, extended

medical services through mobile clinics, built some infrastructures and even tried to intervene during the Pata massacre.[20]

AUTONOMOUS REGION IN MUSLIM MINDANAO

The fall of the Marcos dictatorship and the assumption of Corazon Aquino to the presidency raised new hopes for readdressing the matter of autonomy. President Aquino, through now Senator Aquilino Pimentel, held talks with Misuari in Jeddah, Saudi Arabia from September 1986 to January 1987.[21] The talks produced no written agreement but they agreed to open formal talks should Misuari give up the goal of independence.

By then the 1987 Constitution had been ratified. While the Tripoli Agreement remained the point of departure, the MNLF had to negotiate within the framework of the new Constitution, which provides for autonomy.[22] As in the past, however, provisions pertinent to autonomy were deemed restrictive.[23] Once more, the Constitution did not devolve central powers relating to foreign affairs, national defense and mines and resources to the regional autonomous government. Moreover, the geographic units for inclusion in the autonomous structure would have to be decided in a plebiscite. These Constitutional restrictions, together with the requisite precondition for talks — dropping the goal of independence — inhibited the MNLF from negotiating.

By then also, the MNLF was not the sole voice of the Moros on the battlefront.[24] The MILF had grown in membership and war capability and, most importantly, had harnessed Islam as an ideology of which the Moros have knowledge and experience. It was, however, excluded from the talks because the Tripoli Agreement does not recognize them. Moreover, the MILF and the MNLF failed to unite or give one voice to the Moro cause.

The MNLF, by insisting on the Tripoli Agreement as the point of departure, disbarred the rival MILF from the peace process and consigned them to the battleground. Despite this, President Aquino issued Executive Order No. 322 on March 24, 1988,[25] creating the Regional Consultative Commission, tasked to aid Congress to legislate a new autonomy law by drafting a proposed Organic Act for autonomy through consultations. The MNLF and MILF neither recognized the RCC nor participated in the peace process, and much less in the Autonomous Region in Muslim Mindanao (ARMM).[26]

The proceedings of a symposium on the proposed draft Organic Act for the ARMM showed that, once more, sovereignty over foreign

relations, national defense and mines and natural resources lay with the central government, and a plebiscite remained as the Constitutional process of determining the geographic scope of autonomy. Atty. Merlin Magallona opined that any attempts at autonomy would have to reckon with such limits.[27]

Congress passed Republic Act No. 6734 in June 1989, which provides for the creation of the Autonomous Region in Muslim Mindanao.[28] It was signed into law by President Aquino on August 1, 1989. Based on the results of the plebiscite, which the MNLF and MILF both opposed, the four predominantly Moro provinces, namely, Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi voted for inclusion in the ARMM, while the nine predominantly Christian provinces voted for exclusion. These are Basilan, Davao del Sur, Maguindanao, North Cotabato, Palawan, Sultan Kudarat, South Cotabato, Zamboanga del Norte and Zamboanga del Sur.[29] It is important to note, however, that the two largest Moro cities, namely, Cotabato and Marawi, also voted for exclusion.

THE JAKARTA AGREEMENT

Negotiations between the Ramos Government and the MNLF began on October 25, 1993 and ended on August 30, 1996, both in Jakarta, Indonesia, with the Tripoli Agreement as the point of departure. The "Final Agreement on the Implementation of the 1976 Tripoli Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) with the participation of the Organization of Islamic Conference through the Conference Ministerial Committee of Six and the Secretary General of the Organization of Islamic Conference"[30] was signed on August 30, 1996.

The Jakarta Agreement, as the Final Agreement has been called, was signed to the satisfaction of the MNLF. The negotiated political settlement provided for the integration of the MNLF surrenderees into the Philippine National Police (PNP) and the AFP, the creation of a regional security force that would include the MNLF and, most importantly, it laid down, in two phases, the implementing structures and mechanisms for autonomy. The last has been hailed as the linchpin in the negotiation process. Notable, however, was the fact that the MILF and ASG were not party to the peace process.

Phase I includes the creation of a Special Zone of Peace and Development (SZOPAD) and the Southern Philippines Council for Peace and Development (SPCPD) which would administer the

SZOPAD, the repeal of Republic Act No. 6734 and the creation of a new autonomy law.[31] Phase II consists of the creation of a new Autonomous Region, whose geographic coverage would be determined in a plebiscite, the integration of the MNLF into the PNP and AFP and the creation of a regional security force. With the SPCPD and the SZOPAD, the agreement differs from the earlier interpretations of the Tripoli Agreement in the following ways:

- A transitional period is created through the SPCPD;
- The coverage of autonomy was expanded to 14 provinces; and,
- The plebiscite was placed in Phase II rather than in Phase I.

On October 2, 1996, President Fidel Ramos issued Executive Order No. 371, "Proclaiming a Special Zone of Peace and Development in the Southern Philippines, and Establishing therefore the Southern Philippines Council for Peace and Development and the Consultative Assembly."[32] The SZOPAD covers 14 provinces or the geographic areas provided for in the Tripoli Agreement, which would be the beneficiary provinces of peace and development projects for the subsequent three years.

The SPCPD is composed of a chair, vice-chair and three deputies. The Chair is appointed by the President from among the governors of the SZOPAD, while the other officials are selected from among the heads of government offices and nongovernment organizations in the SZOPAD. The powers of the SPCPD Chair are derivative of the powers of the President. He is tasked with monitoring and coordinating development projects as well as promoting and improving peace and order in the SZOPAD. The SPCPD's term is three years, unless extended by the President.

The Consultative Assembly, which is transitory and under the President, is an advisory body to the SPCPD. It is composed of the SPCPD Chair, the Governors and Vice-Governors of the 14 ARMM provinces and nine city mayors in the SZOPAD, and 55 members from various sectors, including people's organizations and NGOs. In addition it functions as a forum for consultation and public hearings and can recommend policies to the President. In the 1996 ARMM elections, Misuari ran unopposed and won in the September 9 elections; he also served as the concurrent Chair of the SPCPD.[33]

The Mindanao crisis today does not pertain to the MNLF be-

cause, aside from having entered into a political settlement with the GRP through the Jakarta Agreement, the MNLF did not have much cause for complaint. The GRP had acceded to the MNLF demands and interpreted the Tripoli Agreement in creative ways while not violating the Constitutional strictures and processes like the plebiscite. What has caused harm to the SPCPD, SZOPAD and ARMM are factors like the inexperience of the MNLF at good government, a high level of corruption, lack of funding assistance, bureaucratic red tape in its relations with the central government and breaches of peace and order caused by the MILF and ASG over whom Misuari has no influence.

Misuari's first term lapsed in 1999; however, elections were postponed due to disturbances in peace and order. What is interesting to observe in the Mindanao crisis is the timing of the escalation of the MILF's attacks and the ASG's kidnap-for-ransom activities. They had been timed in the year that the next Autonomous Government would have been formed, which roughly overlaps with the three years granted to the SZOPAD and the SPCPD.

By destabilizing the peace and order situation in the SZOPAD, the MILF and ASG had precluded the implementation of the Second Phase of the Jakarta Agreement during which a new autonomous government would have been established with a new set of elected officials. More importantly, a plebiscite would be conducted in the SZOPAD to determine its coverage. Based on the poor performance of the ARMM and the SPCPD in terms of project implementation and maintaining peace and order, it had been anticipated that the votes would be for exclusion even in Moro-dominated areas.[34] In such case, the coverage of the ARMM would be smaller than either the 1976 (9 provinces) or 1989 (4 provinces) coverage.

On his part, Misuari, believing that he had not done well, announced that he would not run because he would not win. He thought it would be "suicidal," as he would just "be put to shame because I have not produced anything that is tangible." He admitted that he has not yet delivered the "fruits" of the Agreement to the people in Southern Philippines. However, Misuari hinted on an "option" should the peace agreement fail. Although he did not disclose what action it would take, he warned the government that the MNLF would take another "option" once the accord breaks.[35]

According to Attoh Salem Cutan, MNLF Chair in Central Mindanao, the MNLF could always resort to an option – independence — because it was "their original position before the signing of the peace agreement in 1996,"[36] which only adds confusion to the

crisis. At least, for now, one thing is clear, it is not about the MNLF.

OTHER VIEWS ON THE CRISIS

To some senators like Loren Legarda, the crisis is about failed attempts at capital infusion for economic development and inadequate delivery of basic services.[37] Such developmental view had inspired studies in the past, showing the socio-economic causes of the Moro Question and perspectives for peace and development.[38] To others like Senators Miriam Santiago and Aquilino Pimentel, it is about an unsatisfactory political arrangement between the central government and the ARMM.[39] They have proposed a federal form of government and the amendment of the 1987 Constitution to such effect.

A more limited view would show that the crisis is mainly the challenge in peace and order in a limited part of the SZOPAD by the MILF and ASG, two groups shut out from the Jakarta talks and over whom Misuari wields no influence. It is about groups that have refused a peaceful negotiated settlement because of their secessionist goal — to establish an Islamic state, which is impossible within the framework of the Philippine Constitution. It has been suggested that the government enter into a new peace process that should involve not only the MNLF but also the MILF and ASG and the tripeoples of Mindanao within the framework of the Constitution.[40]

This implies that the MNLF would have to unite or share power with the MILF and perhaps the ASG and other Moro armed groups, towards a new autonomy formula. The autonomy formulas proposed before the 1996 Jakarta Agreement would be useful for such a purpose.[41] As earlier cited, some senators have proposed that the Constitution be amended for the creation of a federal form of government under which a Moro state would be part of the union. Soliman Santos, a lawyer and peace advocate, believes that in such a union the Moros could establish an Islamic state.[42] Whether such proposals shall influence policy depends on the outcome of the crisis.

The crisis, it being only the current manifestation of the Moro Question, has brought into greater focus the ethnic question in the Moros' struggle for self-determination. Islam has increasingly homogenized Moro culture; it has become the common basis of identity formation.[43] Through Islam the MNLF has not only provided an ideology for the Moros but a goal – to set up an Islamic state.

The Moro Question, which began as an anti-colonial struggle for self-determination first against Spain and then the United States, has been transformed into a postcolonial one and against the inte-

grationist Philippine state. Ethnicity has fueled secessionism. In the case of secessionism as espoused by the MILF, it has been given greater impetus by the resurgence of Islam not only in the world but also in the Philippines. [44]

The aspiration to establish an Islamic state apart from the Philippine Republic chiefly obtains from this, aided in part by the concern and support given by Muslim countries through the OIC, which is committed to the protection of Muslims anywhere in the world. While it is too early to forecast the future of secessionism in Mindanao, it is important to ponder Che Man's finding that ethnic secessionism always leads to independence.[45] Perhaps, only a federal form of government with a Moro Islamic state as member of the union would preclude such fracturing of Philippine territory and finally settle the Moro Question.[46]

Rolando Esteban is an instructor at the Mindanao State University - Marawi.

Endnotes:

[1] On the MILF's secessionist goal, see Soliman M. Santos Jr, "Consolidating a cease-fire, restructuring the peace process," first of two parts. **Today**, 11 June 2000, 7. Santos is a lawyer, legislative assistant and peace advocate. He wrote "Constitutional Accommodation of a Moro Islamic System in the Philippines" for his Master of Law at the University of Melbourne.

[2] The hostage crisis is still hot stuff in the media; see for example two related reports in **Today**, 18 June 2000, 1, 12.

[3] Misuari is the Chair of the Moro National Liberation Front; he also holds two concurrent positions - Governor of the Autonomous Region in Muslim Mindanao and Chair of the Southern Philippines Consultative Committee (SPCPD). In a speech delivered during a recent meeting of the Organization of Islamic Conference (OIC) in Saudi Arabia, he is quoted to have said, "We can always exercise the discretion to have an option (in the event that) the peace agreement (falters)," see **Today**, 11 June 2000, 1.

[4] Reportedly, the option is secessionism. According to Attoh Cutan, MNLF Chair for Central Mindanao and Executive Director of the SPCPD, the establishment of an Islamic state in Mindanao "was our original position before the signing of the peace agreement in 1996." See **Today**,

13 .June 2000, 1.

[5] Peter Gordon Gowing, **Mandate in Moroland: The American Government of Muslim Filipinos, 1899-1920** (Quezon City: New Day Publishers, 1977), 19.

[6] John H. Pershing, "Unpublished Memoirs" (On Moroland, Draft), John J. Pershing Papers, Manuscript Division, Library of Congress, Washington, D.C., USA.

[7] This is based on my personal knowledge and involvement in the advocacy work for the promotion of the Moros' and the Indigenous Peoples' right to self-determination during in the 1980s and in the first half of the 1990s.

[8] For the basis of the chronology, see Miriam Coronel Ferrer, ed., **Peace Matters** (Quezon City: UP Press, 1997), 215-218.

[9] The member countries of the Quadripartite Commission were Libya, Saudi Arabia, Senegal and Somalia, see Appendix A: "The Tripoli Agreement," in Jimmy Balacuit, "Muslim Rebellion in the Southern Philippines Revisited," **Mindanao Forum** 10/1 (June 1995): 37.

[10] For the pertinent provisions of the agreement, see Balacuit, "The Tripoli Agreement," Appendix A, **Mindanao Forum**: 34-37.

[11] The 13 provinces are Basilan, Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, South Cotabato, Palawan, and all the cities and villages therein.

[12] For the chronology of events, see BR Rodil, "Sequence of Events After the Signing of the Tripoli Agreement, December 26 1976-October 28, 1978," **Mindanao Forum** 10/1 (June 1995): 29-41.

[13] For the complaint and the quotes, unless cited otherwise, see Ibid.

[14] No. 17, Third Agreement of the Tripoli Agreement states: "Implementation of the Agreement. The Government shall take all necessary Constitutional processes for the implementation of the entire agreement, see Balacuit, "The Tripoli Agreement," Appendix A, **Mindanao Forum**: 37.

[15] "Proceedings of Symposia on Regional Autonomy in Muslim Mindanao (Draft Organic Act)," Law Center, University of the Philippines, Diliman, Quezon City, 9 December 1988, 15-22.

[16] See speech of Carmen Abubakar in, "Proceedings of Symposia on Regional Autonomy in Muslim Mindanao (Regional Autonomous Government - RAG)", (Diliman: University of the Philippines, 1 August 1988), 1.

[17] Ibid., 28.

[18] W.K. Che Man, **Muslim Separatism: The Moros of Southern Philippines and the Malays of Southern Thailand** (Quezon City: Ateneo de Manila Press, 1990), 84-98.

[19] See for example Sukarno Tanggol's personal assessment of the RAG-Central Mindanao where he worked for a short time, "Proceedings of Symposia on Regional Autonomy in Muslim Mindanao (Regional Autonomous Government -RAG)", 14, 17.

[20] On the statement of accomplishments of the RAG-Western Mindanao, see Ibid., 4-19, 21-25.

[21] **Peace Matters**, 192.

[22] Ibid., see also, "Symposium (Draft Organic Act)," 15-22.

[23] "Symposium (Draft Organic Act)," 15-22.

[24] **Peace Matters**, 215-218.

[25] "Proceedings of Symposia on Regional Autonomy in Muslim Mindanao (Regional Consultative Commission -RCC)," Asian Center Conference Hall, UP, Diliman, Quezon City, 14 July 1988,p.6.

[26] See for example Miriam Coronel Ferrer, "Breaking the Impasse: Formulae for Muslim Autonomy," **Philippine Political Science Journal**, Nos. 39-42 (1995-1998): 46.

[27] "Proceedings of Symposia on Regional Autonomy in Muslim Mindanao (Draft Organic Act)," Law Center, University of the Philippines, Diliman, Quezon City, 9 December 1988, 15-22.

[28] On the passage of the Organic Act creating the ARMM, see **Peace Matters**, 200.

[29] See **Peace Matters**, 193, 200.

[30] See Appendix: "GRP-MNLF Peace Agreement," **Peace Matters**, 268-286.

[31] For the implementation of the agreement by phase, see **Peace Matters**,193-200, 268-286.

[32] See "Appendix: Executive Order No. 37: 'Proclaiming a Special Zone of Peace and Development in the Southern Philippines,'" **Peace Matters**, 287-292.

[33] **Peace Matters**, 199.

[34] Three years ago, the SZOPAD mid SPCPD triggered interest in the academe like the Mindanao State University in Marawi City. To ally the fears of students and the faculty about the Jakarta Agreement as a sell out to the MNLF, the History Department organized a forum with Atty. Norma Maruhom as resource person. Asked about the plebiscite as the process by which the geographic coverage of the ARMM would be determined, she said that it may cover the 14 provinces, that is, including the Province of Sarangani, or shrink, or none will remain. She added that crucial to the plebiscite would be the performance of the ARMM and the SPCPD, both under Misuari.

[35] This is based on a statement made by Misuari in Cotabato, see **Today**, 11 June 2000, 1.

[36] **Today**, 13 June 2000, 1.

[37] **Today**, 11 June 2000, 1.

[38] See for example Jeffrey Salgado, "Development Policies for Muslim Mindanao in the Pre-Martial Period (1955-1971); Historical Notes on their Origin and Implementation," **Mindanao Forum** 9-1 (June 1994):102-125; see also Samuel K. Tan, "The Socio-Economic Dimension of Moro Secessionism, **Mindanao Studies Reports** No. 1 (1995).

[39] **Today**, 16 June 2000, 1.

[40] **Philippine Daily Inquirer**, 11 June 2000, 7; and **Philippine Daily**

Inquirer, 12 June 2000, 9.

[41] See for example Sukarno D. Tanggol, **Muslim Autonomy in the Philippines: Rhetoric and Reality** (Marawi City: Mindanao State University, Press and Information Office, 1993); see also, Macapado A. Muslim, "Autonomy with Compensatory Justice: The Non-violent Alternative to the Moro Problem," **Mindanao Journal**, 19/1-2 (July-December 1992): 176-213.

[42] **Philippine Daily Inquirer**, 11 June 2000, 7; and **Philippine Daily Inquirer**, 12 June 2000, 9.

[43] Samuel K. Tan, **Decolonization and Filipino Muslim Identity** (Quezon City: Department of History, 1986), 65-80.

[44] Hamid Barra, "Islamic Resurgence in Mindanao: An Overview," **Mindanao Journal**, 19/1-2 (July-December 1992): 214-233.

[45] Che Man, **Muslim Separatism**, 1-16.

[46]This is based on Santos' proposal based on his thesis, see **Philippine Daily Inquirer**, 11 June 2000, 7; and **Philippine Daily Inquirer**, 12 June 2000, 9.

7

Burma: Liberation Movements and Indigenous Peoples - Accommodation, Integration or Conflict?

Liton Bom

Liberation movements or movements labeled as such are those that seek freedom from an oppressive force. In the post-World War II period, they mainly represented nations colonized by European powers, as they were non-self governing. But such movements came to be accepted as legitimate movements with a right to self-determination recognized by the United Nations.

The UN saw the right to self-determination as realizable through the achievement of self-governance gained through independence, integration with an independent state, or free association with an independent state. Always, however, the UN's recognition of this right was hemmed in by its reinforcement of the principle of territorial integrity or the right of established states to protect themselves from any attempt to tear them apart. Thus the European empires initially tried to resist the application of the right of self-determination to their colonies by claiming that although these may be many miles separated from them, they were an integral part of the state and therefore not subject to self-determination. The UN effectively defeated this, supporting the liberation of colonial territories one by one.

Another effect of the UN's concern for territorial integrity was that it recognized the right of self-determination as belonging to the entire people of a colonial territory. The right of self-determination of a group making up a part of this population was not recognized. However, in the wake of the success of anti-colonial liberation movements, which often reflected the separate histories of sovereignty or semi-sovereignty of groups within colonial territories (which had been lumped together or split) for the convenience of colonial rulers, many ethnic communities sought to follow the liberation path. Sovereign states everywhere, including those which have recently struggled themselves for liberation, reject the claims to separation of such communities seeking liberation. The UN too has rejected them as threatening the principle of territorial integrity. At the big international UN human rights meeting in Vienna in 1994, the right of self-determination was confirmed, and so was the principle of territorial integrity.

But the truth is that so many so-called sovereign states, in fact, act much like empires established by conquest like the old European empires. The only difference is that it now involves conquest of neighboring territories and peoples rather than territories and peoples far away. Sometimes this is referred to as internal colonialism, a term which at first sounds right, because it states the colonial aspect of the situation clearly. But the use of "internal" is misleading, making it sound as though it is quite a different thing from the old kind of European colonialism. It is not different; colonies are colonies inside the colonial state's own view of its boundaries. Burma was just as much inside the boundaries of the British empire as are the ethnic minorities inside the boundaries of post-colonial Burma.

Liberation movements today usually represent people who see themselves as non-self governing, colonized by aliens, just as colonial liberation movements did in the past. However, they are seeking liberation from states, which are recognized as having a right to claim immunity from separatist claims. In a sense, the UN washes its hands off from these modern liberation movements. They are left to struggle to achieve their own liberation. If they can mobilize sufficient force or diplomatic support to establish their independence, they can gain recognition as sovereign states. This does not mean the international community altogether ignores them. Instead, however, it is left to individual states to work out whether they are willing (perhaps covertly) to join in suppressing these movements or maybe to assist them, depending on their interests, not on any prin-



ciple of justice. Essentially, such a response from the international community and the UN is encouraging liberation movements to follow a violent path to liberation because it denies them any other path.

Certainly that is the case for liberation movements, which clearly seek independence by separation. It puts them in the same position as coup-makers: if you can mobilize the necessary force and get away with it, sooner or later you are likely to become recognized and attain legitimacy. Unfortunately, the capacity of most ethnic liberation movements to mobilize the necessary force is limited and countered by overwhelming military might. Liberation wars therefore tend to escalate repression and reinforce the determination of oppressed minorities to be free. Thus we can have long, drawn-out liberation struggles which are unable to achieve independence but which also cannot be entirely suppressed, as in the case of struggles of ethnic peoples in Burma.

BURMA'S INDIGENOUS PEOPLES

Within Burma is a diverse cultural mosaic of indigenous peoples. The country, beset by so much internal strife, has been on a difficult path towards achieving national unity, and the consequence on its indigenous peoples has been devastating. The conflict has severely damaged their communities: a great number have fled, crossing borders into neighboring countries where they now live as refugees. Many have been forced to build up and fight in resistance movements, and others, to take up clandestine livelihoods in order to survive or eke out a meager existence. Many unfortunate ones have become casualties of the incessant torture and slaughter being inflicted in their communities. The turmoil in Burma has a huge ethnic dimension, and any attempt to understand this has to delve into the problems of its indigenous peoples.

The many groups incorporated into what is now Myanmar or Burma originally lived independently from one another, although at many times they held different kinds of relations with one another. Many tried to enlarge their territories and influence long before the coming of the British. For instance, the basin of the great rivers saw the expansion of native kingdoms that had earlier flourished on the plains, like that of the ethnic Burmese under King Alaunghpaya. Some say that the various rebellions at present are, in essence, rural rebellions of minority or majority peasantry that have manifested as intra-village feuds since the pre-colonial era.

Great Britain's annexation of the area into colonial India resulted in the incorporation of indigenous peoples' territories into the sphere of European colonialism, and also under the control of the powerful majority in the country. The British policy of divide-and-rule caused the deeper fractionalization of ethnic groups. The division between the domains of Ministerial Burma and the frontier or indigenous areas, for one, created various developmental trajectories for the different groups. Another rift took form along political and religious lines. The indigenous peoples were used to quell rebellions by the Burmese nationalist movements. This was the scene during the pre-World War II era and was to continue during the Japanese invasion, notably when the (Burmese) Thakin Party lent their support to the Japanese, and the Karens set up a resistance movement against them.

The negative attitude of indigenous peoples towards the government's assimilationist policy appears to have a historical basis. Firstly, because they have always traditionally rejected the notion of being governed by a central Burmese government, they

continue their struggle in keeping a degree of independence from the state. Secondly, they had dismal experiences in the colonial period when they were placed under the control of a created Burmese state. They were marginalized and disadvantaged, while the majority population continued to prosper.

The centralized regimes played on the differences of indigenous peoples, sowing conflict and distrust among them by constantly altering territorial boundaries and favoring some groups over the others. Most of the time, the state tried to "Burmanize" them by repressing the expression of their culture, discouraging the practice of their own religion, politics, language and lifeways. While gradually losing their cultural identity, they have also had the least opportunities for political rule. The government has shown little sincerity in allowing their participation in central governance.[1]

The 1947 Constitution, which provided for a parliamentary democracy inspired by the British, permitted the Shans, Kachins and Karens to have their own separate states. A fourth one, the Kayah state for the Karenni, was also set up. These states had their own governments and state councils. However, only members of the all-Burma parliament chosen from these areas were the ones elected to positions. The Union of Burma therefore was not a federation in any meaningful sense.

Indigenous peoples formed their own political parties in order to deal with their marginalized situation. One such party was the Karen National Association (KNA) that already attempted as early as 1881 to represent the cause of the Karen. In that year the Karens were granted a sizeable representation in the Legislative Council, although proposals for an independent Karen state were ignored. Representing various indigenous peoples, such parties have actively engaged in political struggle, employing different forms of protests, armed, legal, or both in the pursuit of their objectives.

ETHNIC MINORITY RIGHTS

The first major achievement regarding the rights of minorities worldwide has been the inclusion in the International Convention on Civil and Political Rights, proclaimed in 1966, of an article on ethnic minorities. Article 27 declares:

> *In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to*

enjoy their own culture, to profess and practice their own religion or to use their own language.

The second major achievement is the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities. While it confirms the rights provided for in the abovecited Article 27, this document went a step further. A key international agreement regarding minorities, it requires states to take positive steps to protect minorities in order for them to develop their culture, language and religion. The limits of this protective approach is that it must not be used against the rights of the majority, and it must not threaten the territorial integrity and political independence of the state.

Claims by ethnic minorities to autonomy (in order to have the political space to practice their rights) are controversial, i.e., no international agreement yet exists that regards and guarantees this as a right.

How do indigenous peoples fit into this picture? The situation of indigenous peoples is a special one. A UN process has been established to draft a declaration on the rights of indigenous peoples, which has been going on for the last 15 years. The draft document includes the right of self-determination for indigenous peoples. Indigenous groups participating in the UN Working Group on Indigenous Populations have insisted in saying "we are peoples," and existing international covenants affirm that "all peoples have the right of self-determination;" therefore, we too have the right of self-determination.

Observers say that this assertion is too strong, fearing self-determination will mean separatism, and that the states, which make up the UN, will never agree to the Draft Declaration on the Rights of Indigenous Peoples. In fact the current situation is that there is broad agreement that indigenous peoples do have the right of self-determination in the sense of a right to autonomy and that as long as they are willing to accept this instead of independence, the Declaration may be accepted by states.

ACCOMMODATION AND INTEGRATION

The UN has sought to defuse ethnic conflict by declaring the rights of minorities within states and seeking to promote self-determination of indigenous peoples within states. In a sense, this approach attempts to at least soften the oppression of ethnic minorities by

states. Various states, in practice, do give internal autonomy to minorities within their territory. Sometimes this goes as far as to provide some kind of federal-style constitution to protect such autonomy. This is what I understand by "accommodation" — the accommodation of the demands of liberation movements, provided they abandon the struggle for separation.

On the other hand, I take "integration" as meaning the attempt by the state to recognize the distinctness of the heritage of cultural minorities and to integrate this heritage into a new emerging national culture. It is an approach, which seeks to remake the state so as to allow the previously liberation-bent ethnic communities to identify with the state, to transfer their identity from their ethnic community to the state. This seems to envisage a gradual disappearance of separate identities to be replaced by a new composite one.

In an article in the journal, **Foreign Affairs**, a leading academic observer of ethnic conflict presents evidence that suggests that what seemed to be a growing wave of ethnic wars over the last 50 years appears to have already peaked.[2] He suggests that such wars are now on the decline. He sees the negotiated settlement of a number of separatist wars and a parallel trend towards the accommodation by states of the demands of ethnic groups that have not yet taken up arms. It is argued that this is a result of many states actually putting in place effective protection for the rights of minorities and providing them meaningful autonomy.

Coming from Burma, I am rather suspicious of this academic finding. In Burma, a 38-year long military dictatorship has also been telling the world that ethnic warfare is on the wane. It claims that it has reached agreements with the 16 ethnic insurgent groups and that only one ethnic insurgency, the 50-year rebellion of the Karen, remains to be ended.

I could cite many facts to prove this is not true. There are the ceasefire agreements, which have ended the shooting but frozen the conflicts because of stubborn refusal on the part of the military government to even consider ethnic demands. There are the ceasefires that have been put aside, such as that with the people of Karenni. There are continuing wars (e.g. in the Shan State waged by soldiers who fought with the drug lord Khun Sa's army and defected when he went over to the Burma army). And there are the numerous (some old, some new) armed insurgencies, which the military government pretends to ignore. One such "invisible" ethnic armed struggle in Burma is that of the Chin National Front (CNF).

The Chin National Front was formed in 1988 during the period

of popular revolt against the military dictatorship. It is part of the wider movement against the dictatorship and specifically seeks the recognition of ethnic minorities. The CNF believes that the Chin people must be recognized as a sovereign people. Waging a war to defend Chin national identity, the CNF is using armed struggle because its enemy is a military elite that only knows violence.

The Chin were an independent nation which had a territory with distinct borders. It was colonized by the British in 1895, but it was only in the early 20th century that they were able to bring the whole of Chinland under their control. Chinland was divided, without consultation with the people, into two parts when the Burma Act of 1937 split Burma from British-India. The western part of Chinland remained under British-India and the eastern part came under the administration of British-Burma. When Pakistan broke away from India to form another state soon after the latter gained its independence in 1947, the western part of Chinland was further partitioned, again without consultation with the people. One part fell to east Pakistan (now Bangladesh) and the other part came under Indian administration.

The eastern portion became part of the Union of Burma when Burma became independent in 1948. The union was in appearance a kind of federation, but it soon became clear to the ethnic minorities it did not work as a federation but as a highly centralized unitary state. Civil war has raged through Burma ever since. In 1962, when the elected government began serious discussions with the ethnic minorities about attempting to resolve ethnic grievances, the military seized power from the elected government, claiming they did so in order "to safeguard against the possible disintegration of the union."

The CNF, as with most of the ethnic armed movements in Burma, seeks to establish a Burma, which recognizes the rights of the ethnic minorities and provides them autonomy through a federal constitution. They demand and are willing to fight for the accommodation of their demands. They are not fighting to separate from Burma but to overthrow a military dictatorship, which is unable to adjust to any political demands at all.

If there is a trend towards the ending of ethnic wars through the settlement of conflicts and preventing them from breaking out, then the CNF is part of the trend. But the Burmese military government unfortunately has resolutely turned its back on such an approach since 1962. It is totally opposed to federalism. The only autonomy it has allowed is through unprincipled ceasefires with ethnic insur-

gents, which leave them with arms and "autonomy." But it is an autonomy where they are isolated, provided nothing, and left to generate their own income. In many areas, due to lack of alternatives, ethnic minorities, which previously used drug production and drug trade to finance their armies, have no other source of income after a ceasefire.

In the areas where armed resistance is being waged, the Burmese government seems to be set on occupation and assimilation rather than integration. It demands the recognition of Burman dominance and Burman culture everywhere, generating ethnic conflict, where previously the conflict was between ethnic minorities and central authorities. It appears uninterested in finding ways to accommodate the demands of the ethnic minorities. In fact, it permits virtually no political organization or political discussion. The press and the publishing industry as well as schools and universities are totally under the control of the military dictatorship. No political forum effectively exists in Burma. Under these circumstances, not only will there be conflict but there may be no alternative to armed conflict.

To the CNF, a political process as an alternative to armed struggle is not unimaginable. But a settlement with the present Burmese government is unthinkable. The government appears to have no interest in and, certainly, has no understanding or notion of the rights of minorities and effective autonomy.

Liton Bom is with the Chin Human Rights Organization.

Endnotes:

[1] Martin Smith, **Burma Insurgency and the Politics of Ethnicity** (Dhaka: The University Press Limited, 1991), 45.

[2] Ted Robert Gurr, "Ethnic Warfare on the Wane," **Foreign Affairs,** May-June 2000.

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Gurr, Ted Robert. "Ethnic Warfare on the Wane." **Foreign Affairs**, May-June 2000.

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8

A Valuable Lesson from Rio Tinto: Conflict Resolution in East Kalimantan

Chalid Muhammad

Indonesia is one of the countries in the world with a considerably high rate of natural resource conflicts. One of the causes of this condition is the state's central role and interventionist position in determining the rights of ownership and management of natural resources. This has been accomplished through the implementation of numerous rules and regulations that aim to control natural resources, which, more often than not, are within indigenous peoples' territories. This state's monopoly of power, represented by the government, is consistent with its political interests and orientation, which history shows.

During Suharto's regime, natural resource conflicts between communities, on one hand, and the government, and large local capitalists and multinationals, on the other hand, were common. For a long time, Indonesian economic policy had relied on natural resources as the number one source of income for the state and its bureaucracy. This situation was made worse by practices of corruption, collusion, and nepotism. As a result, military forces loyal to the government with interests similar to the State had been posted along mining operations in communities. These communities resisted the

takeover of their lands and homes by local capitalists and multinationals.

The present signs of "openness" in Jakarta and the relatively better economic situation in certain parts of the country seemingly show promises of reformation. Communities, whose natural resources had been taken over in the previous regime, have been surfacing to claim their rights. They continue to do so. For a long time, these communities had been carrying out their struggle underground in order to avoid more casualties from their ranks. Many communities now manage to reclaim the lands that have been taken over by the state or companies but only temporarily and not without costs and compromises. They have embarked on various forms of actions to pressure the government such as blocking the access roads of companies. These actions actually express their anger and disappointment because both government and companies have yet to fulfill earlier promises to compensate their claims and demands.

Apparently, the government continues to support the interests of capitalists and multinationals with numerous excuses. Two of these excuses are that the old rules and regulations from the previous regime have not been renewed, and that the government is legally bound to several agreements concerning natural resource management with multinationals. The government has the same excuse for the mining sector.

Mining contracts and licenses are among the instruments the government uses in facilitating the investment of capitalists that extract natural resources in Indonesia. The mining contract known as the Contract of Work (CoW) was first issued at the beginning of the Suharto regime. The Sukarno regime banned foreign mining investments in the mining sector for a long time. But it reopened international relations and gave vast investment opportunity for foreign capitalists to invest in Indonesia's mining sector in 1967.

With the issuance of the Foreign Investment Act in 1967, Suharto began an economic policy that depended on foreign investments and loans or debts. In April 1967, the government a contract of work for copper mining in West Papua with Freeport McMoran, a US-based company. This Contract of Work was later known as the First Generation Contract of Work. At that time, West Papua was not internationally acknowledged as part of Indonesian territory. In fact, the old mining act that banned foreign investments in mining had not yet been replaced. The regime's new Mining Act issued in December 1967 is exploitative, by sector, capital-dependent, and discriminative against the rights of local and indigenous communi-



Map of East Kalimantan

ties.

From 1967 until the downfall of his regime, Suharto continued to give away incentives for multinational corporations to invest in the mining sector. As the first of its kind, Freeport's CoW was automatically used as basic reference for the following contracts of work. At present, the Contract of Work has entered its seventh generation. Essentially, no significant differences can be found within the contents of the contracts from generation to generation, except for the company's financial obligations to the government.

The Contract of Work is a very "exclusive licensing system" in Indonesia. This provides the legal framework within which mining companies operate. Under the terms of reference, mining companies have "full management control and responsibility in all areas of the mine site." Indeed, this becomes the "license" in accessing and controlling natural resources. It is no wonder then that the CoW became the most attractive license system for investors. According to Javingan Advokasi Tambang (JATAM), using 1999 Department of

Mines and Energy data, the Government from 1967 to July 1999 granted 908 mining licenses to mining companies and gave away a total land area of 84,152,875.92 hectares, which was approximately 60 percent of the total Indonesian land area.

Experience shows that the company and the state solely do the entire process of drafting and signing the contract while totally disregarding people's participation. The CoW stipulates the need for consultation in the House of Representatives. But this is only "ceremonial" in practice, and it is as if the government and the company were bargaining over a void — a totally empty space with neither ownership nor existence of any humankind.

The CoW never mentions the need to acknowledge the rights and existence of local and indigenous communities and the environment. This renders concession areas under the company's total control, regardless of the presence or absence of communities. And the might of the military has been used to facilitate these mining operations. Numerous cases have shown that government security forces were used to confront local and indigenous communities resisting mining companies' operations.

Made and signed by the government and the companies, the CoW has also bound the state's continuing support to a contract's terms. A change in government administration has thus little or no impact on resolving conflicts over natural resources. At the downfall of the Suharto regime, numerous parties urged the government to renegotiate existing mining contracts of work. As expected, many multinational corporations negated this proposal. The new regime also bowed to pressure from loan givers such as the United States. This and the CoW bind the government from pushing mining companies to resolve arising conflicts.

How the government got itself trapped in this situation with mining contracts and licenses, the manipulations committed by mining companies, and the spontaneous reactions from affected communities are the main theme of this paper. It gives special focus on the experiences with the PT Kelian Equatorial Mining (PT-KEM) mining practices.

CONFLICTS AND NEGOTIATION PROCESS BETWEEN THE KELIANS AND RIO TINTO

The PT KEM is the largest mining company in East Kalimantan. Rio Tinto, a well-established mining company with headquarters in London and Melbourne, Australia, owns 90 percent of PT KEM.

The company holds a Third Generation Contract of Work for gold mining in Indonesia, which it signed on February 27, 1985 with the government of Indonesia. The mine is within a tropical forest at the foothills of the Central Kalimantan mountains approximately three kilometers south of the equator, Kutai district, East Kalimantan. The name Kelian is derived from the Kelian River, a tributary of the large Mahakam River, which historically served as the main transport route. The Kelian River has become the access route for the company's mining operations.[1]

PT-KEM operates within indigenous peoples' territories. Since the beginning of its operations, PT KEM has posed serious problems to communities. From 1982, during the PT KEM's drilling operations, detailed exploration and evaluation up to 1991 when the government approved PT KEM's feasibility and impact study, security forces were deployed to quash any resistance from community members. The security forces burned down houses and demolished villages in Gah Macan, Gah Bujang, Gunung Runtu, Loah Ttepu, Gah Ekung and Gah Punan. Through its security forces, the company also intimidated and violated the human rights of resisting community members. The company's site workers raped and sexually harassed local women and female workers, and this had been and remains public knowledge.[2]

As it took over community lands, the company also displaced traditional mining areas, community graveyards, as well as community plantations. The company's tailings dam also contaminated rivers with cyanide-laden waste and the dust along the access roads from Jelemuq to Tutung area had polluted the air, thus threatening the health and endangering the lives of community folk.

But community folk did not just sit by. They resisted the excesses and abuses of the company. Dayak, Kutai Banjar and Bugis ethnic groups launched a protest drive against the company in 1992. But security forces used their armed might to quell community protest actions, intimidating opposing folk and violating their human rights.

For the beleaguered communities, the legal system did not help them in any way. The legal system actually discriminated against local and indigenous peoples. The only available source of power was the joint pressure from the local, national and international public. We hope such pressure would push the companies to voluntarily negotiate with local and indigenous communities on equal and fair terms.

In the case of Rio Tinto in East Kalimantan, local, national and

international pressures at the beginning had managed to force the company to negotiate with the community. At that time, the company was in a tight spot since the ruling administration then was losing its public credibility, and the authoritarian regime of Suharto was collapsing. Thus, the company could not afford to further antagonize its relation with the local communities. However, as soon as it regained the government's support and authority, the company abandoned the community and betrayed all agreements made such as the agreements that came out of the negotiation process between the Kelian community with Rio Tinto that began in 1998.

Conflict Resolution Efforts

This section presents the actual experiences of the communities and non-government organizations in trying to resolve conflicts borne out of government-sanctioned, large-scale mining operations. This section discusses the processes of negotiations, the agreements made as well as the issues and concerns raised by the affected communities.

In using the CoW as its major "license" to legalize its operations, the PT KEM grossly violated certain international declarations. The company, for example, violated the communities' right to free and informed consent as provided for in the Universal Declaration of Human Rights. The company also violated certain articles of the Draft Declaration on the Rights of Indigenous Peoples such as Articles 10 and 30, which stipulate the collective and individual rights of indigenous peoples.

An April 25, 1998 document outlined major complaints against the PT KEM company, which data from Oxfam and Community Aid Abroad corroborated. These are:

- Demolition and evacuation of villages where the mine is located;
- Lands and assets were not justly and fairly compensated. Certain groups of households did not receive any compensation;
- Displacement of small scale miners; loss of equipment and the change of status of the small scale miners from legitimate small scale miners per-mine to illegal miners;
- Environmental impacts (both short term and long term)

from many activities, specifically related to streams, soil and forest which have effects on the health, physical environment, and other socio-cultural aspects;
- Interference to property and liberty;
- Unfulfilled promises.

The above concerns and issues would be the major rallying points for negotiations, as shown in the ensuing discussions.

Before the Negotiation

In 1998, WALHI (Friends of the Earth Indonesia) together with other non-government organizations organized an international campaign against PT KEM actions. In the beginning of 1998, a Kelian community representative visited Australia to testify on the impacts of PT KEM's mining operations. This community representative also went to London for the same purpose. At that time the Suharto regime was collapsing. Numerous demonstrations took place everywhere in Indonesia. This made all companies in collusion with the regime panic, prompting them to maintain good relations with local communities.

After the campaign, Rio Tinto, which in this case was represented by Rio Tinto Indonesia, offered arbitration that the community initially embraced. After the offer was made, the community representatives organized a meeting in Kelian to discuss the demands and the people who would be representatives in the negotiations. The communities involved likewise organized the Lembaga Kesejateraan Masharikat Tambang dan Lingkungan (LKMTL), which the communities felt was necessary. Through this organization, the community elected, gave confidence and authorized 14 people as negotiators and community representatives. The negotiators, after having consulted with the community, formulated the demands in one document now known as "The 25 April 1998 Document," which was cited earlier. This document became the reference material in later negotiations with PT KEM/Rio Tinto.

To smoothen the process, both parties agreed that the negotiation would be done in stages and point by point using the Document as reference material.

The first negotiation took place on May 4, 1998 in Jakarta. The meeting was quite intense because each side maintained its position. The meeting was reset on May 8, 1998 in Jakarta when an official response from Rio Tinto/KEM would be heard. This meet-

ing concluded with the setting of another meeting on June 29, 1998 in Samarinda. During the meeting both sides agreed on the compensation for land, plants and housing structures. The agreement also laid down definite timetables of implementation. Unfortunately, the agreements up to now have yet to be implemented.

Another meeting on July 23-24, 1998 discussed promises made by Alan Hawke, manager of Site Services from 1991 to 1993, regarding land and plantation facilities of approximately 444 households (families), which mine field workers forcibly destroyed. In that negotiation both sides agreed that PT KEM would pay each family Rp.10,000,0000 as compensation.

The following meeting took place on September 21-22, 1998 in Samarinda,during which participants reiterated Alan Hawke's earlier promise to provide electric power for the community in Tutung village. Participants to the meeting also spelled out the schedules of implementation and the obligations, which the PT KEM must fulfill.

Human rights violation issues were the agenda in another meeting following a previous one on January 11-12, 1999 at Balikpapan. Both sides agreed to investigate reported human rights violations by a team consisting of representatives from the Human Rights National Committee, LIPI, Volunteers for Humanity, LKMTL and PT KEM. Each party was represented by one individual. The meeting also discussed the company's social responsibility towards the community and the dusty road condition. Among certain points agreed on was for the company to asphalt the company's access road to minimize the dust pollution, which was endangering the community folk's health.

MANIPULATING THE NEGOTIATION

Very enthusiastic, the community appreciated what the company showed at the start of the negotiation. The company had shown significant changes in PT KEM's management. Rio Tinto's motto of being the good neighbor of the communities within the company's operation was beginning to be believable. But alas, everything was only temporary.

The Kelian communities gradually saw the deceitful maneuvers of the two companies. The communities realized that the two companies were not really committed in resolving the conflict as shown by their endless delays in implementing the agreements made.

To make matters worse, the West Kutai district, after it became autonomous from the central government, was allowed to join in the

negotiation process in spite of an agreement between the company and the Kelian communities not to involve the local government in the negotiation process. The communities had their reasons. For one, no existing local regulation had ever supported the locals. The locals feared the local government would instead use local government regulations as bases for their jurisdiction to interfere with the negotiation process. What they feared happened.

PT KEM had not taken seriously almost all the agreements.It was inconsistent in and continued to delay implementation of the agreements. In fact, it totally disregarded other commitments. The company also weakened the position of the community representative organization by using slander, systematic vilification and money politics. Here are some of the evidences of how the PT KEM breached the negotiation process.

June 29-30, 1998 Agreement

The agreement known as the June 29-30 1998 Agreement was put in writing and signed by Noke Kiroyan and Erwin Siahaan (representing PT KEM/Rio Tinto), Pius Eric Nyompe (representing the Kelian community), and this writer from WALHI as the witness.

In this agreement both sides agreed on certain categorical claims: lands, plants grown, and structures within the land, which have not been compensated. Resources that received insufficient payments also were to be compensated. The agreement included a "phase-by-phase" settlement process laid down as follows:

a. The Kelian community would make a comprehensive land area list including the perimeter and the amount that must be paid, and this must be submitted to PT KEM by July 17, 1998;
b. PT KEM would study the list and give their response to the community by August 7, 1998;
c. PT KEM, together with the community, would stipulate items in the list by August 12, 1998, which legal counsels of both parties would witness;
d. After both sides agreed on the inventory list, PT KEM and the community legal counsel and the local government would assess the land, plants grown and structures within, which would be stated in accordance with the agreements. The schedule for the assessment was supposed to be given by PT KEM a week after the

data inventory was made;

e. PT KEM and the community, observed by the community's legal counsel, would negotiate on prices and put this in a written statement that would be agreed on by both parties. The community's legal counsel and local government would also sign the agreement as witnesses.

The agreement gave many community members reason to be optimistic and hopeful that the conflict would eventually be resolved. But the other party ruined the community folk's optimism. PT KEM and Rio Tinto have yet to implement the agreement.

PT KEM and Rio Tinto executed many immoral and corrupt acts to discredit the agreement. The two companies had the following excuses which are discussed below.

Erroneous Data

The PT KEM used data on land claims as the main reason stalling the June 29-30 agreement. Although disadvantaged, community members had followed what was agreed upon "to the letter." The communities did their share. They listed their claims with clear boundaries, which was supposed to be reviewed, discussed, and further verified by PT KEM and the community.

Regarding data collection at the site, the community also complied with PT KEM's request – through the LKMTL organization. The data of the actual conditions on site were gathered. The corresponding processes involved an appraisal, which community representatives, the company and the local government carried out together. The appraisal was based on data instruments and equipment of the local government. After the appraisal, PT KEM proposed to interview each claimant by a team consisting of government officers, community representatives and expert witnesses (community elders). The community agreed to the proposal. But up to now the company still claims to have problems about the data, which, it said, should be verified further. These moves of the company were deliberately calculated to stall the agreements.

The company continued to negate the data collected and processes involved. The company would label the listed claimants, about 6,000 people, as "overly excessive" and "unreasonable." The company also brought up the matter of the existence of two data versions, the old and the new one. In fact, the misinterpretation of these two data versions was already resolved during the November 7-8

1999 meeting between PT KEM/Rio Tinto and the community representatives, which WALHI witnessed at the PT KEM base camp.

Another excuse PT KEM presented was the existence of a group other than LKMTL that had also submitted a list of claims. This "other group" had already been confirmed to be a "company group"[3] which PT KEM facilitated and financed. That the company acknowledged the other group also directly violates the June 29-30 agreement.

Employing a rival group to destroy LKMTL

Employing a rival group besides LKMTL to organize the claimants was one of the PT KEM's corrupt ways. The company justified its manipulation during the November 7-8, 1999 meeting at the PT KEM campsite. It said the rival group pledged to submit legitimate data claim to the company unlike those collected by LKMTL. The company accused LKMTL of selling the claim forms to illegitimate parties.

The denigration of LKMTL was done so systematically that many believed that the forms were really being transacted by LKMTL to illegitimate hands. But it turned out this was done by just one coopted individual. The truth was this individual secretly employed by PT KEM, was behind the selling of forms. This person was later dishonorably discharged from LKTML for destroying the organization's name by collecting money from claimants.

With the backing of the company, the same individual later formed a group facilitated and financed by PT KEM to organize the supposed claimants. This was despite the agreements made between the company with LKMTL. This newly formed group, for a time, became the representative group that worked closely with the decision-makers of the company. Due to the extensive period of waiting for the compensation, many from the community started to believe the rival group. Many of them granted their claim dispositions to the group. The grants were given to the rival group without any consultation with LKMTL as the legitimate representative. Since these individuals who joined the rival group had also their names in the LKTML listing, the list expanded due to duplication. The company then continued to use the expanded "lists" of claimants as an excuse to cry data inaccuracy. But the list had actually been updated.

Utilizing Government Jurisdiction to Coerce LKMTL

Since the beginning, the community pushed that the negotiation process between the PT KEM/Rio Tinto and the community would

involve the government to a minimum. This was because government's support for the company in the past only worsened the disputes between the company and the community. Unfortunately, PT KEM started to utilize the West Kutai district government authority during the implementation process of the June 29-30 agreement. Making their own excuses, PT KEM and Rio Tinto stated that it did what it did out of respect for the spirit of reformation within the West Kutai district government, which had recently become independent from the Kutai district government. The company continued to involve the West Kutai government in every aspect of the negotiation process such as determining the amount of land compensation. This directly violated the June 29-30 agreement, which stated that government should be involved only as an eyewitness, nothing more.

PT KEM's deliberate effort to use government authority in the realization of the June 29-30 agreement could be seen clearly in the appraisal, the interview process, and — the most fatal of all—the determination of the price of compensation. During the process of price negotiation on April 11-17, 2000 in Samarinda, the company concealed many things from the people like placing the West Kutai Regent as the moderator. The regent played a dominant role during the negotiation which ended in a deadlock. This deadlock remained unresolved in the following meeting that took place on May 1, 2000.

With the government's involvement, the regent and the company facilitated a rival group, the Pure Team (Tim Murni) to represent the community in negotiating the compensation price with PT KEM. The negotiation between these groups was seen as a way to abandon LKMTL, the community's legitimate representative. Some community members even regarded the negotiation between the Pure Team and the company as nothing but PT KEM negotiating with itself.

The West Kutai government then gave its full support to the Pure Team and abandoned LKMTL. The government had accused the LKMTL of slandering the good name of the regent. The media reported about how the LKMTL objected to the regent's dominant role in the 11-17 April and 01 May 2000 meetings and the LKMTL's letter of protest on the same issue. The government later used the media reports as grounds for not sending its representative to witness any further negotiations between LKMTL and PT KEM. With no government witness, the company, in turn, found a good reason to terminate negotiations with the LKMTL.

The community declared in the June 29-30 agreement that the

negotiation between the Pure Team and the company was not legitimate, primarily because the former is an impromptu team that did not represent the community. LKMTL also invoked the agreement. As the legitimate community representative, LKMTL asserted that it had to be present in negotiations between PT-KEM and any group. Once again, PT KEM had abused the government authority in its efforts to destroy and sabotage the negotiation process.

Police Forces and the People's Movement

Since it began operating, PT KEM had always employed police forces to extinguish the people's movement. The use of force had curtailed the negotiation process between the company and community in many ways. PT KEM used police force to shield their maneuverings as well as to physically threaten negotiators. After the negotiation process on May 1, 2000 ended in a deadlock, for example, LKMTL negotiating members were forcibly taken to the police station in Tenggarong on May 3, 2000. Fifteen negotiators and two members of LKMTL were arrested without any reason whatsoever. They were freed only after their legal counsel intervened.

The use of police forces did not stop there. The company once again mobilized the police to break up a roadblock put up by the people of Kebut village who were disappointed with how the company reneged on the June 29-30 agreements. The police then arrested and detained a secondary school teacher and charged him of "organizing a roadblock." Another police force dispersed another roadblock on May 26, 2000. A total of 100 plainclothes policemen forcibly broke down the second roadblock in Kebut village. The police also opened fire at the villagers who put up the roadblock. The community suffered greatly over the years due to police brutality. All of these only reaffirmed PT KEM's involvement in numerous human rights violations in the area of its operation.

'Force Majeure' Issue to gain Government Support

Disturbed by the delayed realization of agreements and the deadlocked negotiation over the price of compensation, the community resorted to blockading the PT KEM's access road. As a result, the community stopped PT KEM's oil supply, which slowed down its production. The company again used this situation to gain support from the government by declaring the situation as a potential *force majeure* issue. The government, in turn, condemned the blockade. This started the divide-and-rule situation as the company sowed conflict between the workers and their fellow community members.

Ironically, PT KEM/Rio Tinto threatened to withdraw its operations. This would mean abandoning the mine site as well as all its responsibilities after the company drained all the mineral resources.

Money Politics, Community Independence and Unity

The company used money politics to demolish the people's independence in resolving disputes. The company's money politics was not new. It had used it before to settle protest actions and subsequently mobilize support against these protests. Bribery had slowed down temporarily, particularly during the negotiation process after a conflict organization was set up.

With the creation of a committee to oversee conflict, those who used to take advantage and benefited from the conflict could no longer work effectively. However, this situation did not last long since PT KEM facilitated a rival group in organizing the claimants. To make it worse, the company also released 60 million rupiahs as funds for the Pure Team as well as for LKMTL. The management and the accountability of these funds were not made transparent to the public.

Unfortunately, this approach seemed to be effective in breaking up unity. After waiting for more than two years, community members began to lose their patience. Luckily, the LKMTL managed to convince the community. For now, it is difficult to predict what happens if community members find out about the money politics while they continue to suffer with the indefinite negotiation process.

The September 21-22, 1998 Agreement

A negotiation between PT KEM/Rio Tinto and the Kelian community witnessed by WALHI on September 21-22, 1998 discussed about electrical power facility for Tutung village. The details of agreement in the meeting were as follows:

a. Electrical power facility will be installed throughout Tutung village, which approximately covers 600 houses. PT KEM will fund the installation and the first four months of operational cost;
b. After the first four months, PT KEM will pay for major maintenance of the electrical power generator until the cooperative established by LKMTL is able to manage the use of the generator, and becomes independent and

ready for operation by both parties;

c. After the first four months, the sum of money to be paid by PT KEM is equal to the total amount of the monthly electrical bill of 444 KK (family) residing within the Tutung village at the time the agreement is sealed. This agreement is valid up to three months after the company stops its production;
d. The monthly electrical bill stated will be allocated to pay for the operational cost of the generator starting the fifth month. The cooperative will thus manage and maintain the generator;
e. Within a month after the agreement is signed, LKMTL and PT KEM together will simultaneously start the project for Tutung village according to the timetable set and agreed upon by both parties;
f. PT KEM will provide training for management and operational techniques needed by officers who will be appointed by the cooperative for future management of the facility in safe, effective, and sustainable ways.

Again, PT KEM was inconsistent in implementing the agreement. The company did not only delay the implementation, but rejected the cooperative, which LKMTL would establish as stated in the agreement. It reasoned that during the evaluation meeting of the agreement on November 7-8, 1999, LKMTL had serious financial problems. It also accused LKMTL members of corruption. The LKMTL denied the accusation and dared the company to prove its accusation. The accusation was never proven. But since the company insisted on its doubts about the cooperative, LKMTL finally agreed to discuss the establishment of the cooperative with the Tutung community, which it represents. The community demanded that a cooperative be established as was written in the agreement. One year after it was signed, the company finally began implementing the agreement, but the company excluded the installation of electrical power facility for the Kelian Dalam village.

Agreement for the Pavement of Roads

The agreement between PT KEM/Rio Tinto and the Kelian community witnessed by WALHI on June 11-12, 1999, in Balikpapan, specifically discussed the dust pollution, which was endangering the

community's health. The agreement stipulated that the company would fund the road pavement. The details of the agreement were as follows:

a. Within the year 1999, PT KEM would pave the road starting 100 meters from the first house of the housing area up to 100 meters after the last house;
b. Potential housing areas to be paved are Purwodadi, Mapai Baru, Bigung Baru, Melapeh Baru, and Tutung;
c. The total length of road for pavement temporarily agreed to by PT KEM was seven kilometers;
d. The appraisal for the road length and borders must commence no later than January 27, 1999;
e. Both parties would discuss results of the appraisal not later than February 10, 1999;
f. After both parties would agree to the results, the pavement would begin on March 10, 1999;
g. If both parties would not agree upon the results of the appraisal, the road pavement would be discussed in the following meeting.

The community welcomed the agreement with great hopes. Unfortunately, once again the company let them down by breaching the implementation schedule. More than one year had passed and the company had not paved an inch of road. In the evaluation meeting between LKMTL and PT KEM on November 7-8, 1999, the company clearly showed its lack of commitment to implement the agreement. In the meeting, a new schedule for the paving of the road was set in mid-December 1999. But the company failed to fulfil the agreement. In fact, up to now, the company had just begun paving a few meters of road. All these clearly show how the company betrayed the community.

The May 17-18, 2000 Agreement

WALHI was concerned with the roadblocks and the deadlocked negotiation on the price for land compensation. It thus appealed for a meeting among LKTML, PT KEM/Rio Tinto and WALHI to resolve the matter. Rio Tinto and PT KEM responded and agreed to meet with WALHI on 17-18 May 1999 at the mining campsite. On the first day, WALHI representatives were welcomed by a mob of angry workers idled by the roadblock. The angry workers screamed

at WALHI representatives, threatening them with death. PT KEM representatives allowed this to happen in front of them.

The incident gave the impression that WALHI was to blame for initiating the roadblock. The mob, which did not convey any clear demands, dispersed after a cue from the PT KEM. Emmy Hafild, Deddy Yevry, and Chalid Muhammad from WALHI remained calm through out the incident, completely aware that company organized the mob. Committed to help the community resolve the conflict, WALHI firmly carried on with the negotiation as planned. On the second day, the meeting was moved to the office of the Rio Tinto Foundation. The meeting focused on the reasons behind the deadlock. The meeting resulted in the following agreements:

a. The May 17, 1999 Agreement:

1. Both parties agreed to continue negotiations over prices for land, property and crops starting on 19 May;
2. The negotiations between PT KEM and the team representing local claimants (Note: This is the new team. Henceforth, the "claimants' representatives.") which is currently ongoing can also continue subject to certain conditions under discussion for agreement. PT KEM (sic). The "claimants' representatives" must use the same process as was, is and will be used by LKMTL. This process consists of the following steps:
    a. Obtaining power of attorney/negotiating rights (*surat kuasa*) from the claimants represented. If these claimants had previously granted power of attorney to LKMTL but now want to be represented by the new team, they must formally withdraw their power of attorney from LKMTL,
    b. Identifying claims,
    c. Verification through interviews and surveying/measurement,
    d. Negotiating over prices (compensation rates LC),
    e. Revalidation (subjecting claims to cross-checking),
    f. Payment;
3. The government will take part in carrying out processes 2c and 2e and will act as witness for 2a and 2f;
4. In the event that a party does not accept the revalida-

tion outcome, an independent party will inspect this. This party will not be PT KEM, Rio Tinto, WALHI, LKMTL or the government. At the moment, both parties have indicated that the National Commission on Human Rights should handle this appeal process. Only one appeal will be allowed (per case) and no further appeals will be allowed. The time allowed is to be agreed on by both parties. The results will be binding on both parties.

For matters other than land, houses and crops – as noted in the letter of demands dated April 25, 1998 – PT KEM will only negotiate with LKMTL.

b. The May 18, 2000 Agreement:

1. The process of revalidation for the land along the Jelemuq access road has been completed;
2. Checking of claims for land damaged along the access road will start on May 23 and will last 14 calendar days. The team that did the previous checks will do the checking of claims. Claims for houses along the access road will be done on May 22 by the same team;
3. The same team, which will revalidate claims for land, crops, and houses inside the mine concession (at the mine location), will start on June 5. These claims include those submitted before PT KEM's letter of July 23, 2000 as well as those afterwards;
4. Negotiations between PT KEM and another party will be carried out after that other party has received powers of attorney and these have been verified. PT KEM will suspend all ongoing negotiations with them until this has been done;
5. PT KEM will continue negotiations with LKMTL on May 19, 2000 at Mr. Elyason's house at Melapeh Baru, provided that there are no large gatherings of people and the security forces;
6. PT KEM will not involve Jan Andersen and Nispalah in negotiations that involve matters discussed in the May 17-18 meetings.

Again, PT KEM breached this agreement. A day after it was signed, on May 19, 2000, PT KEM was still negotiating with the Pure

Team. This was so despite what was stated in the agreement. According to the agreement, the Pure Team must go through all the processes, which LKMTL had gone through to obtain legitimacy from the community. In addition, the Pure Team must also start the whole process of negotiation from the beginning. Nevertheless, PT KEM proceeded to negotiate the price of compensation, and had even come to an agreement over the price of compensation for the access road from Jelemuq up to Post 235.

The price, which has been agreed upon by PT KEM and the Pure Team, was forced on LKMTL. As a result, LKMTL diverted the negotiation to another matter, which was compensation for lands within the mine site. Most members of the community have agreed, although half-heartedly, to accept the price, which has been set by PT KEM and the Pure Team. The community had to accept it due to the severe economic situation they were facing. As they waited long for the realization of the June 29-30 agreement, the community members had been driven into severe poverty.

But some community members refused to accept the compensation price, which, they knew, was insufficient. They also refused to give their power of attorney to the Pure Team.

These acts of PT KEM did not only breach the agreements but also destroyed the unity among the community. These acts will not lead to a win-win situation. It cannot be refuted that the dissatisfation felt by the community will resurface in the future. As a result, all the time invested by WALHI in helping the community will be wasted due to the manipulative practices of PT KEM.

The November 7-8, 1999 Agreement

With the inconsistency of PT KEM in implementing the agreement, the LKMTL and WALHI doubted the company's actual commitment to really resolve the conflict. LKMTL thus asked WALHI to communicate with Rio Tinto and request that all existing agreements be evaluated. An evaluation meeting finally took place on November 7-8, 1999. Noke Kiroyan and Anang Noor (Rio Tinto), Jan Andersen (KEM), Pius Nyompe, Alia, Mahran, Kasim, etc. (LKMTL), Deddy Yevry and this writer attended the meeting.

The meeting revealed how PT KEM negatively perceived LKMTL. The company accused LKMTL of being mismanaged, corrupt, and unprofessional. LKMTL was definitely outraged over the corruption accusation that the company was unable to prove.

During the meeting, it was also discovered that PT KEM broke

negotiation requirements proposed by the company itself, which was to negotiate only with a single representative group for all claims made by the community. In fact, following the requirement, LKMTL had asked the community it was representing to sign letters of attorney to give it legitimacy. The whole community had signed and given their power of attorney to LKMTL. But by facilitating negotiation with a rival group, the company violated its own requirement.

Reprimanded for its own requirements, the company pledged not to repeat its mistakes in the future. But it still remained in contact with the rival group in order to disadvantage LKMTL. Therefore, the negotiation process remains slow and turbulent up to this very day.

CONCLUSION

At present, it is severely difficult for communities facing natural resource conflicts to get their demands fulfilled. They cannot rely on any existing rules and regulations. Worse, they cannot even rely on agreements made with multinationals no matter how legitimate and legally binding these are.

Government, therefore, must get real and serious if it wants to sincerely help resolve existing conflicts. One way is for it to establish a mandatory conflict resolution mechanism through which the government, the company, and the community involved can sit together to negotiate how to resolve existing conflicts.

This mandatory conflict resolution mechanism may yet help reverse flawed regulations under Indonesia's long dictatorial political climate. To help accelerate the democratization process, government's new leaders must have the political will to immediately help resolve, if not reduce and eliminate, natural resource conflicts.

Chalid Muhammad is the Coordinator of Jaringan Advokasi Tambang (JATAM) or the Mining Advocacy Network in Indonesia.

Endnotes:

[1] K. Ham, **Human Rights Investigation Report** (Indonesia, 1999).

[2] Data on the cases are listed in the **Human Rights Investigation Report** by Komnas Ham, (1999), and victims' testimonies from the archives of LKMTL and JATAM.

[3] Data on these cases are listed in the HR Investigation report by Komnas Ham, (1999), and victims' testimonies from the archives of LKMTL and JATAM.

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9

Development: The Root Cause of Conflict in India

Ravi Rebbapragada

Recognition of "development" or the outcomes of "development" leading to conflict is a perspective that is until recently alien to the Indian mindset. The premise of public policy on development is that national prosperity (of a minority) can only be attained through the large scale sacrifice of the marginalized masses whose majority interests are barely taken into consideration.

This paper narrates an activist's experience in situations of conflict that our group, Samata, and the indigenous communities have had to confront. From this micro level action, the paper links up to the macroeconomic policies of India that accelerate the pace and intensify the nature of conflict between the people and a few overpowering lobbies controlling resources and decision-making.

SAMATA – A CASE STUDY OF CONFLICT RESOLUTION AT THE GRASSROOTS

This case study presents the struggle of the Adivasis of Vizakhapatnam district (or Visag district) in Andhra Pradesh with regard to land rights and state-sponsored illegal mining operations.

It also presents the assistance of Samata in resolving the conflict. Samata is a voluntary social action group working for the protection of traditional and constitutional rights of the Adivasis or the indigenous peoples. The "Adivasi," as their name implies (in Hindi "adi" means of earliest times and "vasi" means inhabitants or residents),[1] are said to be the earliest inhabitants of India. They were pushed into the hill areas after invasion by the Indo-Aryan tribes 3,000 years ago.

The centralizing rule of the British empire in the late 18th century ushered in the entry of the state into Adivasi society. By 1950 the Adivasis, together with other indigenous peoples, were classified as "scheduled tribes" which gave them certain rights.[2] Between 1765 and 1947 when India gained its independence, the Adivasis staged periodic uprisings against the British colonial order. The first of these was in 1784 when the Adivasis, in what is now called the Santhal rebellion, rose up to prevent the loss of their lands to non-Adivasis. Under the Chotanagopur Tenancy Act, which was legislated when the British crown took over the reins of power from the British East India Company in 1857, the indigenous peoples lost more of their lands. Other uprisings were the Birsa movement in 1895 and other messianic movements that followed until the 1920s when a "separate state" became the Adivasis' main goal. This culminated in the formation of the Jharkhand Party in 1957, which called for a separate state for the indigenous peoples of Jharkhand.[3]

Demographic and Livelihood Profile

India has the second largest concentration of indigenous peoples, next only to that of the African continent. The tribal areas in the state of Andra Pradesh (A. P.) are governed by the Fifth Schedule of the Indian Constitution that guarantees Adivasis constitutional privileges in the protection of their lands. "Scheduled areas" specifically refer to areas predominantly populated by indigenous peoples and are granted special protection by the Indian Constitution under its Fifth Schedule.

Based on the 1995 census the total Adivasi population in India is 67.8 million and constitutes 8.1 percent of the total population of the country. The Constitution of India has classified them as the Scheduled Tribes (STs) and has recognized about 360 communities as STs. Of these 87 percent are concentrated in the Central Indian belt covering the nine states of Madhya Pradesh, Chattisgarh, Orissa, Andhra Pradesh, Himachal Pradesh, Rajasthan, Gujarat, Jharkand,



and Maharashtra. About 10 percent of the tribal population occupies the northeast and the rest are spread over the other states. The Adivasi mainly live in hilly and thick forest regions and have distinct socio-cultural practices from the rest of mainstream Indian society. The economy of the tribals is based on agriculture and the gathering of forest produce.

Andhra Pradesh is the seventh largest state in India with a population of 663,600. Tribals in north coastal Andhra Pradesh which is a part of the Eastern Ghats, are spread over four districts with a population of 96,000 or 1.5 percent of the population of the state; they consist of 39 tribes like the Kondareddies, Kondadoras, Bagatas, Jatapus, Savaras, Khonds, Parjas and Valmiks. The languages spoken by the tribals in this part of the Eastern Ghats include *Adivasi Odiya*, *Telugu*, *Kui*, *Savara*, *Jatapu*, and *Gadaba*. The tribals practice the traditional animist form of worship but there is now an influence of Hinduism and a strong presence of Christianity. The Alekha sect of Buddhism is also practiced in some parts of the region.

The main livelihood of the Adivasis in this area are settled agriculture, *podu* (shifting) cultivation and gathering of non-timber forest produce. Most of their needs are obtained from the natural bounty

of the forests and the land. However, like all other tribal areas of the country, the Adivasis in Andhra Pradesh have been highly exploited by the state through the Forest, Revenue, Police and Excise Departments and have recurring conflict with these agencies.

Visakhapatnam (or Visag) district is rich in mineral resources that hold lucrative commercial prospects for industries. Tribal peoples however experience constant harassment from the government for entering forestlands and face long delays in administering entitlements to their own lands.

Rights Accorded to Scheduled Tribes by Government Laws

Under the Constitution of India, comprehensive special provisions have been made for the protection and development of STs, mainly under the Fifth and Sixth Schedules, which restrict the entry and ownership of land and immovable resources in the tribal areas by non-tribals and outsiders. This constitutional provision has been defined through various decrees and executive orders by the nine scheduled states that fall under the Fifth Schedule.

The law on scheduled areas is well defined in the state of Andhra Pradesh with a clear government mechanism for implementation. The state passed two laws for the scheduled area to prevent the appropriation of tribal lands. Under the Scheduled Area Land Transfer Regulation Act of 1959, transfer of land or immovable property was rendered null and void. The second act, the A.P. Scheduled Area Land Transfer Regulation (Amendment) Act, Section 1 of 1970, prohibits the transfer of land from tribal to non-tribal in the Scheduled Area. These two laws mean that no non-tribal or private company can hold land in the Scheduled Area.

But a closer look at the implementation of these protective laws reveal that they have not been successful in protecting the interests of the tribals not only from the exploitation by non-tribals but also from the state itself. In recent years, land appropriation by non-tribal individuals has considerably decreased but there has been a corresponding increase in state-initiated land appropriation. This has presented a disturbing development with regard to the survival of tribal communities. In the context of the New Economic Policy of India, there is a conflict between the interests of the local communities, particularly those of tribals, and external stakeholders who are laying claim over the natural resources of the communities. Land appropriation is increasingly on the rise in the resource-rich tribal areas of Andhra Pradesh like the Visag district where lands are

being apportioned to commercial and industrial groups. This blatantly contravenes the protective role of the State as laid down in the Constitution.

Historical Overview of Development by Government in the Region of Eastern Ghats

The period between the 1950s and the 1990s showed a rapid shift in state interference from one decade to the next. In the 1950s the state initiated its development policy through the construction of multipurpose infrastructure projects in the region like reservoirs and hydroelectric projects, e.g. Sileru, Machund, Balimela and Duduma. These projects displaced vast tribal populations in Andhra Pradesh and the neighboring Orissa state, whose interests were considered nominal compared to the larger interests of the country.

The laying of the Dandakaranya-Bolangir-Kirbur-Bolangir-Kirbur railway line came in the 1960s in anticipation of the government's plan for commercial exploitation of the rich mineral deposits in this belt.

The 1970s was a decade of irrigation and hydroelectric projects where relocated tribals were again displaced for the sake of national development. There was a shift in the 1980s in terms of government intervention when public sector industrial projects were initiated which were largely mineral-based projects. Large tracts of tribal and forestlands were acquired for these projects, although mining leases were granted as early as the 1950s. (Refer to Table 1) Other projects that were set up were paper, pulp and wood-based industries.

The entry of multinational companies came in the 1990s, ushered in by economic liberalization. Multinational companies apportioned the natural resources of the Eastern Ghats, bringing economic doom on the Adivasi people in this region. The state boldly moved towards industrialization through the private sector, particularly the multinational companies engaged in industries ranging from power to commercial mining.

As seen in Table 1, the state granted mining leases to non-tribals and private companies on lands occupied or used by tribals in the Visag district. This has been happening for many years now despite the presence of laws prohibiting such practice. Visag district in Andhra Pradesh, particularly in *panchayats* (groups of villages) in Ananthagiri Mandal, Borra and Volasi, is endowed with rich minerals like bauxite, calcite, quartz and mica. Using archaic and unscientific methods, non-tribal companies began exploiting these min-

Table 1. *Mining Leases in Visag District, Andhra Pradesh*

Location	Owner	Period/ Year	Area
Borra Reserved Forest Area	K. Appa Rao	20 yrs (1979-1999)	Not indicated
Borra Reserved Forest	M/s Perclase India Ltd.	Not indicated (NI)	NI
Borra Reserved Forest	M/s Unirock Minerals Pvt. Ltd.	NI	125.30 acres
Borra Nonreserved Forest	M/s Unirock Minerals Pvt. Ltd.	NI	45.7 acres
Borra Reserved Forest	M/s Kalyani Minerals	NI	48.0 acres
Borra Nonreserved Forest	M/s Kalyani Minerals	NI	32.0 acres
Borra Reserved Forest	M. Seetharama Swamy	NI	300 acres
Borra Reserved Forest	Shri R.K. Deo	NI	NI
Nandkote Reserved Forest	Chalapati Rao	20 yrs (1972-1992)	50.0 acres
Chimidapalli/Saripalli Villages	Chalapati Rao*	20 yrs (1974-1994)	11.0 acres
Veduruvada Reserved Forest	Andhra Phosphates Ltd.	40 yrs (1957-1977; renewed, 1978-1998)	271.5 acres
Konapuram, Anathagiri Mandal	M. Venkatapathi Raju*	20 yrs (1981-2001)	13.8 acres
Mandaparti Village	M/s Visaka Mines and Minerals	20 yrs (1978-1998)	Not surveyed
Reserved forest area of Sivalingam Village	M/s Visaka Mines and Minerals*	20 yrs (1977-1997)	130 acres
Dumbriguda Village	Associated Mica Exports*	20 yrs (1986-2006)	50 acres
Borra group of villages	Associated Mica Exports*	20 yrs (1983-2003)	10 acres

Mallagumuru Village	Madan Mohan Reddy*	20 yrs (1984-2004)	NI
Same lease transferred to M/s Trowall Cements Ltd.*		20 yrs (1985-2005)	
Same lease subleased to M/s Indian Rayon Ind. Ltd.		Same period as above	
Ninmalapadu Village	M. Laxminarayana	20 yrs (1995-2005)	21.56 acres
Same lease transferred to M/s A.P.Mineral Dev't Corp. Ltd.			
Ananthagiri Mandal	M. Laxminarayana	10 yrs (1986-1996)	37.9 acres
Ananthagiri Mandal	Indian Rayon & Ind. Ltd.	Obtained in 1993 from a nontribal	120 acres
Peddamaredumilli Reserved Forest Area	M/s Hyderabad Abrasives and Minerals	20 yrs (1974-1994)	318 acres

*Mining operations not carried out or carried out partially
Source: Judgement of "Samatha vs. State of Andhra Pradesh" July 11, 1997.

erals since the 1960s in about 2,000 acres of tribal *patta* (titled lands), *banjar* and forest lands.

HISTORY OF THE ADIVASIS' STRUGGLE TO GAIN BACK THEIR LANDS

Historical injustice has systematically taken away land rights from 14 tribal villages of the Borra *panchayats* in Anantagiri Mandal. This group of villages is situated in the Borra Reserved Forest Area with ambiguous classification whether they are revenue lands or forestlands. The state government denied the Adivasis title deeds to their lands on the pretext that those are forest reserves in spite of the fact that the tribals have lived there for many years prior to the classification as forestland. In contrast, the private mining companies were readily granted mining leases.

Denial of any legal rights to their lands gave advantage to mining companies and facilitated the eviction of tribals from their agricultural fields and forest lands when mining operations began. The tribals were forced to work as wage laborers in their own lands under highly hazardous conditions.

One of the world's largest limestone caves is located in Borra.

The large and numerous formations of stalactites and stalagmites in the Borra Cave make it a key tourist site but more importantly, the cave is an important religious center for the Adivasis. However, mining leases were granted to the surface above the caves. Blasting operations are destroying the cave's limestone formations without any consideration of the cave's religious significance to the Adivasis.

Over the last two decades, the tribals of Borra have repeatedly filed petitions with the government to grant them title deeds to their lands but to no avail. It was then that they approached Samata for help in getting their land problems settled.

The mining issue was taken up in 1993 in the Borra panchayat where most of the mining operations were confined at that time. Samata assisted the tribals in obtaining title deeds to their lands. In the process, Samata realized that it was not merely a problem of lack of land titles but a part of a calculated liberalization process where the State was deliberately leasing out scheduled area lands to private industries in violation of existing laws.

Samata is constantly faced with situations that necessitate finding means to address conflict at the community level. Essentially the conflict involves mining interests *vis-à-vis* the people's land rights. Our experience as a social action group took us through a complex process — from addressing the micro problems of Adivasis in north coastal villages in Andhra Pradesh to analyzing how these relate to macro development issues.

The poor response from state authorities forced Samata to go for Public Interest Litigation in the high courts on behalf of the tribals. We were successful in obtaining a stay order and the mining companies were driven out from our lands. As a response, the mining companies instigated the local police to arrest the Samata activists on trumped-up charges but the police were forced to release the detainees as a result of media outcry and appeal to the district authorities.

The tribals have now gained the courage to organize themselves and initiate protest rallies and public meetings to demand for their land rights. When the stay order was lifted by the High Court, the tribals did not allow the mining companies to enter the area. The news of the Borra tribals' resistance spread across the region and tribals from other parts of the *mandal* started to approach Samata for assistance.

The panchayats included the Karaiguda village and the Volasi panchayat. A mining lease was issued in 1995 to a non-tribal and later taken over by Indian Rayon and Industries, for an area of 50

acres in Karaiguda village. The mine site included the tribals' agricultural fields where there were standing crops. The local revenue officials even threatened the tribals if they did not cooperate. The mining company went on to pitch tents in the tribals' patta lands, the primary school building was used as a storage room by the company, and a road was laid across irrigation canals blocking the fields.

In Volasi panchayat, a major mining project, the Birla Periclase obtained a lease from a nontribal and started its survey in 1993. The mining project deals with the extraction of calcite ore for the tribal area to manufacture magnesia using seawater, fresh water and calcite. The transfer of the mining lease was in clear violation of land transfer regulations of the Scheduled Area and against the 1991 amendment to the Mines and Minerals Regulation Act of 1957 that prohibits the granting of mining leases to non-tribals.

In addition, the government has also granted economic sanctions like sharing 50 percent of the road construction cost for the company. The land acquisition by the mines was in the guise of "public purpose" when it was very clear that the road was intended for the company alone.

The Adivasis were against the mining project as it would displace them and destroy their means of livelihood. Samata assisted them in filing writ petitions in the division and high courts, and presented the issues to the government, media and other sectors. The government offered very little compensation to the farmers on the pretext that these were useless lands and served them with predated notices for land acquisition.

The tribals refused to give up their lands and did not allow the company to build the road cutting across their lands. As a result of their protest action, the road construction was done only in patches in government and forestlands. The company, in turn, also resorted to unlawful methods of force like kidnapping some tribal leaders, booking them on false charges, forcefully taking thumb impressions of tribals under duress and using tribal lands for dumping and sand casting. On the other hand, the local tribals boycotted road construction and the company was forced to hire outside labor. They laid roadblocks and did not allow them to enter the mine site even for surveying and collecting samples.

However, the company and the Border Roads Organization committed gross violations of human rights of the tribals even before the actual mining activity could begin. The project encroached beyond the lease area; standing crops were destroyed or used as dumping

grounds; thousands of trees were cut down from the forest and smuggled out; people were crushed to death by bulldozers and young tribal girls were raped. These violations were deliberately ignored by the authorities.

Conflicts in State Policies on Tribals and Mining Companies

The following show the conflicts in state policies with regard to tribals and mining companies:

1. Mining leases are in clear violation of the land transfer regulations of the tribal area. The state government has ignored this violation and is appropriating tribal lands to mining companies;
2. State government cannot lease forestlands for any non-forest purpose unless clearances are obtained from the central government, Ministry of Environment and Forests. The mining leases are against the Environment Protection Act of 1986 and the Forest Conservation Act of 1980. These laws are violated to the advantage of mining companies whereas leases are denied to tribals based on these laws and regulations;
3. Tribals have lived in these hills for generations yet the forest department delimits the area as Reserved Forest and prohibits the people from entering but allows a private company to lay roads without prior approval from the local communities. No cases are booked against private companies and their officials. Instead, it is the tribals working as wage laborers for these companies who get booked;
4. Decades of perseverance by the tribals to obtain title deeds yield no results. Yet it takes no more than one week to survey and acquire tribal lands on behalf of non-tribal leaseholders;
5. Companies are allowed to operate their projects without fulfilling the legal requirements of submitting Environmental Impact Assessment (EIA) and Environmental Management Program (EMP) documents. There are no relief or rehabilitation plans, disaster management plans, employment or other provisions for the local communities. There is no transparency followed by the state while sanctioning these projects or no in-

formation is provided to the public or the affected communities. Public hearings are either superficially or not conducted at all where affected communities are not even informed;

6. Various guidelines were issued by different ministries to ascertain that the interests of the tribals are safeguarded and that they are not disturbed and displaced from their living environment for any project. All these guidelines exist only on paper and authorities concerned always find ways to circumvent them;
7. When tribals protest or demand for information, they are ruthlessly suppressed, arrested or illegally held, and forcibly evicted by the state, in flagrant violation of human rights.

Prior to the entry of major mining companies, local authorities expressed helplessness at the influence wielded by the industry as this reached the highest echelons of power. It was then that we realized that the fight was directly against the state and not just a few companies. It was not merely a local conflict over entitlements to land but a shift in the role of the state from one of protector to that of exploiter. The entire state and police machinery were geared towards suppressing any form of dissent from the local communities to ensure that the industries could take over the land and resources. In exchange for eviction, people were offered token compensation of a paltry amount (1,500 INR or roughly $30 per acre) or falsely assured with promises of employment.

Strategies Adopted by Samata and the Adivasi Communities

Besides building up a strong people's movement, mobilizing media, networking, academic support, and dialogue with government, we had to carry on a legal battle up to the Supreme Court of India for about two and a half years at the provincial High Court and two years at the central Supreme Court. A full bench of the Supreme Court delivered its historic judgement in July 1997 on the Public Interest Litigation (Samatha [*sic*] vs. State of Andhra Pradesh). The Court upheld the rights of Adivasis over their lands and declared the mining leases null and void. We have managed to keep the companies at bay to this day in spite of heavy investments from their side. The High Courts' historic judgment contains the following important points:

1. The government has no right to grant mining leases in lands belonging to Adivasis in Scheduled Areas;
2. Government lands, forest lands and Adivasi lands in the Scheduled Area cannot be leased out to non-Adivasis or private industries;
3. Government cannot lease out lands for mining operations in Scheduled Areas to non-Adivasis as it violates the Fifth Schedule of the Constitution;
4. Mining in Scheduled Areas can be taken up only by the State Mineral Development Corporation or a cooperative of Adivasis and only if they are in compliance with the Forest Conservation Act and Environment Protection Act;
5. The Court recognized the 73rd Constitution Amendment Act and the Andhra Pradesh Panchayat Raj (Extension to Scheduled Areas) Act by stating that the *Gram Sabhas* (village councils) are deemed competent to safeguard and conserve community resources and thereby reiterated the need to honor the right of self-governance to Adivasis;
6. If necessary, the Chief Secretary of Andhra Pradesh state could constitute a committee consisting of himself and the Secretaries of Industry, Forest and Social Welfare to collect factual information and consider whether it is feasible to permit an industry to run mining operations. Upon consideration of the committee, the matter may be placed before a Cabinet sub-committee consisting of the Minister for Industries, Forests and Tribal Welfare to decide whether licenses will be given or not;
7. The Court found it would be appropriate to constitute a conference of chief ministers and concerned union ministers to take a policy decision so as to bring about a suitable enactment for a consistent scheme throughout the country in respect of the Adivasi lands and exploitation of mineral wealth;
8. The Court affirmed that since the Executive is enjoined to protect social, economic and educational interest of the Adivasis, when the state leases out lands in the Scheduled Areas to non-Adivasis or industries for exploitation of mineral resources, it transmits the same

> constitutional duties and obligations to those who exploit the natural resources. Thus, the Court directed that at least 20 percent of the net profits should be set apart as a permanent fund as part of industrial/business activity for the establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads, and others. This 20 percent allocation would not include the expenditure for reforestation and maintenance of the environment.[4]

In the struggle described above, as it is elsewhere in the country, the fundamental cause of the conflict is the state's seizure of the people's land rights and giving token incentives in return. A forced shift in control over resources and decision-making from the people to the state and their industrial counterparts reflects the present polarization of interests. It has impinged on the economic progress of the larger majority of people with the capture of power and resources by a minority commercial body. Arising from this conflict are the more specific ramifications of social, cultural and economic devastation to the people.

The leasing of indigenous peoples' lands to mining companies as shown above is illustrative. Local communities were recklessly transported from a situation of minimum conflict in their traditional livelihood systems or in situations where communities had social mechanisms to resolve their internal disputes whenever they arose, to a maximum conflict situation totally beyond their control. As their resources are snatched away from them, they are physically displaced or forced to migrate without any alternative means of survival. Their role is changed from a resource owner to a wage laborer at the mercy of a powerful industry whose main goal is to maximize profits by minimizing costs. It cannot be gainsaid that social costs are the first to be compromised.

Certainly, two diametrically opposed interest groups cannot be expected to coexist without conflict. The injustice starts with the takeover of the people's resources without their informed consent or by consent obtained through deception. Ultimately, the poor implementation of compensation and rehabilitation, unfulfilled promises of employment and the lack of responsibility towards the environment all have significant impact on social and cultural practices and on law and policy.

Actions by Government after Samata Decision

Since the Supreme Court issued its decision on the Samata case, both the State Government of Andhra Pradesh and the Central Government have attempted to reverse it. These two bodies filed a joint petition for the modification of the Samata order but the Supreme Court dismissed the petition on March 6, 2000.

In July 2000, the Ministry of Mines drafted and circulated a Secret Note to the Committee of Secretaries proposing an amendment to the Fifth Schedule in order to prevail over the Samata judgement and to legalize the leasing of land to outsiders in tribal areas. This led to massive popular protests in Andhra Pradesh and extensive critical coverage in the national and regional media. The Chief Minister of Andhra Pradesh reacted by issuing a statement in which he indicated the withdrawal of the proposed amendment, and the Prime Minister reiterated on March 15, 2000 that the Government had no intention of amending the Fifth Schedule to defeat the Samata judgment.[5]

In the Draft Approach Paper to the Tenth Five-Year Plan (2002-2007) issued by the National Planning Commission on May 1, 2000, the Samata judgment was referred to as a hurdle to private coal mining. Paragraph 3.58 of Chapter 3 on Sectoral Policy Issues states:

> *It will also be necessary to make other amendments to overcome the hurdle placed in the way of private mining in notified tribal areas by the Samatha [sic] judgment. The procedures for environmental clearance also need to be greatly simplified so that potential private investors face clear and transparent rules.*

On May 11, 2000, the Minister for Disinvestment made a statement in the Hindu Business Line, Delhi Office, implying that they wanted to review the Samata judgment.

It is obvious that many forces in the central government of India still refuse to accept the Supreme Court's Samata judgment. The battle is not yet over and the tribal people need to be vigilant at all times.

The importance of strengthening the Adivasi network is a vital move to effectively engage future battles as one consolidated group rather than as one tribal community or organization only.

CONFLICT – A NATIONAL PERSPECTIVE AND ISSUES OF CONCERN

History of Conflict

After a long history of dynastic rule, India came under colonial governance in the nineteenth century. For over 200 years there was expressed disapproval for the British establishment and there was continual conflict between the whites and the Indians. This eventually led to a successful political independence for the country. In postcolonial India, conflicts have grown out of proportion with regards their dimension and particular urgency. On the other hand, colonial authority gained greater power.

India is fraught with various conflicts of a very diverse socio-economic and political nature. Conflicts between urban and rural, agriculture and industry, religions, gender, Adivasis and non-Adivasis, among caste hierarchies – the divisions and points of conflict are incredible. Efforts at neutralizing these conflicts were seen in previous regimes. For instance, in order to work towards a socially just state, the Indian Constitution, after independence, was framed with a socialist democratic philosophy. The Indian Constitution provided legal safeguards to socially discriminated communities and all its policies regarding utilization of resources, whether land, water or forests, were based on social equity rather than on the market economy. With the philosophy of decentralization, the recognition of community and customary practices under the system of traditional panchayats formed the basis for the Five-Year Plans of India.

India maintained a socialist model of development until the 1990s. The state was clearly biased for the peoples' welfare and social justice was the fundamental mandate. In the meantime, strategies of colonialism took on new forms. Powerful nations restructured their global agendas through a neo-imperial liberal philosophy. Globalization became the catchphrase. In the 1990s the trend towards globalization in India brought on the institution of a new economic policy, completely reversing the socialist essence of the Constitution.

Globalization ushered in an era of corporate control of resources wherein the state relinquishes control over the nation's resources to transnational industries on the pretext that the state has failed to deliver. In other words, "industry becomes the state" becomes the *carte blanche* to frame the education, health, social, industrial, envi-

ronment and legal policies. This is illustrated in the policy of privatization that was implemented with apparent urgency. Development projects undertaken by the state also show consistent large-scale displacement of people, mainly of the scheduled castes and the scheduled tribes who are the most marginalized communities in the country. Indian society never understood the adverse and long-term effects of these so-called "development projects" as social costs. In a way, such costs were deemed inevitable. Besides, it was never imagined that one should question the authority of the state.

Thus, conflict was always ignored and presumed not to exist in any of the development projects in the country. With this kind of non-acceptance of conflict, any theories of conflict resolution were completely alien paradigms especially for the state. The social movement, however, is not short in recognizing these conflicts.

Conflict Resolution – Efforts of Struggle Groups in India

In a country like India where awareness levels are alarmingly low and the people have little or no access to information, state- and industry-induced violations against human rights are aggressively on the rise. Mechanisms for monitoring industry are almost non-existent because of a corrupt administration; the myth of big industries as the road to development continues to cast a spell – and one cannot envisage anything but a situation of aggravated conflict.

At every stage, the state is bending over backwards to accede to the demands and interests of industries. For instance, when we raised the legal violations (as shown in the Fifth Schedule of the Indian Constitution) of mining leases in Adivasi lands in Andhra Pradesh, the state made every attempt to overcome this obstacle by removing the "legal basis" issue. Moreover, there is a serious move to amend the Indian Constitution in order to open up tribal areas for the mining industry after we won the case in the Supreme Court nullifying the very purpose for which they were introduced by the founding fathers. To date, the state is taking all moves to reverse the judgment.

In India, there are several people's movements and struggles against various "development initiatives." Dams, power projects, mining, forestry programs, urbanization and privatization projects continue to proliferate. In the face of these so-called development projects, Indian civil society is not willing to accept the conflict situations stirred up by such projects. In spite of all the theories of "development and conflict resolution," terms now in popular use by state elements, conflict cannot be resolved unless the state is serious

Table 2: *Persons displaced in India by various projects, 1951-1990.*

	Type of Project	No. Displaced	No. Rehab-ilitated	% of all DPs Backlog (%) of DPs	No. Rehab-ilitated	% of all DPs backlog
1	Mines	25,500,000	630,000	24.71	1,920,000	75.29
2	Dams	16,400,000	4,100,000	25	12,300,000	75
3	Industries	1,250,000	375,000	31.25	875,000	69.75
4	Sanctuaries	600,000	125,500	20.83	475,000	79.17
5	Others	500,000	150,000	30	350,000	70
Total		21,300,000	5,380,000	25.26	15,920,000	74.74

Source: Fernandes, Walter. 1994.

about putting peoples' welfare before industries. Anti-people legislation passed in the guise of development or progress is simply unacceptable. The state cannot continue to evict people from their lands and plunge them to poverty and ignore human rights violations whenever people protest against injustice. The state cannot speak of "development" when it cannot even provide the promised rehabilitation to people who have been displaced over the last five decades.

Table 2 shows a conservative estimate of persons displaced in India by various categories of projects from 1951-1990. With this pattern of development, the state should not expect people to have short memories. Clearly, conflict cannot be resolved when private interests are projected as public/national interests and people are forced to give up their resources.

Conflict resolution is not achieved in a political vacuum. Resolution is not a means of negotiation or pacification through short-sighted material incentives. As public protests and people's movements in India are gaining momentum, the government and industries have moved from denying the prevalence of conflicts to conciliatory tactics by offering incentives and welfare schemes while the basic aspects of conflict on power and control over resources are deliberately ignored.

Corporate terms like consultation, negotiation, win-win situations and community involvement are only just beginning to be used in India. Particularly, the strong presence of international financial institutions like the World Bank that are actively influencing the state in privatization and liberalization are ironically introducing

these new terminologies in India. These institutions have yet to accept the fact that people's movements do not perceive conflict in a political vacuum and that palliative approaches to conflict resolution will reveal themselves and continue to be opposed.

The New Economic Policy of the country reflects the changes in the socio-economic mindset of the state and its apathy towards preventing conflict. It is a patronization of the new consumer-oriented approach to development. We are questioning the state on the consumption patterns which it is clearly encouraging, thus creating a great demand for over-utilization of resources at the cost of social inequities and ecological devastation.

A key factor in the conflict is the suppression of information by the state. This lack of transparency in the implementation of any project affecting the livelihoods of people is in itself an indicator of the steady regression of democracy in India. Information reaches the persons affected belatedly and thus precludes any opportunity to evaluate choices vital to decision-making. There is never a public debate on issues concerning national resources and the common people. All over the country, we are now fighting for right to information as a primary and fundamental right.

The role of the judiciary was and still is most crucial to resolving conflicts in a democratic country like India. Often, social action groups resort to approaching the legal system for redressing the problems of people when response from the executive and the legislative are not forthcoming. Public Interest Litigation has been a very useful judicial tool for activists. However, the vagaries of the legal structure, the costs involved and the change in the attitude of the judiciary towards public issues are sadly fluctuating at present. The most recent judgment on the Narmada case, one of the biggest people's movements in the country, speaks of a weakening judicial independence and integrity. The Narmada case, as can be recalled, drew in one of the biggest mobilizations as it involved dam construction on the Narmada river which would affect the lives of over 1.5 million people and submerge about 350,000 hectares of forest lands and 200,000 hectares of cultivated land. Despite the importance of the case, it has yet to be reviewed by a jury. Hence to this day, no action has been taken.[6]

This, in turn, is giving way to undemocratic and violent political movements in many states, which are adopting violence as a means of conflict resolution in the absence of any positive response from the state. Along the way, the primary cause of conflict is held in abeyance while political equations cross swords at the cost of inno-

cent lives. Yet, people's movements are pushing for democratic space for protest and conflict redress. Unless the state listens to these democratic voices, violence would be the remaining option left.

Mines, Minerals and PEOPLE

Mining is the largest industry in India, and it has caused serious conflicts. Having put in individual struggles in each of our regions, we realized that the tentacles of globalization in mining could be countered only by collective might. Hence we came together to form a national alliance of mining struggle groups, called Mines, Minerals and PEOPLE (mm&P) that include miners, workers, communities and indigenous peoples. The mm&P aims at understanding conflicts in mining, fighting for the rights of mine-affected communities, exploring alternatives and putting pressure on the state for a balanced mining policy. We envisage mm&P as an important vehicle of people's voices that seeks to address problems of conflicts in mining. The mm&P has also been established to counter the threats posed by the New Policy.

CONCLUSION

No matter how different our conflict situations are, we will find that our experiences are painfully identical and that the enemies we are fighting are like the multiheaded demon in Indian mythology. It keeps rising up in different forms and with renewed viciousness strike in another country if we successfully oppose it in one. In mythology, justice is ultimately won only when the demon is struck down simultaneously with calculated precision on all the heads or when the vulnerable point of the demon's life is fractured. Metaphorically, we need to strike the globalization demon with strategic precision in all our countries collectively.

The imminent threat to indigenous communities and struggles against mining in developing countries are initiatives spearheaded by institutions like the World Bank with the force of multinational corporations behind them. Undermining peoples' gains are groups like Mining, Minerals and Sustainable Development (MMSD) and other similar initiatives that profess "clean mining" and "sustainable mining." There is every reason for us to stay clear from attempts to subvert our movements through efforts to "engage" and "negotiate" in the name of conflict resolution. Our history has shown that conflict can only be addressed when consumption patterns change

radically. Like the profound statement of an elderly Adivasi village leader fighting the Indian multinational The Birla group, "Companies are like monkeys. We have to keep a constant vigil and shoo them away to protect our crops and lands."

Ravi Rebbapragada is with Samata and is the National Convenor of Mines, Minerals and PEOPLE.

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10

Land, Culture and Identity: The Case of the Kalasha

Sehr Hussain & Saima Zaman

The Kalasha are an ancient people, descendants of Alexander, who, for centuries, have lived as a small distinct religious, cultural and ethnic minority in an otherwise hostile environment. The Kalasha have survived many hardships including serfdom and religious persecution. But today they face a more invasive force, the force of modernization, which threatens the very fabric of Kalasha culture, economy and society.

Restricted to three isolated valleys in the mountainous area of Chitral in the North West Frontier Province of the Islamic Republic of Pakistan, these tribal people have managed to hold fast to their polytheistic religious beliefs, traditions and culture despite a history of enslavement by the Mehtar (ruler) of Chitral.

Restricted entry to the valleys has shielded the Kalasha from the outside world for centuries, and allowed them to preserve their culture and religion without the intrusive influence of outsiders. However, the building of the first road to the valley of Bumboret exposed the Kalasha to a deluge of migrants, visitors and tourists. These outside influences had a deep impact on Kalasha culture, economy and institutions. A culture that had survived feudalism and serf-

dom was unable to hold its own against the destructive influences of modernization. The greatest blow to Kalasha identity and culture was the loss of Kalasha land to outsiders.

Land has always been of primary importance to indigenous communities. Unlike the industrialized world where land is merely a commodity to be exploited for economic gain, for indigenous peoples it has greater meaning; it is central to their existence.

> *The land is the unifying force in their lives – social, political, spiritual, cultural, economic – and to separate the people from their land is to deny peoplehood.*[1]

Although the Constitution of Pakistan promises to protect the rights of indigenous communities to their land, little has been done to restore the land rights of the Kalasha people. This issue of land rights has politically united the previously factionalized Kalasha and resulted in a revival of indigenous institutions to prevent any further exploitation of indigenous resources and rights.

This paper examines the influences the opening of the Kalasha valleys ushered in. It focuses on the issue of loss of land as being central to the current economic, cultural and political marginalization of the Kalasha. It examines the roots of this marginalization, analyzes Kalasha political culture and dynamics, and outlines economic realities and cultural threats.

POLITICAL DYNAMICS

For any peoples' rights to be effectively protected and addressed, they must be given a political voice to enable them to speak for their group. The constitutions of nations address the issue of fundamental individual rights. However, the rights of groups must also be addressed. Group rights include the right to one's own area, way of life, language, and system of social control. In multi-ethnic states, this is important in order to prevent the state from being dominated by the majority. "The dominant people also consist of different fractions: different interest groups, which may try to compete with each other to enlarge their share of the good."[2]

The Kalasha are a politically marginalized people and to understand this marginalization, it is necessary to examine the denial of group rights in a historical context. This section will explore the existing situation, problems and attempts to address these problems.



Before the creation of Pakistan, the Kalasha were living in the area of Chitral. The Mehtar of Chitral sought to dominate them. A feudal system was instituted where they were subordinated and required to pay tribute. However, the Mehtar did protect the Kalasha from outsiders' pressure by restricting entry into the valleys. This protection allowed the Kalasha to freely practice their culture and retain their land.

> *They were considerate of our religion and customs; they would not allow outsiders to put force on us. If any people tried to oppress us, the king sent his Carwelu to beat and fine that man. So outsiders coming to our land were unable to seize our property; the king did not allow that. And in those times of oppression we also held firmly to our customs: our elders made sure that all our work should be done according to tradition.*[3]

The advent of the independence of Pakistan eventually abolished feudal culture and Chitral became a part of the North West Frontier Province (NWFP). In effect, the Kalasha were then subject to federal, provincial and local (Chitrali) legislation. They were given

citizen status in Pakistan and according to the Constitution of Pakistan of 1973, this entitles them to equality, protection, voting, representation, economic opportunity, and government services.[4] Group rights are advocated under Article 28, which states that "any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same…and establish institutions for that purpose."[5]

The Government of Pakistan has adopted various institutional arrangements for minorities. The Minorities Affairs Division of the federal government safeguards minorities' rights and represents minorities in international bodies and conferences. The Federal Advisory Council for Minorities Affairs advises the Government in periodical meetings. Non-official members of the Council include minorities of the National and Provincial Assemblies and other prominent minority representatives of the country. The idea is to look into the day-to-day problems of the minorities and to resolve them at their doorstep. The Committees are headed by Deputy Commissioners/Additional Deputy Commissioners and are composed of members belonging to minority communities residing in the district.

The National Commission for Minorities, chaired by the Minister for Minorities Affairs, promotes minorities and safeguards their religious, social and cultural rights.[6] All minorities living in Pakistan are represented on this committee. This committee reports on minorities' status, recommends measures for fuller participation by minorities in national life and protects and promotes their culture and religion. The committee also preserves places of worship. At the local level, there are minority seats in union councils, town committees/municipal committees, cantonment boards, municipal corporations, and metropolitan corporations. For example, the District Minority Committee in Chitral consists of the Deputy Commissioner (DC) of Chitral, the Assistant Commissioner and 15 Kalasha (five from each valley).[7] Project committees concerned with the Kalasha also consist of the DC, a representative of the NWFP government, a representative of the federal Ministry of Minority Affairs and a Kalasha representative. Federal funding is given for minorities' religious celebrations and for their uplift.

In 1996, a Committee for the Preservation of the Kalasha was formed comprising Members of the National Assembly (MNAs), representatives of concerned ministries/divisions, and officials of the NWFP government. This Committee was established to discuss the work undertaken and to focus on the problems of the Kalasha. It

monitored the establishment of new schools, health centers, and infrastructure schemes. Tourism and its much-needed control were also reviewed.

Over the years, the Government of Pakistan has taken various steps to ensure Kalasha political representation and to offer political affirmation. President Ayub Khan's government encouraged their progress. This affirmation was reiterated in President Zulfikar Ali Bhutto's visit to the Kalasha Valleys where he stated that their rights were equal to others. In addition, Bhutto's Minister for Minority Affairs, Mr. Raja Tridev Roy, set up a Pakistan Minorities Welfare Fund to help minorities in dire economic straits. The MNA for Minorities Affairs has throughout time been supportive of the Kalasha and their needs.

Yet despite the Government's provisions for Kalasha representation, various forces prevent the full participation of the Kalasha. The mechanisms may exist for political participation but political will amongst certain officials or groups may be lacking due to the influences of the prejudices of the society in which they live. Constitutional prescriptions regarding rights have not been enough to protect the Kalasha culture and their group rights. More complex issues are at work in the case of the Kalasha. Maureen Lines quotes, "A ban on the cutting of the forests of the Kalasha Valleys was called for last year by Shakil Durrani, Commissioner for Malakand. Corruption, however, from what I have been told succeeded in stopping the ban from being effective."[8] This is an example of exogenous forces that prevent the enforcement of law.

Due to the political marginalization of the Kalasha, few of them are employed in important government posts. Most positions of power in the area are held by non-Kalasha, which may be contrary to their own. Furthermore, Alauddin argues that even government representatives who want to protect the interests of the Kalasha are hesitant to take on the majority non-Kalasha population. As Alauddin would say "…the higher echelons of Government sulked back when it came to taking adverse steps against the aggressive members of the majority community. They possibly suffered from an illusion that the weaker groups could be protected without harming the exploiter's interests…"[9] Indeed, Government-sponsored initiatives at times do not always consider indigenous views or opinions. For example, Saifullah Jan tells of an instance where the government was sponsoring the building of a *jastakhan* (temple) but using a tin roof and concrete pillars. "They make it difficult for dancing, for our *dewa* (gods) also do not like it. So why did these new

things appear in our religious places?"[10]

There has been neither legislation nor effective, enforceable measures undertaken to date to protect the Kalasha from the intrusive activities of non-Kalasha in the valleys, such as missionaries with their forceful proselytizing and other migrants with their unequal terms of trade and coerced land transfer. Regarding land transfer, the Land Enactment of 1960 prohibits the sale of tribal land to non-tribals. This act is not enforced and the encroachers have found loopholes in this law. Despite a ban on land transfer in Chitral, this activity has not stopped. The government officials do sense the need for such legislation but are hesitant to enact laws because of pressures of certain vested interests (i.e., businessmen and the absentee landowners). A revised PC-1 (a government project proposal) of the Government of NWFP dealing with the redemption of Kalasha walnut trees states the following:

> *Initially it was decided that an ordinance to amend (or a totally new ordinance) be passed to bring changes in the existing law on mortgage. However, subsequently the Government decided that instead of interfering with the legal structure, it would be feasible to provide a one-time subsidy for redemption of the mortgaged trees.*[11]

In government schools, teachers (paid by religious missionaries) make derogatory remarks about the Kalasha culture and some promote students to the next class if they convert. This undue pressure from other students and teachers results in a high dropout rate amongst the Kalasha. The Kalasha are coerced to convert by the lure of political and economic gains, better jobs and more opportunities. Inability to access education and jobs because of the prejudiced majority further marginalizes them and denies them of their right to government services, a fundamental Pakistani citizen's right and a group right as enshrined in the Constitution of Pakistan.

The protection of the Kalasha from the government side requires people with an understanding of the ground realities. There have been some notable efforts in this regard. Mr. Shakil Durrani, a former Deputy Commissioner of Chitral, proposed and oversaw the formation of the Kalasha Foundation, which brings together the federal Minorities Affairs Minister, senior officials of the NWFP Government, tourism officials, the DC Chitral and some Kalasha to formulate policies sympathetic to the Kalasha cause. In addition, he suggested that foreign philanthropists, anthropologists, and university

scholars also become part of this Foundation. This Foundation would collect donations for the Kalasha and disburse this money as needed. It would also identify and try to come up with viable solutions to these issues/problems.

Thus, although political institutions exist at the federal, provincial, and even district level, deep-rooted prejudices, corruption and a lack of political will make it difficult for the Kalasha to access them.

AN ECONOMY CENTERED AROUND LAND

> *In essence, the Kalasha are a wealthy people – not in a monetary sense but in terms of the vast natural resources available to them.*
>
> Georges Lefeuvre

The Kalasha have some of the thickest forests in the Chitral district, own some of the largest cattle herds and record higher crop yields than their non-Kalasha neighbors. Peter Parkes, in his essay on "Enclaved Knowledge: Indigent and Indignant Representations of Environmental Management and Development among the Kalasha of Pakistan,"notes that the average Kalasha household owns, "half a hectare of arable land and a few score goats."[12] But like most highland economies this is a fragile ecosystem – one that can be easily upset.

The Kalasha economy is a "mixed mountain" one. These ancient people depend largely upon subsistence agriculture and livestock husbandry for their living. Maize, wheat and millet are typically the main crops under cultivation in the small terraced fields of the Kalasha, and have been so for centuries. Due to "erratic" irrigation and mountainous terrain, hardly any rice is grown in this area. Wheat cultivation has also become increasingly restricted due to harsh winters. Over the years, there has been some loss of crop diversity in the Kalasha fields as high-yield varieties replace traditional ones. But as a whole, the Kalasha have been suspicious of these new varieties and have resisted the switch to high-input agriculture.

Traditionally, women take on much of the agricultural responsibility of hoeing, weeding and irrigation while the men tend to the goats. In the past, the Kalasha women have proved to be successful farmers as their crop yields are usually higher than those of other comparable landowners. The women also cultivate beans inter-

cropped with cereals, and have been experimenting with vegetables.

The men on the other hand are given the responsibility of tending to the goatherds. Goats are highly valued in Kalasha culture and society. They provide cheese and milk, which are important components of the Kalasha's staple diet. "Goat husbandry is a sacred activity, restricted exclusively to men, which underpins a pastoral ideology inherent in the Kalasha religion."[13] As a result, large goatherds are maintained — despite the high cost of fodder — for sacrificial feasts and religious festivals. These feasts symbolize prestige and power and are an important part of Kalasha culture and religion.

Walnut trees and vineyards are also valued assets in Kalasha society. Walnuts are an important component of the Kalasha diet and are used in the preparation of bread and for their oils. The fruits of the trees are managed collectively through traditional institutions such as the *roi* or "constabulary" of young men who are also responsible for protecting the forests and pastures from overgrazing and also supervise each household's contribution to clearing the irrigation channel. However, more recently the *roi* has been replaced by the *den-wal*, a traditional regulatory body of the Nuristanis with greater powers than the *roi*. The increase in population — due to better access to the earlier isolated Kalasha valley — resulted in overgrazing and deforestation, forcing the Kalasha leaders to institutionalize the *den-wal* to exercise stricter bans and fines, and to protect their forests and grazing pastures. Thus while isolation made resource management easier and facilitated the growth of institutions for collective management, better access to the valleys has brought poverty, increased competition and suspicion, and eroded ancient institutions for collective resource management.

The Kalasha have access to some of the thickest holm oak and conifer forests in the Chitral district. They depend on these forests for firewood as well as fodder. The alpine pastures to the north also provide valuable grazing land for the cattle. Abundant natural resources make the Kalasha a wealthy people. However, it must be noted that the Kalasha's "wealthy" status largely depends on their ability to exercise their rights over their land, which has been seriously threatened by neighbors on both the north and south.

Saifullah Jan argues that the encroachment on Kalasha pastures by the Kati-speaking Bashgalis in the North is a serious threat to Kalash people and economy.[14] The Bashgalis are the Red Kafirs of Afghanistan who were driven out from Nuristan by the King of Kabul. They came and settled in the Kalash valleys as early as the

1890s after fleeing Nuristan. These Bashgalis have been overgrazing in the high alpine pastures to the north of the Kalasha valleys, dangerously reducing the availability of fodder and threatening the valleys with consequences of deforestation. According to Saifullah Jan, the Kalasha are helpless as they fear the Bashgalis and their clansmen in Afghanistan who are "very violent, cruel people."

To the South the Kalasha valleys and pastures are under threat from the Aiunis. In 1960, the Kalasha invited the Aiunis to join their herding companies in a bid to build alliances to counter the threat of violence from the North. But this decision backfired. The Aiunis, who belong to the Muslim majority and thus carry more political clout, began encroaching on the Kalasha forests and pastures and started to assert local landholder rights over the forests of Rumboor. Since these Aiunis were non-Kalasha and thus exempt from the pastoral regulations and fines of the *roi,* they began to indiscriminately overgraze in the pastures. Under threat from both sides, the Kalasha managed to unite under the leadership of Saifullah Jan and launched a case to assert their rights over their ancestral land.

> *We must make plans. Those Aiunis are ready to make a dispute with us. First, we must go and look at the documents (royal deeds of the former principality); and once we get those we can begin. So later we went [to Chitral] and we got out those documents…. and they clearly showed the interests of Kalasha there. Those Aiunis were at fault. So I took a lawyer, and then the case began…* [15]

The Kalasha valleys had to pay dearly for the overgrazing and excessive logging done by the Aiunis. Deforestation and unchecked logging led to floods and loss of valuable fields. Resolving to protect their pastures and fields for the future, Saifuillah Jan promised his people that:

> *The government has cut 2 percent of the forest [for obligatory 'local supply' of timber in Chitral], but I will allow them to cut no more than 5 percent of the total. Then I will explain to the people of the valley that they must use some of the royalty money to recreate the forest that has been lost. But it will be their money, so they must decide…*[16]

The land rights case took seventeen years and was appealed three times in the Provincial Court of Peshawar and twice in the High Court of Islamabad. Nevertheless, despite the pressure tactics

and violent protests of the Islamist parties in Chitral, the Courts in March 1997 awarded a judgement in favor of the Kalasha.

Yet, despite the court's judgment there is little guarantee that the forests of the Kalasha valleys will be protected against indiscriminate logging since the Kalasha depend on the timber contracts to pay back their loans. According to Peter Parkes, the extensive deforestation in Birir would not have been possible without the Kalasha leaders' consent to sell the rights to timber contractors for royalty monies. Thus the root of the problem lies in the poverty and indebtedness of the Kalasha.

INTRODUCTION OF CASH ECONOMY AND ITS IMPACT

> *Historically, adaptive mechanisms of mountain peoples have centered on local ecosystems and resources. In the last five decades, however, change has been more externally driven. Development interventions, large infrastructure projects, and growing market pressures have pushed self sufficient economies towards commercialization, often with negative consequences.*[17]

The roots of Kalasha poverty can be traced back to the introduction of cash economy in these valleys. In 1974, the first road was built into the Bumboret valley. Suddenly, the isolated Kalasha valleys were exposed to diverse and sometimes overwhelming influences of the outside world. The outsiders brought with them an unfamiliar culture, religion and cash economy. Belonging to a barter economy based on collective resource management, the Kalasha were easy victims for wily moneylenders and loan sharks. Since all the shops belonged to non-Kalasha they had an advantage over the local Kalasha population. Non-Kalasha shopowners sold their goods on credit to the Kalasha and charged prohibitive interest rates. The Kalasha with no financial means of their own could not possibly pay back these loans and were forced to mortgage their land and trees. Kazi Sheydan Sheikh, the priest from Birir valley, explained the process in a taped interview in 1987:

> *Advancing food grains from their shops in Aiun on credit through land mortgage, they took our land, Kalasha land, which according to the Government rules, cannot be sold to or purchased by outsiders…through cheating, through gift or by our own free will we are poor. No machine. No mill. No employment…*

Tricked into mortgaging their trees and lands at a fraction of their price, the Kalasha were trapped in a vicious cycle of poverty. Without their trees and fruits the Kalasha had no other means of living except by mortgaging more land and taking on more loans:

> *The Kalasha were poor and this poverty was further impoverishing them. For instance, there are hundreds of cases where the fruit trees – mostly walnut – on their lands, were mortgaged thirty or more years back to their Muslim neighbors for as little as five rupees a tree or even for a Chitral cap. Now a mature walnut tree costs over Rs.3,000 and its fruit fetches a price of up to Rs.5,000 annually. There are an estimated 600 such trees, which means that the Kalasha are losing a fortune every year. It is almost impossible to get mortgages redeemed since that would mean going to the courts and engaging lawyers, which costs a lot of money. No documents are available with them and mostly the mortgagees are influential people who would loathe to be denied this income.*[18]

Kalasha culture also played a large role in creating an indebted Kalasha population. The traditional feasts and festivals require heavy expenditure and the Kalasha would often take out loans to meet these expenses.

> *Many of the farmers who have taken such loans have not used the money for the intended purpose. The money has been spent to meet expenses of death and marriage rituals. Some have constructed houses. Another popular use of loan money among young Kalasha is to buy new clothes, shoes and cassette players.*[19]

The cash economy brought a culture of materialism in the valleys, increasing competition and making collective resource management a difficult process. It also brought poverty to a people who had never known it. And now this poverty threatens the very fabric of their cultures, society and religion as many Kalasha abandon their beliefs and convert to Islam for economic benefit, and old institutions of collective ownership and management are threatened by the growing poverty and competition for resources.

At the root of all these problems lies the question of land rights. If their rights over their lands, fruits and trees were restored, the Kalasha would be a wealthy people, able to sustain themselves, their population growth and their unique culture and religion. However, this

restoration of rights is proving to be difficult for the politically marginalized and economically deprived Kalasha population. As discussed earlier, the Kalasha lost their land through unlawful encroachments by more influential communities such as the Bashgalis and Aiunis. These encroachers likewise become the mortgagers, which eventually led to the loss of Kalasha lands, thus, negating significantly the cultural tradition of the Kalasha.

Despite federal legislation prohibiting the sale or purchase of Kalasha land, the acquisition of fruit trees and fields by outsiders through fraudulent means or as part of debt repayment continues. According to the first survey done by the District Administration in 1981, 493 walnut trees of the Kalasha had been mortgaged along with 66 grapevines in Benir. By 1985, when PC-1 was submitted to the Government of NWFP, the Government discovered more than 1,000 walnut trees and more than 100 grapevines. In the 1981 survey, the District Officials recorded the names of those who mortgaged as well as the names and addresses of mortgagees, the properties or items involved, the amount and the years that had lapsed.

The mortgagees were mainly from Aiun and were popular for their unethical marketing practices. As can be culled from the 1981 listing:

Property mortgaged	Amount/ Payment	Years lapsed
1 walnut tree	2 goats	35 years back
1 walnut tree	Rs.10	20 years
7 walnut trees	Rs.100	25 years back
1 walnut tree	1 shirt	20 years
1 walnut tree	1 chitrali cap	48 years back
1 walnut tree	20 kg salt	10 years
2 walnut trees	1 kg tobacco	20 years back
1 walnut tree	½ kg rice	20 years back
2 walnut trees	2 kg salt	16 years back
1 walnut tree	1 blanket	35 years
2 walnut trees	Rs.2	16 years back
1 walnut tree	Rs.5	36 years back

As shown, the Aiunis had bought the trees at a ridiculously low price, refused to sell them back except at absurdly high cost. According to Government records, if the Kalasha were able to buy back their trees and fruit at the asking price, "the running losses being sustained by Kalasha (would amount to) Rs.21 million for 35 years,

at the rate of Rs.0.600 million per annum for walnuts alone."[20]

The Deputy Commissioner noted in late 1981 an estimated average of Rs.500 paid to mortgagees for each tree. By 1985 the administration estimated the average to be at Rs.300 and Rs.400 actual prices. The Aiunis refused to sell back for less than Rs.5,000 to Rs.8,000. This inflated bargain prevailed despite official calculations of the running losses sustained by the Kalasha, which amounted to Rs.0.600 million per annum for walnuts only.

Although the Government has been providing one-time subsidies to help the Kalasha buy back their walnut trees, little has been done to counter the mechanisms, which forced the Kalasha to give up their rights in the first place:

> *The reasons for selling royalty rights to forest contractors seemsto be a combination of poverty (high discount rate), the uncertainty which afflicts logging operations, combined with the risks associated with future compensation. If the locals were to comply with the Pakistan Forest Development Corporation's harvesting regulations, they would neither be paid in advance nor assured of being paid later.*[21]

Since trade and transport remain the monopoly of outsiders, the Kalasha can gain little benefit with the restoration of rights over trees and fields unless steps are taken to improve their access to market and trade facilities.

Rendered landless and dependent on a hostile majority, the indebted Kalasha have few other means of paying back their loans without outside assistance. Hardly any employment opportunities are open to them in the valleys due to their lack of education and the attitude of private and government institutions regarding the Kalasha:

> *Employment status in the organized sector is far from being impartial, both in the government and private institutions. Private institutions of course belong almost entirely to outsiders. Their employment preferences are quite predictable. The small jobs that are available with the government sector rarely accommodate a Kalasha, as the appointing authorities happen to be total outsiders. Even the unlettered guards of government dispensaries have to be brought from Aiun or distant Chitral. First preference is for a man to be brought fresh from outside, next one for an immigrant, next for a convert and lastly for some lucky Kalasha sponsored by an emerging politician who happened to*

be Kalasha.[22]

Even the tourist industry, which banks largely on the ability of the rich Kalasha culture and traditions to attract foreign and local tourists to these otherwise remote areas, has reflected an apparent reluctance to hire Kalasha workers who are often painted as being lazy thieves. Despite a remarkable deluge of tourists because of newly built better roads to the valleys, which led to an alarming tourism growth rate, little benefit has gone to the local Kalasha populations.

> *The tourists who visit the valleys, quite obviously, come to see the Kalasha and their living. However, it is the non-Kalasha who prosper economically because they own almost all the hotels that the tourists live and eat in; they alone own the jeeps the tourists travel by and they alone own the small grocer shops in the area. The Kalasha are too poor and too subdued to profit even in a field, which should be strictly theirs.*[23]

The growth of the tourism industry has been some cause of concern for the Kalasha people. The density of visitors to native population is probably the highest in the world.[24] These tourists bring with them a host of new problems. Ignorant of Kalasha culture and lifestyle, tourists disrespect the women, litter the mountainside, defile religious places and treat the Kalasha as "exotic animals." Despite such negative reports, a resolution adopted by the Kalasha Research Cooperative at the Second International Hindukush Cultural Conference concluded that putting a ban on tourism or limiting access to the valleys would not be appropriate or feasible.

> *In consultation with Kalasha representatives, however, we oppose any attempts to control or limit tourism, which do not have the support of the majority of the local population. We apprehend dangers of creating what Shakil Durrani has aptly referred to as a potential 'zoo culture' through special protection… We rather believe that tourism should emerge as a natural process of adaptation to market opportunities by the local residents of Bumboret, Rumboor and Birir.*[25]

Although, until now, tourism has been of little benefit to the Kalasha people, there is no denying that if managed properly, tourism has great potential for future benefit to the local population.

Other potential sources of benefit to the Kalasha are the numerous development initiatives being conducted by various NGOs, for-

eign agencies, anthropologists and the government. In fact:

> *Within less than a half century, the Kalasha have experienced a significant reversal of fortune: from abject feudal servitude to ever increasing patronage through government subsidies and NGOs.*[26]

There are truly an extraordinary number of development projects operating in the Kalasha valleys, dealing with economic upliftment, cultural preservation, environmental protection and a host of other issues. However, rather than being an ameliorating presence, this excessive attention has become a source of factionalization as the Kalasha compete with each other to win favor with donors and NGOs:

> *The main problem we are facing right now are those actions taken above our heads, without asking the people: for example, when well-wishing foreigners create their own NGOs for the 'protection' of our people and our valleys… These outsiders just involve a few people (in their projects), so the rest of the people stay away. They just say: 'There is an NGO at work, so why should we do anything for nothing?' Or when political groups [i.e. factions] are involved in a project, they say: 'We don't belong to that party, so why should we do it?' So the unity is gone…in this way, the people stop working together.*[27]

This culture of local competition dates back to the years of serfdom when Kalasha leaders would compete with each other for the much-coveted post of *asakal* or headman. Those years of servitude have had a deep impact on Kalasha culture and psyche. In order to survive they have adopted a servile, submissive attitude and projected an indigent image, one inspiring pity rather than aggression. According to Masood-ul-Mulk, a former program director of the Aga Khan Rural Support Program (AKRSP) in Chitral, this has been a crucial reason why they managed to survive in an otherwise hostile environment. However, Ul-Mulk argues that this "survival mechanism" has taken its toll on Kalasha society, which is highly fragmented with many small leaders competing for political power. For this very reason the AKRSP program, one of the most successful development initiatives in the area which is based on a system of self-help village organizations, has had such limited success in the Kalash valleys. Ul-Mulk explained that the Kalasha, with their traditional political rivalries, are very difficult to organize into an effec-

tive and united village organization.

Ul-Mulk, like Parkes, insists that the indigent image of the Kalasha is merely an illusion and in fact the Kalasha are much better off than some other tribes in Chitral who would benefit more from this donor aid and attention.

Some anthropologists argue that since most of the development initiatives being pursued in the valleys are managed by non-Kalasha it is easy for Kalasha leaders to mislead and exploit them for political gain and to keep up the facade of an indigent population. If instead the local Kalasha would take the initiatives, they would be in a better position to target them to meet the actual needs of the population. To unite the population under the leadership of any one Kalasha, however, is difficult because of the deep-rooted political rivalries.

It is sad to see how poverty and political marginalization have reduced these once proud, united people with a history of peaceful collective resource management, into a highly factionalized and bitterly competitive group.

CULTURAL EROSION: THE MECHANICS OF ETHNOCIDE

Every culture reflects the history, the collective memories, and the value systems of its bearers. It contributes to the sense of identity and self-understanding of its bearers. Just as a mature human mind is the repository of a lifetime experience, which the adult individual passes on to his children, in the same way a developed culture is the storehouse of many generations of experience, which is passed on to the new generations by various teaching institutions. For these reasons, every group is rightly concerned about maintaining the continuity of those aspects of its cultural heritage, which are deemed essential to maintaining its distinctive identity. At this particular historical juncture, we are in the northern mountains of Pakistan and find ourselves facing the problem of how to present the best elements of our traditional cultures while adopting selectively the beneficial elements of the new.[28]

"Culture is the dynamic relationship between peoples and their environment."[29] Culture results from the "activity of sharing, exploiting, utilizing, and dividing some area of the earth and its resources."[30] With independence, the restrictions on entry to the valleys enforced during the time of the Mehtar effectively ended. This then saw an influx of religious missionaries, non-Kalasha and entrepreneurs. The Kalasha community, already a small minority, faced

sudden, intense pressures on their culture. This section looks at the pressures on Kalasha culture, and the ways in which they are being addressed.

From the government side, the Kalasha were given political affirmation resulting in pride in their culture. When President Zulfikar Ali Bhutto visited the valleys he encouraged the Kalasha: "Keep your customs and religion strictly! Your customs are good, for you are ancient peoples. In Pakistan, your rights are equal to others. So practice your religion freely and worship properly. Hearing these words we became proud!"[31] In addition, Bhutto's government also started paying stipends to religious scholars of Kalasha traditions, thus giving more impetus to feelings of cultural pride. This political affirmation still did not supercede the feeling of lower status ascribed to them due to their different religion and their enslavement by the Mehtar.

Others looked down upon the Kalasha due to their status as slaves under the Mehtar. In fact, in Southern Chitral the word "Kalash" has a negative, offensive connotation.[32] One of our small discoveries during this research has been the term "Kalash" (Khowar for Kalasha) now used in Southern Chitral with a very offensive connotation. In this, it has apparently supplanted the term Kafir, which seems to have become altogether unpronounceable.

Furthermore, missionaries (mainly Muslim and now some Christians) are operating unchecked in the valleys. They refer to the Kalasha religion as pagan and primitive and further add to the cultural shame felt by the Kalasha. The Muslim missionaries have been known to provide financial support to schoolteachers to propagate their ideas. Kalasha culture is denigrated and the schools become missionary centers of sorts.[33] As a result of these attitudes, the Kalasha developed a sense of cultural shame. "With outsiders entering our valleys, our customs began to get weak, becoming mixed with theirs. With this mixing of customs, even our members began to think, 'Perhaps our customs are wrong, since other people say it is bad!'"[34] In fact, a number of them have turned to alcohol and alcoholism is also now a prevalent problem in the valleys.[35]

The presence of a dominant Muslim community has had far-reaching effects on the Kalasha community, particularly on the status of women. Some Kalasha stories are built upon the theme of culpability and the shamans have restricted women's liberties and controlled their activities. Though they maintain some freedoms, i.e., choice in marriage and the right of divorce, Islamic attitudes have influenced their culture. Viviane Lièvre postulated that "the

idea of women's culpability is not original to the Kalasha traditions but borrowed from their Islamic neighbors."[36] In addition, the Kalasha have even abandoned some rituals such as the Budalak, a fertility ritual, because it would be perceived as immoral by their neighbors. The Kalasha even deny the existence of such a ritual.

The Kalasha are also influenced by the culture of the Chitralis. Khowar (Chitrali language) words have crept into their language and Muslim terminology into their religious discourse. Nomenclature as well is shifting as the Kalasha use Arabic, Persian and Islamic names.[37]

Culture, being a people-territory relationship, can be disrupted in five forms of forceful intervention:

- genocide
- forced removal
- occupation
- ethnocide, and
- ecocide

Ethnocide is a fact of life for the Kalasha. Ethnocide is defined as using various means to bring a populace into conformity with the majority state population or the philosophy and ideals of those in power. For the poverty-ridden Kalasha, conversion to Islam offers economic incentives.

> *There is an economic reason for conversion. When an ethnic Kalash wants to convert, he goes to the mosque in Ayun or Chitral on Friday. All the Muslim men give him some money, the amount of which comes to Rs.3000-7000. The cash has helped some Kalash to get back their mortgaged property.*[38]

Thus a mechanism of ethnocide, not sponsored by the state but a result of the factors above, has been entrenched in the system.[39]

Anthropologists argue that it is actually conversions, which account for the decrease in Kalasha population. This is corroborated by a study by a team of biologists from Quaid-e-Azam University who evaluated the biological causes of decline such as inbreeding, poor/improper diet, and excessive infant mortality. The study showed that they suffer from the same diseases as other Chitralis and that there was no indication of lower fertility amongst the Kalasha. Conversion brings with it an effort to distance oneself from

the Kalasha language, Kalashwar, and other symbols of religion; hence, they escape official counts.

With conversion, culture gradually disappears. The dress, language, religion and related rituals and other manifestations of culture such as architectural or building style, all disappear. To understand the consequences of Kalasha cultural disappearance, one can look at the Kalasha history in Chitral. At present, the Kalasha inhabit Rumboor, Birir and Bumboret Valleys. Jinjiret Kuh and Urtsun were previously Kalasha valleys. There are very few Kalasha in these valleys. Looking at the history of how the Kalasha disappeared from these two valleys can help us understand the process of cultural extinction.

The loss of land has hurt them economically as well as culturally. The Kalasha religion is tied to the fruits of the land. Festivals are celebrated with the surplus crops of the season. Chilam Jost is celebrated in May, upon the advent of spring; Uchao is celebrated in mid-August when the fruit and walnut trees start to bear fruit. Poh is celebrated at the end of September during which ritual festivities and fruits are picked. Chumas celebrates the end of the year and a goat sacrifice is made. Loss of land and degradation of land endanger the celebration of these festivals so central to their religious expression. Their festivals also serve as a time to bring the community together, and as a time of economic redistribution.[40]

Language vitality is one indicator of the strength or resonance of a culture. The Kalasha has a strong oral tradition. As Kalasha convert, they slowly abandon the language to distance themselves from Kalasha culture. This language needs to be documented and taught in schools. According to studies done in these two valleys, Kalashwar was spoken in these two valleys till recently.[41] In Urtsun Valley, Kalashwar is known, but rarely spoken, except among elders. This is the last stage of a language loss model identified by Joshua Fishman, which demarcates eight stages of language loss. Stage 1 is least critical and stage 8 is most critical as the language is on the verge of extinction. (The eight stages are listed in Annex A.)

In an effort to revitalize language and traditions in order to inculcate pride in Kalasha, it has been suggested that books detailing their customs, songs and rituals be compiled. These should be used in schools. The Kalash Indigenous Survival Program has undertaken such an initiative as have the French anthropologists, Jean-Yves Loude and Viviane Lièvre.

Dress also disappears with conversion as women abandon traditional clothing and start to wear the Pakistani shalwar kameez.

Rituals and other traditions are also abandoned and new Muslim customs and rituals are adopted. Housing is also changed and is constructed in the Muslim style. These indicate the distancing from Kalash culture and absorption into Chitrali culture. Some villages in Urtsun and Jinjiret Kuh formerly had Kalashwar names and now have Khowar names, showing an attempt to completely assimilate into Chitrali culture.

The Kalasha have cultivated this land for centuries and had developed systems of rituals and fines to prevent the early picking of fruit, ascent and descent of goat herds, and the cutting of trees.[42] With the new migrants, these traditional rituals and fines can no longer be imposed and are flouted by non-Kalasha. This collective management technique has thus lost its significance.

Tourism has also brought about the sale of Kalasha handicrafts. This in itself is controversial, as there are no traditional Kalasha handicrafts. Wooden effigies of their ancestors (located in graveyards), columns of shrines, and the headgear and belt are made by the Kalasha. They are not handicrafts at all. These items are important components of their culture and their identity and have been commercialized by non-Kalasha.

Rebuilding the indigenous national identity is imperative for the Kalasha. Education considering Kalasha culture and religion can help strengthen the existing community by instilling pride. The Kalasha's procurement of their land can assist them in rebuilding themselves economically, and socio-politically as a community.

CONCLUSION

Land has many meanings central to culture and identity. The loss of land has had a deep impact on the Kalasha, which no amount of development aid or initiatives can compensate for. The inability to fully restore land rights would be ignoring the mechanism of ethnocide. The Kalasha culture and economic and political situation have all changed because they have lost their land. Therefore, we cannot ignore this issue by simply diverting resources to them and being in denial.

Pakistan's government has provided appropriate mechanisms for Kalasha participation in society. However, more must be done to counter the forces that are eroding their culture and threatening their survival. The first step in this direction is for them to reassert themselves as a nation, using the education system as a conduit for cultural revival. This will serve to motivate and instill pride in the

Kalasha and generate a shared commitment to improving their situation. Though politically divided, strong leaders who truly have Kalasha interests at heart need to take charge and take their peoples' needs and ideas into account when leading this reconstruction of a nation. The organization of divided nations do initially have their teething problems, but the cultural pride in conjunction with shared goals can serve to recreate the bonds of a people.

Many people and institutions belonging to the governmental, non-governmental and international sectors are committed to keeping the Kalasha culture alive. The Kalasha must enter into partnerships with them to dictate the terms of their development and for assistance in their rebuilding initiative. Only then can they effectively reclaim the land that is rightfully theirs.

Sehr Hussain and Saima Zaman are with LEAD-Pakistan.

Annex A: *Fishman's Eight Stages of Language Loss*

STAGE	LEVEL
Stage 1	Some language used by higher levels of government and in higher education
Stage 2	Language is used in the local government and in the mass media in the minority community
Stage 3	Language is used in places of business and by employees in less specialized work areas
Stage 4	Language is still used in the schools
Stage 5	Language is still very much alive and used in the community
Stage 6	Some intergenerational use of language
Stage 7	Only adults beyond child bearing age speak the language
Stage 8	Only a few elders speak the language

Source: Reyhner, 1995.

Endnotes:

[1] Marie Smallface Marule, paper delivered at the World Council on Indigenous Peoples General Assembly III, Canberra, Australia, 27 April

- May 2 1981, <www.cwis.org.>, October 2000.

[2] National Congress of American Indians, speech made for World Council of Indigenous Peoples. General Assembly III, Canberra, Australia. 27 April - 2 May 1981, <www.cwis.org.>, October 2000.

[3] Augusto Cacopardo, "The Kalasha in Southern Chitral, Part II: The Pre-Islamic Culture of Urtsun Valley." **Proceedings of the Second International Hindukush Conference**, Elena Bashir and Israr-ud-Din, eds. (Karachi: Oxford University Press, 1996).

[4] Alauddin, **Kalash The Paradise Lost** (Lahore: Progressive Publishers, 1992).

[5] Ibid. 21-22.

[6] United Nations, (1996).

[7] Alauddin.

[8] Maureen A. Lines, "Sad Legacy: Environmental Problems in the Kalash Valleys," **Proceedings of the Second International Hindukush Conference**, Elena Bashir and Israr-ud-Din, eds. (Karachi: Oxford University Press, 1996)

[9] Alauddin, 24.

[10] Saifullah Jan, "History and Development of the Kalasha," **Proceedings of the Second International Hindukush Conference**, Elena Bashir and Israr-ud-Din, eds. (Karachi: Oxford University Press, 1996.).

[11] Ibid., 222.

[12] Parkes, P. **Enclaved Knowledge: Indigent and Indignant Representations of Environmental Management and Development among the Kalasha of Pakistan** (Pakistan: Harwood Academic, 1999).

[13] Ibid.

[14] Jan, personal communication, October 2000.

[15] Jan.

[16] C. Rose, "Progress and Culture: The Kalash Struggle to Survive" **Institute of Current World Affairs** (Crane-Rogers Foundation, 1992, mimeographed), 12.

[17] R. Byers, "Mountain Agenda: Environmentally Sustainable and Equitable Development Opportunities," Background Paper in support of the Global NGO Consultation on the Mountain Agenda in Lima, Peru, 1995.

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[20] Alauddin.

[21] Parkes.

[22] Alauddin.

[23] Durrani.

[24] Ahmed, (1986).
[25] Kalasha Research Cooperative, (1996).
[26] Parkes.
[27] Jan.
[28] Israr-ud Din, "Welcome Address," **Proceedings of the Second International Hindukush Conference**, Elena Bashir and Israr-ud-Din, eds. (Karachi: Oxford University Press, 1996), xxiii.
[29] Richard A. Griggs, "The Cultural Dimensions of Environmental Decision-Making," **Mountain Forum On-line** on the World Wide Web, < http://www.mtnforum.org.>, October 2000.
[30] Ibid.
[31] Jan, 241.
[32] Cacopardo, 255.
[33] Aluddin, 220.
[34] Jan, 241.
[35] Lefeuvre, personal communication, October 2000.
[36] Viviane Lièvre, "The Status of Kalash Women in the Religious Sphere," **Proceedings of the Second International Hindukush Conference**, Elena Bashir and Israr-ud-Din, eds. (Karachi: Oxford University Press, 1996), 341.
[37] Alauddin, 18.
[38] Ibid., 33.
[39] Lefeuvre, personal communication, October 2000.
[40] Ibid.
[41] Cacopardo, 248.
[42] Parkes.

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11

Salient Features of the Chittagong Hill Tracts Peace Accord of 1997

Rajah Devasish Roy

The most recent peace accord on the Chittagong Hill Tracts (CHT) region in Bangladesh was signed on December 2,1997. The signatories were J.B. Larma, chairperson of the Parbatya Chattagram Jana Samhati Samiti (JSS) representing the people of the CHT and Abul Hasnat Abdulla, Chief Whip and head of the government-appointed CHT Committee, representing the Government of Bangladesh (GOB). The Accord led to the end of the more than 20-year-old armed struggle of the JSS and laid the basis for strengthening the self-government system of the CHT.

THE CONFLICT SITUATION

Like other indigenous regions in many parts of the world, the conflict in the Chittagong Hill Tracts can be traced back to the colonial period. The CHT was formally annexed to the then province of Bengal in 1860. Programs and policies of the British colonizers resulted in the exploitation of the Hill peoples' territory as well as the creation of a divide between the Hill peoples and the Bengalis. The process of building the nation- state of Pakistan subsequently incor-

porated the peoples of East Bengal and the Hill peoples, which was further compounded by the transmigration of ethnic Bengali people to the CHT under government sponsorship in 1979 and the 1980s. This eventually contributed to the alienation of both the Bengalis and the Hill peoples.

The combined effects of the revenue-oriented forestry policies of the British government impoverished numerous indigenous communities who were dependent on these lands for swidden (jum) cultivation, hunting, trapping and gathering. Development projects such as the construction of the Kaptai dam in 1960 of a US-funded hydro-electric project in 1957 to 1962 in Rangamati, which inundated the Hill peoples' lands and resources, led to disposession of the indigenous peoples. Their marginalization into second-class citizens was institutionalized in the Constitution.

At around the same time, reactions broke out to this kind of development policy. Underground as well as activist organizations were formed, first, to work for independence and, later, to counter any assimilationist or integrationist policy of the government. Militarization of the Hill Tracts was also rampant during this time. All these led to the clamor for autonomy for the CHT, which later led to the formation of the Parbattya Chattagram Jana Samhati Samiti (the United People's Party) with the Shanti Bahini as its armed wing. This signaled the formal break of the CHT from the state-sponsored model of nationhood. Thirteen tribes in the CHT collectively declared and identified themselves as the "Jhumma People."

The desire to have peace ushered in initiatives from the JSS starting in 1979 when they began sending "peace feelers" to the Bangladesh government. Since then, they have engaged in 26 dialogues.

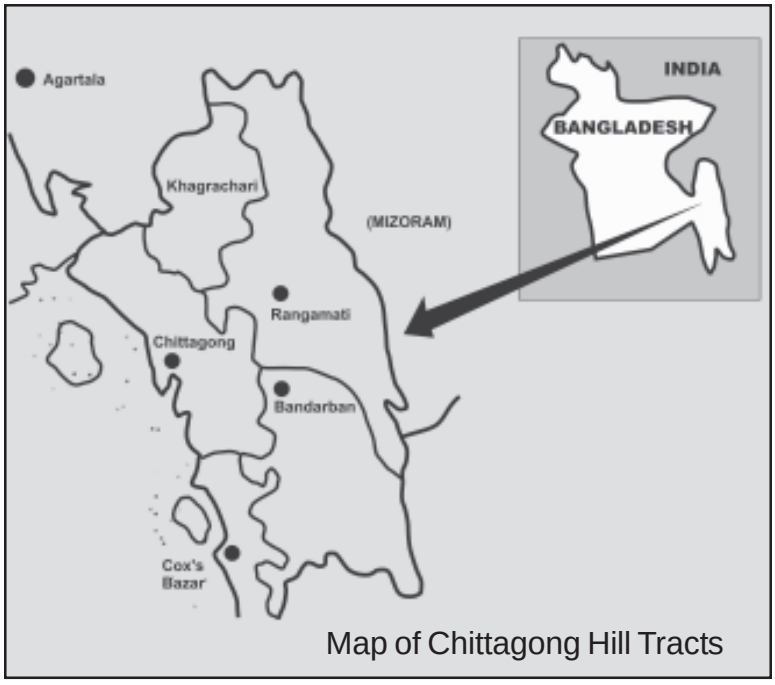
PROVISIONS OF CHT ACCORD OF 1997

The following discussion describes the main features of the 1997 Peace Accord, makes some basic comments as to the implementation or non-implementation of its relevant provisions under the heading "Current Status (as of 2000)," and identifies some of the problems related to the implementation of various provisions.

The major provisions of the Accord include the following:

I. Handing over of Weapons by JSS

All arms in the possession of JSS fighters were to be handed over to



Map of Chittagong Hill Tracts

the GOB within a prescribed date.

Current Status: About 1,947 JSS fighters handed over their arms to representatives of the GOB on four separate dates.[1]

2. Dismantling of Military Camps

All non-permanent camps of the Bangladesh Army and para-military, police and para-police camps in the CHT were to be dismantled and the armed personnel quartered in those camps were to return to their usual barracks. The exceptions were military garrisons in the headquarters of the three districts within the CHT and three other garrisons within the region. However, the Accord did not mention by what date the aforesaid camps would be dismantled.

Current Status: Reportedly, there were more than 500 military camps in the CHT, of which about 35 camps are said to have been dismantled.[2]

3. Rehabilitation of JSS fighters

Pending cases against JSS members were to be dropped and ex-JSS

fighters were to be rehabilitated economically, through cash grants of TK50,000 (about US$ 950 in June, 2000) to each JSS fighter.

Current Status: Of the 999 cases pending, 441 are said to have been withdrawn.[3] The cash grants have been provided and members of the JSS are still receiving grants of food grains from the GOB. Moreover, about 700 ex-JSS fighters have been appointed into the Bangladesh Police Force and posted in districts outside the CHT.[4]

4. Rehabilitation of Refugees and Internally Displaced People

a. Refugees

All refugees sheltered in camps in Tripura State, India were to be rehabilitated in their original homes and lands within the CHT and provided with cash and other grants.

Current Status: Of the 66,604 refugees accounted for, all have returned to the CHT.[5] A Special Task Force has been formed under the leadership of Dipankar Talukdar, Rangamati Member of Parliament, including members of the Jumma Refugees Welfare Association (JWRA). The cash and other grants have been provided but a significant number of refugees— numbering into the thousands—have not been returned to their lands.

b. Internally displaced people

All the internally displaced "tribal" people were to have been rehabilitated.

Current Status: Although it was also entrusted the responsibility of rehabilitating displaced people, apart from compiling a preliminary list of the these people, the the aforesaid Task Force on Refugees has not taken any other concrete measures for their rehabilitation. Moreover, a lot of controversy has arisen regarding the list. The representatives of the JWRA and the JSS within the aforesaid committee have recently boycotted its meeting as a sign of protest against decisions being taken by the Task Force without consulting them.

5. Cultural Integrity of the Indigenous Peoples

The CHT was to be declared a "tribal area" and the Hill District Councils (HDCs) and the-to-be-formed CHT Regional Council (RC) were to be devolved authority over the customary laws of the indigenous peoples.

Current Status: The CHT Regional Council Act of 1998 recognizes the CHT as a "tribal-inhabited area," but this is not backed by

corresponding constitutional recognition. So far, the HDCs and the RCs have not exercised their prerogative over the customary laws of the indigenous peoples of the CHT.

6. Strengthening the CHT Self-Government System

The Accord provides the following provisions to strengthen the self-government system of the CHT. These include:

a. The Hill District Councils

The HDCs — which also have an indigenous chairperson and a two-thirds majority among its members—were to have been strengthened by: (a) increasing the number of subjects under its jurisdiction by adding law and order, secondary education, land administration and developmental matters within its authority; and by (b) enhancing the nature of the authority exercised by the HDCs over its "transferred subjects" and by enhancing its legislative prerogatives.

Current Status: As of June 2000, the new subjects had not been transferred through the execution of inter-departmental agreements and memoranda of understanding (MOU). Moreover, the nature of authority exercised by the HDCs over its transferred subjects (including Agriculture, Health, Public Health, Engineering, Fisheries, Animal Husbandry, Primary Education, Forests other than "Reserved Forests" — which are administered by the Ministry of Environment and Forest—Small and Cottage Industries, "tribal" Culture, etc.) has not been enhanced in the manner as stipulated in the Accord.

Although the funds related to projects of some of the transferred subjects are reportedly being now channeled through the HDCs, the HDCs have as yet no role in national decision-making processes regarding the allocation of funds for development-related projects. Moreover, the fund allocations for the HDCs have been increased since the signing of the Accord but still insignificant in comparison to its needs. In the post-Accord years, the annual budgets of the HDCs — from which administrative expenses including the salaries of its members and office management expenses need to be met — have seldom exceeded US$1 million.

Theoretically, the HDCs have been authorized to frame regulations concerning their decision-making processes, to be consulted by the GOB before any rules are passed by the GOB under the HDC Acts of 1989 (and amendments made thereto in 1998), and to formally request the GOB to refrain from passing any laws that may be

detrimental to the interest of the "tribal" people. Its legislative prerogatives remain largely untested.

b. Establishment of a Regional Council

A regional council for the CHT was to be established with an indigenous majority and the chairperson, as mentioned above. The RC was to have supervisory and coordinating authority over such matters as general administration, the HDCs, local government units, heavy industries, NGO affairs, the CHT Development Board (a statutory body), tribal laws and custom, etc. Moreover, the GOB was obliged to consult the RC before passing any laws that were made applicable to the CHT. A related provision of the Accord stipulates that the RC could advise the GOB to remove any inconsistencies between the CHT Accord and the CHT Regulation of 1900, which is the main legal instrument under which the region is administered.

Current Status: The RC has been established, and the chairperson and the majority of the members of the RC have been appointed from among the nominees of the JSS.[6] However, necessary laws have been passed to develop authority upon the RC in order to enable it to effectively exercise its supervisory and coordinating role over the subjects under its jurisdiction. Its legislative prerogatives are yet to be tested. It seems that coordination between the role of the RC has not been taking place as expected. Further legislation is required to enable the RC to play its due role. The differing party affiliation of the political head of the CHT Ministry and the chairpersons of the HDCs on the one hand, and the majority of the members of the RC, on the other hand, is an important factor that has led to the lack of coordination between these bodies.

c. Ministry of CHT Affairs

A separate ministry for the CHT was to be established with an indigenous person at its head. The ministry was to have an advisory committee composed of the chairpersons of the RC and the HDCs (or their nominees), the three MPs from the CHT, the three "circle chiefs" of the CHT and representatives of the non-indigenous (permanent) residents of the CHT.

Current Status: An indigenous person, the MP from Khagrachari district (Kalpa Ranjan Chakma), has been appointed as the minister. However, the advisory body is yet to be appointed. The ministry (as is the RC) is still in a state of mutation and is yet to evolve as a dynamic institution in playing a positive role as a spokesperson for the CHT institution and to act as an effective body in influencing

national decision-making processes regarding the CHT. As in the case of the RC, its administrative capacities may perhaps be enhanced by the strengthening of its staff and by playing a more proactive role in national policy-making regarding the CHT. In particular, its influence over various ministries having subordinate institutions within the CHT may be increased.

7. Resolving Land-related Problems

The 1997 Accord proposes to resolve land-related problems through the following provisions:

a. Recognition of Customary Rights, etc.
No substantial measures have yet been taken in this regard through legislative and other means.

b. Land Administration Authority of HDC
The 1997 Accord and legislation following the Accord (the HDC Amendments Acts of 1998) provided that no lands within the hill districts were to be settled, leased out, transferred or compulsorily acquired by the GOB without the consent of the HDC concerned. This authority is yet to be transferred through the passage of necessary laws and the execution of the inter-departmental agreements and MOUs. Furthermore, the HDCs were to be provided a part of the land revenue incomes from their respective districts, transferred authority over lower level land administration officials (both indigenous institutions like the headmen and revenue officials of the GOB), but this provision too is yet to be acted upon.[7] A related provision stated that the HDCs were to receive a part of the royalty from the GOB's incomes from extraction of forest produce and the extraction of mineral resources. In this instance too, there has been no corresponding legislation or other executive measures.

Current Status: The requisite authority on all the aforementioned subjects is yet to be transferred to the HDCs.

c. Land Commission
The 1997 Accord stipulates that a Commission on Land was to be established to resolve disputes over ownership and user rights over lands within the CHT. The Commission was to be headed by a retired judge of the High Court and its members were to include the three circle chiefs, the chairperson of the RC and the HDCs (or their nominees) and the Commission of the Chittagong Division (a senior

civil servant). The functions of this Commission were deemed to be necessary especially in dealing with complaints by indigenous peoples that a large area of lands they owned and occupied had been taken over by non-indigenous government-sponsored settlers or "transmigrants" from areas outside the CHT.

Current Status: Although the head of this Commission has been named, the Commision is yet to start its activities.[8]

PROCESS OF IMPLEMENTATION OF CHT ACCORD

The implementation of the CHT Accord was entrusted in a committee headed by the Chief Whip of the GOB and including the MPs from the CHT and the chairperson of the JSS (now the chairperson of the RC). However, this committee has had irregular and infrequent meetings. Therefore, this has led to serious problems in implementing various provisions of the 1997 Accord. It may be noted that the membership of this committee is composed of representatives of the GOB and the JSS and does not include any third parties.

SHORTCOMINGS OF CHT ACCORD

The CHT Accord of 1997 has been criticized, both on the grounds that it provides undue advantages to the indigenous people of the CHT by violating the rights of the non-indigenous people living in the CHT (who are largely ethnic Bengalis: both older residents and newer settlers) and that it provides very limited autonomy. Apart from the problem of its non-implementation, perhaps its greatest drawback lies in the fact that it does not provide for constitutional recognition of the CHT, its self-government and legal system and the indigenous peoples of this region.

Thus, theoretically, an Act of Parliament passed by a simple majority could weaken the self-government system against the wishes of the people of the region who have only three MPs among the more than 30 parliamentarians in the national legislature. The absence of constitutional recognition of the CHT self-government system (which existed up to 1964) also means that many CHT laws could be declared to be *ultra vires* to the national constitution. A writ petition was recently filed in the Supreme Court that challenged the constitutional validity of the CHT Regional Council Act of 1998 and other post-Accord legislation.[9]

Rajah Devasish Roy is the Chief of the Chakma Circle in the Chittagong

Hill Tracts and Chairperson of TAUNGYA. He is also a lawyer.

Endnotes:

[1] Information provided by Mrinal Kanti Chakma, law student and social activist.

[2] Ibid.

[3] "Recommendations on Conflict Resolution" by Mrinal Kanti Chakma, paper submitted for distribution at the Work shop on Conflict Resolution, Peace Building, and Indigenous Peoples, organized by the Tebtebba Foundation in Manila, Philippines on June 21-23, 2000, p.5.

[4] Ibid., 4.

[5] Ibid., 5. It may be mentioned that a separate agreement had been reached between the GOB and the Jumma Refugees Welfare Association (JWRA) before signing of the Accord of December 1997.

[6] The Chairperson of the JSS is currently the Chairperson of the RC. It may be mentioned that the current HDCs are composed of appointed members who belong to the ruling Awami League, and the JSS has no representation in it.

[7] The headmen had authority over resource management and revenue matters, administration of "tribal" justice and the maintenance of law and order. They are appointed by the GOB's district officer in consultation with the circle chief concerned.

[8] For a critical analysis of the land-related provisions of the Accord, see Amena Moshin, "Chittagong Hill Tracts Peace Accord: Looking Ahead," **The Journal of Social Studies** (August-October 1998)

[9] "Md. Badiuzzaman vs. Government of Bangladesh and others," Writ Petition No. 2669 of 2000.

Latin America

12

K'iche'-Maya Concepts of Conflict

Carlos Ochoa García

CH'O'J, A MODALITY IN SOCIAL RELATIONSHIPS

The word *ch'o'j* designates conflict among the K'iche'-Maya of Guatemala. *Ch'o'j* is a term without local variants in the *k'ichee'* region. It also designates conflict in other Mayan languages, such as *kaqchikel, tz'utujiil, zacapulteco* and *achi*.

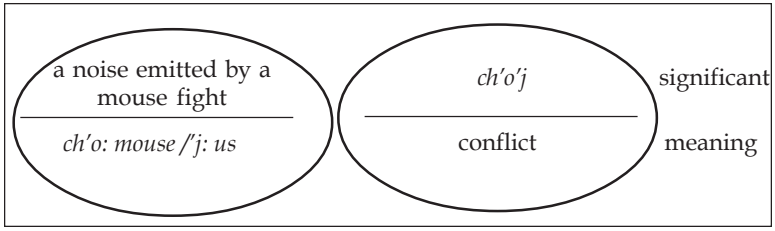
Primarily, *ch'o'j* is an homology. In linguistics, homologies are structures based on similarities between movements, functions, actions, types and sounds. *Ch'o'j* is a type of homology that reproduces sounds to express meaning. A classic homology in Mayan languages, it consists of reproducing, duplicating and often triplicating sounds (phonemes) depending on the intention of the speaker.[1] Table 1 presents homologies that pervade K'iche-Maya ideas on how actions are executed and relationships are conducted.

These words reproduce sounds caused by specific actions, and depend on an icon or sign of reference. These are phonosymbolisms that denote emotional state, events and actions. This K'iche-Maya concept of conflict, *ch'o'j*, shows two different morphemes: *ch'o*, a term that literally means *mouse-mus musculus*;[2] and [*o*]*'j* which makes

Table 1: *Homologies in Mayan-K'iche' language*

Homology	Significant	Meaning
poq' poq' poq'	the noise of the steps	noisy
chi paq' chi paq'	the noise of applause	agility
chi plok' chi plok'	the noise of deer at fast speed	speed
tz'iin	the noise of a typical quiet night	tranquility
ch'o'j	the noise of the mouse's fight	conflict

possible the substantive form. This structure is expressed in the following figure:



The meaning of *ch'o'j* is very precise, it is not open to different interpretations. It does not mean to beat[3] or to make war.[4] The homology based on iconicity justifies the lack of polysemy. In other words, the K'iche'-Maya developed an image of conflict based on the icons of sounds and the mouse. The K'iche' people prefer to translate *ch'o'j* as fight, but a description of these kinds of mouse-fights is not possible in cultural terms. A common k'iche' expression says: "We never see these mice fight, we just hear the screeches." Certainly, these are very displeasing sounds, perceived and defined as "noise" by the K'iche'.

In conclusion, this homology associates conflict with antagonistic relations. The K'iche' concept of conflict is a sophisticated one, with emphasis on behavior and relationships, individual as well as social. It presupposes a social situation where conflict is associated with real transformations and virtual differentiation yet to be discovered.

AN HOMOLOGY THAT REFERS TO HOMOLOGOUS SYMBOLS

Mice are of very different forms and varieties; following a K'iche' classification, mice receive different names according to their habitat. There are those who live in the mountains, corn plantations, rivers or lakes, and houses. The last can be divided in different cat-



egories according to form; however, the generic term is *ch'o*.

The mouse is considered essentially as a rodent and a destroyer. The cultural representations among the Mayas is that the mouse feeds on the kind of things that feed humans; consequently, it is seen as a species that steals from people anything it can. In addition, mice hide their misdeeds, but later or sooner these are discovered. Mice are the kind of animals that can penetrate any place, and no space could be safe from them. The K'iche' term *kuxuxiq*[5] refers to a process when something erodes and deteriorates progressively. Not surprisingly, it also means how rodents progressively destroy things.

In order to stop this process, first, the K'iche' people say that we have to discover or realize that a damage exists or is going on, but it requires vigilance, discretion and imagination. When a mouse is found in a process of destruction, the K'iche' will not take rest until they kill it. They say it is imperative to react and eliminate from the very roots the cause of *kuxuxiq* (destruction). The mouse is symbolically associated with impoverishment, affliction, sickness and conflict. The K'iche' recognize links among these universes due to the lack of diligence, carefulness and order. Up to this point, it becomes clear that this analogy refers to a cultural and mental model of ho-

mologous symbols about the process of annihilation, impoverishment and suffering.

A second cultural and mental model could be drawn from another symbol also associated with the mouse: the notions of spy, concealment, threat, fear, and fighting. In the **Pop Wuj** (the classic and sacred K'iche' book of pre-Columbian stories), the mouse appears at the first instance associated with a conflict. The scene is very significant: Jun Ajpu and Ixb'alanke decide to watch their corn plantation as it is being destroyed and the crops are being stolen. They discover the culprit is a mouse. They interrogate and threaten the mouse, which gains its freedom by revealing the place in which the grandmother hides the instruments of the balloon game .[6] The role of the mouse is vital in the succeeding events because the finding and further use of the game's instruments are the source of a long and deep conflict among the heroes and the masters of the underworld.

The ideas that mice move slyly under cover and watch over people, keeping memory of what have been observed, associate conflict with transformation of relationships. On the other hand, conflict is associated with the perpetuation of social memory[7] of cooperation and dialogue.

These links do not belong exclusively to the K'iche' world; similar associations are described for other regions in Mesomerica, especially in the Nahuatl by chroniclers, such as Sahagun ,[8] Motolinia[9] and Torquemada .[10] However, in the K'iche' world the mouse homology associated with conflict is vividly expressed. Among the K'iche' and through this homology, symbols of conflict become more clear and precise.

It is important to emphasize that in the Mayan worldview relationships between animals and humans do not presuppose opposition and domination; the perception is that human beings, created of corn, according to the **Pop Wuj**, have responsibilities more than rights with regard to animals. Human beings do not exist to dominate, but to take care of animals.[11]

Animals are seen as able to have communication with people. The **Pop Wuj** tells us that animals were created with the mission to talk. The K'iche' people believe that they bring messages, announcements and advices. Their presence brings good as well as bad auguries for people; some animals usher in happiness or sadness, others proclaim catastrophic events and disasters; and others like the mouse herald conflict, sickness and poverty.

At the core of this homology we find two semantic fields tied by analogy. First is the potential of annihilation, carelessness, lack of attention, which lead to death. Conflict is perceived in a dualistic view; on one hand it has a negative connotation and on the other it is seen not as an extraordinary event but as an ordinary and daily risk in social relationships.

Secondly, this cultural perception shows hidden behaviors, ambivalence in meaning, emotional process, etc. which are signs to be read. The notion of sickness has similarities to the idea of moral and ethical transgression. Both sickness and transgression lead to a process that could end in death if no action is taken to stop it.[12] In analogous reasoning, conflict works within the same kind of process.

CONFLICT AS TIME AND SPACE QUALIFIED WITHOUT AMBIGUITIES AND DETERMINED BY NOTION OF PROBLEM

In a conflict situation relationships will be transformed and will follow a schema qualitatively marked by disorder. The idea that conflict supposes an implicit marker of disorder must be well interpreted vis a vis the notion of order, long a key concept in anthropology. First, the notion of "disorder," recurrent in Mayan thought, is a semantic field subject to a complex typology of causation.[13]

- *patzuk*: a term that means both disorder and problem; it refers to problems due to break down or subversion of a pre-established form or structure;
- *yojonik*: literally a set of things in disorder, a problem associated with its several parts or components;
- *zakom*: disorder, but it refers to hard or inaccessible situation, a problem difficult to understand or to assimilate;
- *tetz'opem* (in the town of Santa Catarina Ixtahuacan**:** *tzalk'a'teem*): this is a synonym of problem due to a lack of stability, a trouble in movement, weakness, and lack of support.[14]

The complexity of this typology leads us to think that behind conflict there is a problem to be discovered. K'iche' think of conflict in terms of transitional process and transitional time, a dangerous

space where the rule of law, morals and agreements are at risk. Evidently, there is a link between conflict and moral and ethical frameworks where some kind of social order exists .[15]

NOISE AS HOMOLOGY IDENTIFYING COURSE OF TRANSFORMATION AND AMBIVALENCE

The K'iche' concept of conflict is an homology where the true significance is the notion of noise. Indeed, for the K'iche' the coming of a conflict is usually announced by omens, and certain types of noises are signs of bad omen.[16] The peculiar mice screeches are perceived as noise[17] as well as harbingers of bad portents.

When coyotes (wolfs) arrive at the crossings of roads howling in corners, this is taken as an imminent misfortune for the community. The same meaning is given to the howls of these animals when in front of a building of authority, because it predicts the *ch'o'j*, that is to say, a conflict for the community

It is possible to read these signs also in the home, especially in the kitchen. In perceiving a noise, something like a wind that blows from among the flames or a crackling of the flames invariably signifies omens of conflict for the family. However, it is believed that these signs don't acquire precise meaning until they are subjected to a detailed reading and interpretation; attention is also placed on other indicators, i.e. those related to the Mayan beliefs about space. As a result, the outcomes of conflict could be positive as well as negative. Conflict can lead to big problems as well as derive a good. It is usually repeated that "conflict gives us ideas," and "conflicts wake us up."

The noise, that is to say, something that perturbs communication, becomes the first sign of conflict. Communication is a fundamental sign. This conception reinforces the notion that all social relationships contain a potential for conflict. The K'iche' look at conflict as a daily possibility in social relationships.

Interestingly, the reading of signs given by a conflict situation is crucial. Conflict begins its journey through a chain of signs that progressively add up. As a result conflict is perceived as an ambivalent situation, which means it is associated with rupture, and even destruction, of social relationships; on the other hand, conflict could also lead to a good, if it is faced or confronted.

NOTION OF CONFLICT (*CH'O'J*) AS CHARACTERIZING RELATIONSHIPS

Ch'o'j is an homology where the person markers are explicit (oj), with the first person of the plural (us) and the third person of singular that refers to mouse. This homology should not be read as an opposition between ourselves and another species, as emphasized earlier.[18] An homology is not an argument. Due to the analogical reasoning, the meaning of *Ch'o'j* has to be reconstructed, to be deduced. On the other hand, this homology is located in a field of meaning, which is based on empirical observations and within a specific culture (the Maya). The analogical reasoning completes the purpose of having progressed from the original way to a new field of meaning.[19]

We find an emphasis on behavior but outlined as a reaction to a situation. The directionality of the emotional behavior is a core interest among the K'iche'-Maya. Interestingly, K'iche' language organizes this linguistic sector through a directional: *oq* (to enter, from outside to inside). Examples of the use of this directional are found in other domains; i.e. it intervenes to indicate that somebody enters into a position, to indicate that illness enters into a person, likewise the curses and the blessings enter as do problems and conflicts.[20] This is indicated in the expression: *xoq che taq ch'o'j*, conflicts began to enter.

The notion inside-out would have a double effect: first, a certain perception of causation and second, the notion of "situation". It is perhaps an analogy that stigmatizes the individual and recognizes that after all, conflict is a social situation and consequently a social concern. The homology suggests a tension among the group and the individual, and gives influence to the "us". An outcome of this perception is to transfer responsibilities to the social groups to whom an individual in conflicts belongs. Therefore, the homology points to what a conflict implies for social groups.

Individuals are exposed to criticism and forms of influence, and this is socially acceptable among the K'iche'-Maya. The fact that conflict is perceived as an open situation and extends to social groups around the individual is a remarkable social condition. It leads the parts to anticipate that their problems woould not be contained or reduced to them, and reaction from people around is expected if they do not reach an agreement themselves.

In the K'iche' language the term *ch'o'j* designates the conflict; in

Q'anjob'al, another Mayan language, the equivalent term is *owal*. Shelton H. Davis approaches this Q'anjob'al notion of *owal* in his excellent interpretive study on land property and conflict in Santa Eulalia.[21] Davis describes conflict as it is conceived in cultural terms, and the cultural conceptions of causation of disputes. He describes how conflicts are developed and solved. Among the Q'anjob'al-Maya, the concept of *owal* designates conflict. Davis does not make semantic precision on this term; however, his starting point are the distinctions and the folk categories among Q'anjob'al-Maya; for the Q'anjob'al each social relationship implies in a certain sense a potential conflict. When people refer to *owal* in Santa Eulalia, they are not simply considering this as an isolated situation nor a unique event — like it can be an act of violence in a given moment — but a long and extensive process that ends when consent takes place, and they recover the agreements and social contracts by means of collective negotiation.

A conflict situation frames a wide range of situations. It begins with words (*b'uchwal*), is manifested with mistreatment and physical violence (*b'ajwal* and *maq'lejb'ail*), and finishes in personal shame and peace among the involved parts (*k'ixwil* and *okwatx' k'ulkal juyeb*).[22] The outline of the conflict, on the personal as well as interpersonal level, implies a series of ethical premises; to understand a conflict is to understand the ethical and moral framework where it is registered.

The conflict is considered between the *Kanjob'ales* as something intrinsically immoral. Therefore the conflict should be reason for shame and is sanctioned by the community. There is a link between the notion of conflict and the notion of sin. In fact, it is referred to with the terms *awas* and *mul*. The notion of conflict articulates ethical views that will allow people to evaluate on which side the irresponsibility and immoral action were committed and the conflict originated. But the same notion of conflict indicates the procedure that should be followed in conflict situations.

My fieldwork done in Santa Eulalia[23] leads me to the understanding that the Q'anjob'al term *owal* ties the notions of conflict with anger, fights, discussion and war;[24] *al* is abstractive and the meaning of *ow* is determined by the notion "to force." Despite signifying "to fight" and "conflict," the term *ow* is quite close to the K'iche' notion of *eyow*.[25] Both Maya languages Q'anjob'al and K'iche' identify *eyow* with a negative emotional state associated with shame, transgression and prohibition.[26] It is also similar to the perception that ey*ow* is associated with the notion of fault and describes a so-

cial situation where events are interrelated.

RECAPITULATION: CONFLICT AND AGREEMENT, READING THE SIGNS

The general phenomenon examined in this paper is conflict as perceived by culture. It deals with cognitive behavior and how social relationships are related to ethical, moral and emotional viewpoints. The K'iche'-Maya perceive conflict without ambiguities, and it is defined as a modality of social relationships.

Conflict will connote the negative character of a social relationship that results from problems in communication and poorly developed social relationships. Ethical and moral offenses will escalate conflict. Consequently, conflict can mean the possibility of rupture in relationships, i.e. divorce, separation, resignation, abdication, escape, suicide, etc. On the other hand, conflict is a situation also marked by ambivalence, that is to say, it also presents the possibility of reestablished relationships (reconciliation), by means of a renewed agreement — an agreement that gives a new sense of well-being to social relationships.

As long as conflict is a social situation, every day has the potential for conflict. It is perceived as a risk for the continuity of social groups. Desirable relationships are seen from the logic of well-being, and this is indicated in the term *chutzil* (*ch*: imperative mode; *utz*: well, good; *il*: abstractive).

Every action has moral-ethical boundaries. A situation of this kind shows clear signs:

- *k'ax* (pain). The verification of suffering leads to individualizing the history of this suffering and its context. This means to focus on the "where," "how" and "who";
- *taqu'ij* (fault, transgression). Conflict and reconciliation deal with faults, irresponsibilities, and duties that go unfulfilled.

The term *taqu'ij* is an homology that refers to the sound (*taq)* of something that crashes against something else; *'ij* means behind. It concerns those who lose or throw away duties and responsibilities. These are situations directly related to moral and ethical disobedience.

Finally, I want to emphasize agreement and its role in reconciliation and problem solving. We know that decision making in indigenous communities go beyond the procedure of getting a "majority" or consensus. Conversely, the notion of reaching a general agreement is more valued as a democratic ideal. Democratic behavior through agreements and meetings requires long discussions and dialogues. The K'iche' term *chob'oj* can be translated as: to think, to meet, and to agree. The morpheme *chob'* means to show, to explain, to declare. The K'iche' language does not have a word for tolerance, perhaps, because the notion of dialogue is highly valued to deal with disagreements and with the minorities. Dialogue, in turn, is based on a large list of values such as freedom of opinion, consent, acceptance, extensive consultations, and decisions using the advice and the teachings of those community members that have moral status. The idea of general agreement is more complex than the notion of consensus, partly because of the complexity of local forms of social participation.

A general agreement presupposes that a dialogue is taking place, that social space exists for this dialogue. Autonomy and freedom, social as well as individual, propitiate dialogue. However, this kind of space also contains a source of weakness and aggression against indigenous societies in modern times.

Carlos Ochoa Garcia is with the Institutio Muni-K'at.

Endnotes:

[1] Candelaria López Ixcoy describes homologies of this kind as emotional languages that strengthen and emphasize the human behavior. As a linguistic phenomenon, homologies are sectors where the normal structures of the language become disintegrated. C. Lopéz Ixcoy, "Ri ukemik ri tzib'anik pa k'ichee' Cha'ab'al. (Manual de Redacción k'iche')," (Cholsamaj, Guatemala. 1994).

[2] D. Xiloj Ajtún is of the opinion that *ch'o'j* means literally "we as mice." But I don't find basis for an analogy mouse-human beings as I intend to demonstrate. See D. Xiloj Ajtún in: J. García Ruiz, **Historias de Nuestra Historia** (Guatemala: IRIPAZ, 1991, 171).

[3] The term c*h'ey:* to beat, identifies violence, direct and physical. Not surprisingly, the notion of violence has a human body reference located

in the elbow. Braseur translates *ch'uqab'* as violence, force. See also: Rabinal Achi, a precolumbian danze, where we find the toponymy *B'elejeb' Moqoj-B'elejeb' Chumay*: "nine elbows" an expression that designates the place of a fight, makes clear reference to a fight where many people were killed. Rabinal Achi, **Version of Georges Reynaud**, (1953), 6 edition, Note 55. Breton (1994) translates de Rabinal Achi expression "andar dando de codo", (to be giving of elbow), as to beat or mistreat. In: Alain Breton (1994), Rabinal Achi, Un drame dynastique maya du quinzieme siécle. Nanterre. Societe des Americanistes. N0. 275, 1815, & pp. 176, 177, 273 y 328. See also Ximenes, 1985, p. 483.

[4] Currently the term *ch'o'j* makes reference to the armed conflict in Guatemala; however, in the "Titulo de los Señores de Totonicapán" (Carmack, 1983) the term that designates war en Xvi Century was *lab'al*. See also the dictionary of Alonso (p. 129); Angel (p. 83), Basseta (p.175), Tirado (p.8v) Varea (p.104), Vico (p.114) Villacañas (p.125). Brasseur translates *lab'al* as *lab'* bad augury; *al:* abst.; *lab'aj; lab'alij:* to make war, to fight. In the Rabinal Achi, (Breton, 1994) *lab'lij* is a synonym of *tzala* (p.161, Nos. 79, 80, 100, 101, 102, 103). Carmack (1973) in the "Titulo C'oyoi" (XVI], translates *Tzala tun*, as: the Dance of war. Similarly in Basseta (p.224v), Coto (p.99), Tirado (p.46), Varea (p.292), Vico (p.114). Cf. Carmack (1983). Titulo de los Señores de Totonicapán. Folio 11r No.4. UNAM. pp. 83. Cf. Brasseur "Gramatica de la Lengua Quiche" 1969, p.208. Note No. 117, pp. 221. In conclusion, we find among the K'iche' clear differences among the notions of war, conflict, force and annoyance.

[5] The things that have been eaten by mice are designated with the expression: *kuxul ruwach ulew* (*kux*: to corrode, *ul*: landslide; *r*: possessive 3a. singular; *uwach ulew*: world; literally: do not leave anything); this expression also refers to somebody who exploits other people, designates the oppressor as well as people who do not pay their debts. In summary, these different meanings designate people unable to give anything, to return, to leave something for others.

[6] **Pop Wuj** . version of Chavez A. I. pp. 41[a] - 42.a.

[7] There is a link between social memory and conflict, and this is clearly expressed in geography by toponymic terms. In the k'iche' town of Santa Clara la Laguna, I found the term *Ch'uwa xkich'o*, (*chuwa*: in front; *x*: past tense; *ki*: they; *ch'o*: mouse, fight). Lit. in front where the fight took place. This toponymy refers to a plain located at the top of a mountain. The oral tradition refers to a conflict about borders that took place there. Cf. Ochoa García (ed.) Nuestra Geografía. p.77. See also in the Rabinal Achi, the toponymy *B'elejeb' Moqoj-B'elejeb' Chumay*: "Nine juncture, Nine elbows" which designate the place of a fight. in: Rabinal Achi, Reynaud, Note 55A.

[8] Sahagun explains the image of mice for the Nahuatl of XVI century. For the Nahuatl the term mouse is applied to those who spy and those that hear and see attentively. Spies are also called "ratonelos" (mice). Sahagun notes that people call mice those "who go between, those who walk hidden, those who speak falsely, specially to women." (X Cap.

viii). Sahagún. Bernardino de,. Historia General Tomo II p. 589, 699 ss.

[9] Motolinia, like Sahagun, underlines that "those who spy were called by the Nahuatl as mice, because they walk hidden in the night." Among the Mexicans the term *quimichtin* (lit. mice) was used to designate those who acted as secret agents in foreign countries; those able to dress and to speak the language of foreign countries." Cf. Motolinia, T. Memoriales. Cap. 12. p. 346.

[10] Torquemada translates *quimilli*: as package, fight. See: Cap. II, No.2, Monarquia. See: Sousstelle, Cf. Diccionario Nahuatl, FCE. 1993. México.

[11] The philosophical tradition that sees an opposition between human beings and animals (Mantagu, 1968) is a strong occidental belief. Burggat says that this thinking draws a border line between human being and animal. The fact that a human being is the only one that can speak supports the idea that the individual can dominate animals. This humiliation of the animals is on the basis of crimes against humanity, due to the fact that neglect of the human condition means to feel the right of extermination. Proust goes a step forward and says that the invention of the soul was a necessary condition to draw the line between humans and animals. Burgat, Florence. Animal, mon prochaine. Odile Jacob. París. 1997. Tambien: Joëlle Proust. Comment l'esprit vient aux bétes. Essai sur la representation. Gallimard. París. 1997.

[12] See about the notion of sickness and transgression among the Maya: García Ruiz, J. Historias de Nuestra Historia. IRIPAZ. Guatemala. 1991. p. 328.

[13] In the Rabinal Achí drama, at the end of the first act, Rabinal Achí indicates to *Kiche´Achi* the kidnapping of their children, and says: "want the sky, want the earth that I disorder to the sky that I disorder to the earth;" this expression is located in the context of a challenge, where Rabinal Achi reiterates to him: "If you don't allow my governor, my man, to go; want the sky, want the earth that I disorder to the sky that I disorder to the earth, that I traverse the sky, that I traverse the earth." Certainly, the text can be read as putting the world in complete disorder and here it should be read, evidently, a threat and a declaration of war (see Reynaud 1972). The context is characterized by the admission of the existence of a conflict and refusal to dialogue. However, Breton (1994) translates the term *kantziloj* as "to remove", not as disorder (line 861,862, Notes 140, p.214 & 215), adopting the sense given by Ximenez (1985, p.647), as: to move, to boil, to remove. In any of the cases, *tzil*, (to remove something), designates a type of problem or disorder due to instability, to movement or to wobble (*tzal*).

[14] See Diccionario K'iche. PLFM, 1996, p. 427. Cf. note #32 and pp.144 ss.

[15] Let us go to the cognitive meaning of this reasoning: if conflict becomes a space of disorder it will be expressed destructively, and violence becomes its main component. Consequently, social groups will promote organization, social norms, leadership, and systems of authority to regulate and to mediate. The *k'iche's* would say: "it is necessary to

guide, to drive or even to crawl people to these places where dialogue is quicker and easier, and agreements are possible."

[16] The word "jin" can mean to hate, to resound, to make noise, thunder, warning.

[17] In an evident similarity, Sahagún registered among the Nahualt of XVI century, that "certain mice that have peculiar screeches and break the peace in our homes meant that those of the house could be persecuted. Their destruction are signs of adultery and those who ate what the mouse had gnawed would be subject of false testimony." Sahagún, General History, pp. 294, 302 ss.

[18] Analogies between human behavior and animals are well developed in authors like Konrad Lorenz (On Aggression, 1966), and Robert Audrey, (The Territorial Imperative, 1966)' in whose works the analogy is about aggressiveness. This is to perceive a human nature in the intellectual tradition of the social Darwinism and the thought of Hobbs. For a comparative reading of these analogies see: Man and Aggression. Ed. M.F. Ashley Montagu. Oxford University Press. 1968; C. Barnet. On the hazards of analogies pp. 18-26; and Keneth Bouilding. O am a Man or a Mouse - Or Both? pp. 83-90.

[19] In Mayan societies we find very often an analogical logic. Saussure already observes that all analogical fact is a drama of three states, 1. the transmitted type, legitimate, hereditary; 2. the competitor; 3. a collective character constituted by the forms created that competitor has made. The aim is to transit from the transmitted form to a new one, Saussure F. p. 22.

[20] Note that the same one directional is also applied to the semantic universe of tzij, (the word), and their potential for transformation.

[21] CIRMA, 1997.

[22] Davis p. 97.

[23] E. Esqui and C. Ochoa. Chap. II.

[24] See: Dictionary of Q'anjob'al.

[25] Breton (1994, note 22) indicates that *eyow*'s first sense is "anger," but this term also expresses displeasure, furor, impatience, rages, anger, bravery; etc.; in any case, k'iche' language makes a clear distinction among anger, violence, force and conflict.

[26] The notion of prohibition becomes associated with the notion of conflict: *ch'o'ojrij*: a forbidden thing; (*rij*: back, cracked). *ch'o'ojrij na b'an k'atik*: it is forbidden to make fires; *ch'o'ojrij alq'*: it is forbidden to steal.

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13

The Peace Process and Indigenous Peoples in Guatemala

Juan León

Guatemala has a surface area of 108,840 square kilometers and a population of 12.5 million. There are four well-defined peoples who inhabit the country: the Mayan, Ladino, Xinka and Garífuna. Of the four, the Mayans are considered the biggest group comprising 70 percent of the population.

Guatemala's economy is based on a *minufundio-latifundio* agricultural system. The society is clearly divided into a majority of poor people and a small minority of the extremely wealthy. The economy is based on agro-exports. The country's wealth is its land and natural resources. At present, industrial production is being introduced, mostly in the form of the *maquiladora* system.

For several hundred years, the existing political system has generated structural conditions that bring about extreme poverty, discrimination, exclusion, marginalization, and repression. As a result, the country has not had a stable political system capable of shoring up conditions of social equilibrium and harmony. This has given rise to uprising, strikes, demonstrations, armed struggle and political opposition to the dominant, conservative sectors. This has

also led to open confrontation and intense social polarization which has affected the indigenous peoples and society in general, though in different forms and in varying degrees.

The country's greatest armed conflict began in 1960. It lasted for 36 years until guerrillas and the government signed the Accord for a Firm and Lasting Peace on December 29, 1996.

Primarily, the armed resistance broke out after the sectors in power closed all possibilities for dialogue and left the marginalized and excluded sectors with no political avenues for their proposals and requests. Of course, the guerrillas' objective of seeking economic, social and political changes, and even their goal of taking power through armed struggle, were well justified given the denial of their fundamental rights, both individual and collective.

For that reason, large sectors of the population, including entire communities of the Mayan people, joined social movements and the armed struggle. Even so, prior to the onset of peace negotiations, the major objectives of the revolutionary movement did not include proposals from the indigenous peoples themselves.

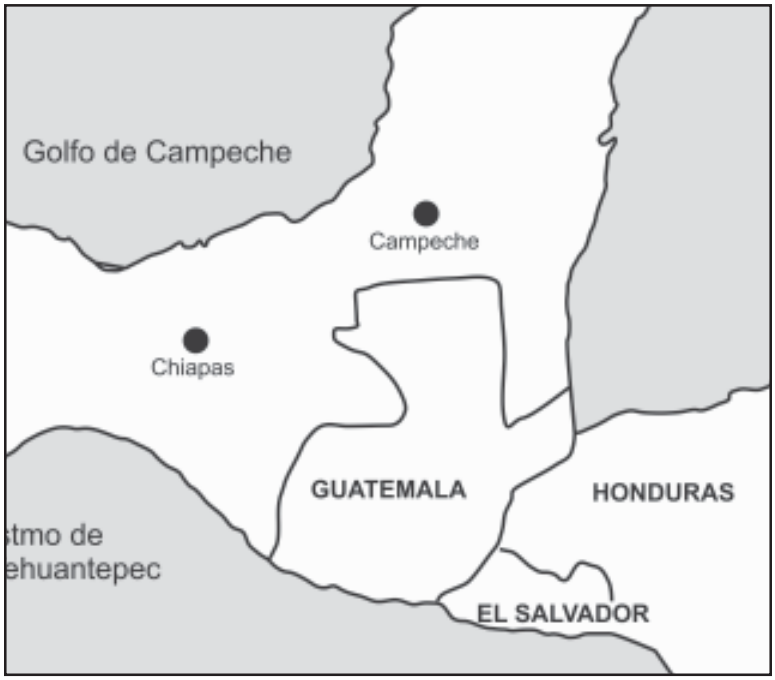
For their part, the sectors in power and the army organized to defend their "democratic system," streamlining the State's policies and strategies to defeat the guerrillas. As expected, militarization was the immediate response as it represented an application of State policy. Controls were imposed over the population and the country's resources. What followed were a series of military atrocities: over 660 Mayans massacred; more than 50,000 persons disappeared and believed killed; 100,000 political killings and the physical and psychological torture of those arrested. Families broke up and community ties shattered.

At the onset of the armed conflict, it was evident that the majority of the citizenry opposed the State and the governments. Little by little, the State's strategy led to confrontations between communities and among families.

The *Patrullas de Autodefensa Civil* (Civil Self-Defense Patrols) or PAC required forced enlistment of one million persons for military operations. The majority of the PAC were Mayans, a military strategy intended to sow terror and divide Mayan communities. This resulted in confrontations between communities, as well as theft and pillage of land and property belonging to persons tagged as "subversives suspected of supporting the guerrillas."

The armed conflict had a profound effect on all of society that the State can never hope to rectify.

It was mainly the Mayans who were involved in the armed con-



flict. In fact, the majority of the combatants of the guerrillas as well as the majority of the army's soldiers were Mayans. This had a major bearing on subsequent political events, given that the indigenous peoples, principally the Mayan organizations, had a greater stake in laying the foundation for a firm and lasting peace.

INTERNATIONAL CONTEXT

Guatemala's armed internal conflict was contextualized as an East-West confrontation, or as communism vs. anti-communism. This forced the conflict players to seek their respective alliances, both for purposes of obtaining political and economic support and for purposes of building their military infrastructure.

The conflict intensified as other players became involved. Indeed, these additional players were not interested in resolving the issues that generated the conflict. What they sought was victory over the other party.

In response to the massive, systematic and recurrent human rights violations, Guatemalan human rights organizations started to express formal condemnation to appropriate United Nations (UN)

groups. As a result, a special *rapporteur* of the UN Commission on Human Rights was appointed in 1983 to investigate the events and to establish policies for improving the social situation in the country.

The Guatemalan government and human rights organizations each developed their strategies, and the struggle for human rights turned into a political battle in the international arena.

Thus, diplomatic missions based in the country also took great interest in the human rights issue and in the conflict. These players are important to mention, because to a certain extent, many foreign governments played lead roles in the subsequent peace process.

The armed conflict remained at an impasse for a long time. There were no winners or losers. The situation continued in such a state until the world's powerful governments decided that the military confrontation, rooted in world tensions, had to change. A peaceful solution to the internal conflicts was reached, but unfortunately, no solutions were worked out for the root causes that gave rise to those conflicts.

FIRST CONTACTS BETWEEN URNG AND THE GOVERNMENT

In 1985, the Central American governments held the first of a series of meetings in Contadora, Panama. Among several political agreements reached at those meetings were those aimed at pacifying the region through negotiations while simultaneously seeking to establish democratic processes.

In 1987, through the good offices of the Norwegian government, the first contacts were made between representatives of the government and of the *Unidad Revolucionaria Nacional Guatemalteca* (URNG - National Revolutionary Unity of Guatemala), a coalition of the four guerrilla groups.

These political contacts elicited a wide range of reactions within the country's power groups, mainly those of the army. Some of those groups argued that it was not wise to commence a dialogue process, much less negotiate with "criminals" as they characterized the revolutionary movement. There was a perceptible division between military officers who wanted to pursue the conflict until every last member of the guerrillas had been eliminated and those officers who sought dialogue as a means for ending the conflict.

A parallel situation existed internally among the guerrillas. Some groups were not in agreement with the dialogue process, because they considered sitting at the same table as the armed forces a be-

trayal of revolutionary principles.

It later became known that each party to the conflict had to engage in intense internal debate in order to arrive at a consensus regarding the fundamental principles inherent in dialogue and negotiations. At the same time, they took their crusade to the media to generate confidence and convince the population in general.

Efforts to achieve internal consensus within each party and to consolidate the principle of dialogue and negotiations were pivotal in sustaining the contacts between the players in the conflict. Indeed, it took a long time to generate confidence, establish strategies, calculate the projected results and limitations of the negotiations and consolidate the social bases for each of the parties.

It is worth emphasizing that it is essential to have a confidence-generating process in order for two radically opposed groups to sit and dialogue. That way, conditions can be established to ensure the security of all members involved in the negotiations. We should bear in mind that conflict always generates distrust and "power calculating," that is to say, the calculation of who stands to benefit the most from the negotiations. Every move is politically and militarily calculated.

Another key factor in the opening of dialogue between the army and the URNG was the venue for the negotiations. This was a contentious issue among members of both parties. Some people wanted the negotiations to take place in Guatemala. Others wanted them to take place abroad.

The international community, specifically governments, churches, human rights organizations, NGOs, cooperation agencies, solidarity committees and others played an important role in exerting political pressure regarding the definition of principles, the venue for the negotiations, and the agenda to be discussed. Major sectors of Guatemalan refugees and exiles in other countries also participated.

Through the Friends of the Guatemalan Peace Process, a coalition of foreign governments provided consultations to the Guatemalan government, army, URNG, the church, organizations of civil society and other indirect players in the conflict.

Guatemalan progressives in popular and peasant organizations, trade unions, Mayan organizations, women's associations, NGOs, religious groups, and churches, along with prominent individuals, also played politically significant roles, which are discussed further.

ROLE OF CIVIL SOCIETY ORGANIZATIONS IN DIALOGUE AND NEGOTIATIONS

Given the Guatemalan army's systematic militarization, the terms "civil society" or "organizations of civil society" were used to describe organizational expressions not linked to the army. Nonetheless, given the widespread political polarization, it was understandable that certain individuals, groups, sectors, and organizations would have relationships with the army or with the URNG. In normal times, that is to say, times without armed conflict, this would have been a normal part of democracy, but in times of war, this meant that many persons were risking their lives.

Individuals and organizations of civil society who agreed with the issues and ideas presented by the URNG would be tagged as subversive and consequently persecuted by the government and army.

In mentioning this, I am not excusing the URNG from possible acts of pressure or repression against persons or groups aligned with the army. Yet the range of action and the ease with which the URNG could carry out such actions never put them on a par with the State when it came to the massacre of vast numbers of persons, families, and communities.

By the 1990s the majority of organizations had great political strength and a large membership. Given this correlation of forces, the government had no choice but to take the opinion of civil society into consideration. The political strategy of lending credibility to the negotiations necessitated such an approach. Negotiations without the indirect participation of the country's civilian organizations would not present the needed legitimacy.

After becoming aware of the agenda for the negotiations, the majority of the organizations decided to come together by sectors, that is, on the basis of interests and objectives. They listed suggestions for the negotiation's agenda and submitted these to the government and the URNG.

It should be pointed out that only organizations of the Mayan people asked for direct participation in the negotiations. The Mayans opposed having an issue such as the Accord on the Identity and Rights of the Indigenous Peoples be negotiated by and between Ladinos. Despite great political pressure and talks on various levels, this direct participation was not attained. Yet history will take note of their attempt.

The mechanics of civil society's participation in the negotiations

was hotly debated, inasmuch as the URNG wanted the social sectors to have a major influence, while the government and the army did not. In the end, a separate body comprised by civil society was formed which was named the *Asamblea de la Sociedad Civil* (Assembly of Civil Society) or ASC established in May 1994.

Some of the sectors that participated in the ASC were trade unions and popular organizations; human rights, women's and student groups; political parties; research centers and Mayan organizations.

The ASC was mandated to reach a consensus on the content of the agenda for the negotiations between the parties in conflict; to send the document containing that consensus to the negotiating table; and to validate the content of the substantive agreements reached by the URNG, the government, and the army.

Monsignor Quezada Toruño was appointed ASC coordinator. Toruño, whom both parties trusted would ensure the ASC will function with respectability, acted as a conciliator between the parties in conflict.

Many lessons were learned in the experience of the ASC because there were substantial discussions and agreements over interests and concerns that were not shared by all. During the deliberations, each participating sector would present proposals for issues that concern them, but at the same time all sectors could present their individual proposals to the general assembly for discussion.

Each topic discussed presented difficulties in reaching a consensus. Surprisingly, one issue that they exhaustively deliberated on was about "Identity and Rights of the Indigenous Peoples." This was the first time that discrimination and racism in the country was debated openly. Various sectors, even those considered "progressive," opposed the substantive aspects of the proposals under discussion particularly regarding self-determination, territory, and the historical recovery of lands and natural resources.

By seeking political alliances and through extensive deliberations on all the proposals, many sectors attained a level of awareness that made it possible to approve the majority of the proposals of the Mayan people.

It should be noted that the creation of the Assembly of Civil Society responded to public demonstrations, hunger strikes, paid advertisements in the press and lobbying with the government and the URNG. In effect, steadfast political action by civil society's organizations shaped the ASC.

Prior to the formation of the ASC, both the URNG and the government held separate meetings with the leaders of civil society or-

ganizations to listen to opinions and political assessment of the process. Each sector submitted proposals. Representatives of Mayan and other indigenous peoples' organizations were the only ones who were not invited.

NEGOTIATING AGENDA AND SUBSTANTIVE ISSUES

After several discussions, the parties in conflict reached an agreement to address operative and substantive issues.

The operative part was to address demobilization of the guerrillas and their reincorporation into civil society. On the other hand, the military would parallel this by a reduction of army detachments.

Substantive issues were defined as follows:

1. Comprehensive Accord on Human Rights;
2. Accord on the Resettlement of Population Groups Uprooted by the Armed Conflict;
3. Accord on the Identity and Rights of the Indigenous Peoples;
4. Accord on the Establishment of a Commission for the Historical Clarification of Human Rights Violations and Violent Acts Causing Suffering in the Guatemalan Population;
5. Accord on Social and Economic Aspects and the Agrarian Situation;
6. Accord on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society.

Once the agenda was set, certain army sectors proposed that the first item to negotiate should be the demobilization of the guerrillas and the surrender of their weapons, while the substantive issues would be reserved for later.

For their part, the guerrillas insisted that the substantive issues be discussed first and the operative issues later. Here, it should be noted that the suggested order for discussion of the agenda had a direct relationship to each party's goal. These preferences were not capricious in nature; they were a tactic of war. We could say that the negotiating agenda represented a victory for both parties. In the short term, the army had to accept that the substantive issues would be discussed, and that accords thereon would be developed at the negotiating table. This appeared to be a political victory for the URNG, but in the long term, it was the army that achieved victory.

The army succeeded in demobilizing the URNG and neutralizing the organizations of civil society. Yet they have not complied with the Peace Accords or if at all, only in the most superficial way.

STRATEGIC OUTLOOK ON NEGOTIATIONS AND PEACE PROCESS

The results we had hoped to attain through the negotiations were not put into practice in Guatemala.

We should remember that as indigenous peoples, we have a distinct view of what conflict is. For Mayans, a conflict is a loss of equilibrium or an imbalance in the relations between individuals and societies. It is a fissure in the harmony between parts of a family, society, or group.

This viewpoint derives from our philosophy based on the concept that all individuals, societies, elements of nature and of the cosmos, no matter how large or how small, serve harmonizing and interrelated functions. Thus, when there is a lack in equilibrium, remedies to a conflict seek to reestablish the harmony. In other words, we aim to restore the relationship that existed prior to the conflict. Thus, we Mayans use the term "mend" or "repair," which is not the same as "resolve." When one seeks to restore harmony in a relationship, one does not seek to have a winner or a loser. Rather, one seeks to voluntarily do what is needed to restore equilibrium.

Returning to the issue at hand, both the army and the URNG sought to win political victories at the negotiating table, rather than restore equilibrium to a society that was unstable and in discord due to political, economic, social, cultural and educational factors. I must admit that this was no easy task, since other players not present at the negotiations, among them wealthy Guatemalans and foreign nationals, were the ones who determined the policies causing such instability or loss of equilibrium.

From my viewpoint, three perspectives could be seen in the dialogue and negotiation process, which I would like to explore here. Our own participation in that process was as a part of civil society. It was aimed at achieving good results, where peace in the country would be sustainable, not just some short-lived state. Compliance with the Peace Accords following the signing of the Accord for a Firm and Lasting Peace has been a function of these viewpoints.

a. Outlook of Government and State of Guatemala

For the government and the sectors in power, the army included, the negotiations represented the end of armed conflict, that is to say, elimination of the war and neutralization of the social movement. Even though they stated in their political discourse that they were willing to change the conditions that caused the conflict, actual practice did not match the rhetoric.

b. Outlook of URNG

The URNG called for negotiations in order to attain political advantage, given that it was losing its social strength and legitimacy. Furthermore, it had no choice but to come to the negotiating table in an attempt to take advantage of world tensions. The URNG may have intended to achieve certain changes through the agreements, or at least minimum reforms of the structural situation. Currently, the URNG does not have the same vitality as it did before. Neither does it have much interest in defending or demanding compliance with the contents of the Agreements that the URNG itself signed.

Thus, the attitude of the URNG could be seen in its acceptance of some agreements that brought no change whatsoever in the people's situation, e.g., the "Accord on Social and Economic Aspects and the Agrarian Situation" or the "Accord on the Establishment of the Commission for the Historical Clarification of Human Rights Violations." That commission achieved good work in establishing accountability for the human rights violations that took place during the conflict, but its recommendations were not binding for purposes of determining State policies on the matter.

c. Outlook of Mayan Movement and of Civil Society

Both the Mayan movement and the organizations of civil society continually asserted that the signing of the Peace Accords did not simply call for an end to the armed internal conflict, but also for a change in the structures that caused the conflict. This meant that concrete solutions had to be sought to overcome poverty, discrimination and repression.

Peace necessitates the building of processes that allow for broad participation and decision-making power among all social sectors. Expressed in terms of the thought of the Mayan People, peace means "good life," that is to say, *utz k'aslemal* in K'iche. To have good life

means to live well, without worries of any type, to have those things that are most indispensable for one's welfare, to have health, to smile, to eat well, to have work, to be able to educate one's children, to enjoy life; these are some elements of the "good life."

Unfortunately, neither civil society nor the indigenous peoples had an opportunity to directly participate in the negotiations. As a hypothesis, we stated that if we could have negotiated the contents of the accords, they could have been better, though it is possible that they might not have been.

FIRST ATTEMPTS AT PARTICIPATION BY MAYAN MOVEMENT IN NEGOTIATIONS

The peace process opened many doors and small cracks of participation for the organizations of the Mayans. Of course, this was not a gift from the government or from the URNG. They were the fruit of such a great loss of life. Indigenous and non-indigenous poor people had shed blood as they strived to win their freedom and to build a more just and humane world.

Starting in 1989 several Mayan organizations struggled in a variety of ways to have the issue of indigenous peoples included in the agenda for peace negotiations. In fact, that topic was not originally included. This endeavor was successful, and both the government and the URNG accepted the inclusion of an agenda item on the identity and rights of indigenous peoples.

The Mayan movement occupied certain significant political spaces, submitting its own clear proposals to the negotiations. This fact generated a wide range of reactions. Among Mayans, it generated internal reflection, both on an individual and collective level, regarding our identity, origin, culture, and historical roots. It also provided great stimulus for improving self-esteem and defining our own values.

This was a key development, representing a landmark in the historical process of the Mayans. Not only did the experience controvert discriminatory stereotypes and preconceived notions associating being Mayan with inferiority, uselessness, ignorance, laziness, being stupid, dirty, drunk and dumb. Many people succeeded in ridding themselves of these vestiges of colonial bias and stereotyping.

A number of events on a world and regional level contributed to Mayan consciousness-raising. Even though they were not directly related to the peace process, they indirectly benefited many commu-

nities through the dissemination of news over the radio, television, press, and other communications media.

Through the 1991 and 1992 Continental Conferences of Indigenous Peoples of the Americas, they expressed political opposition to the celebration that the government of Spain had intended. These events contributed enormously to strengthening indigenous identity and culture in Guatemala. There were multiple exchanges of ideas. All those who attended these events were nurtured by the experience.

Here again, acknowledgment should be given to the Mayan people of Guatemala for their tireless work and enormous support for the Nobel Peace Prize nomination of our K'iche sister, Rigoberta Menchú Tum. She received distinguished recognition for her political testimony and unconditional support from a wide range of organizations in Guatemala and from governments around the world.

I emphasize this, because this international celebration stirred the conscience of the entire world, at least as far as the news reached. In Guatemala, it provided a fundamental boost to further raise consciousness among indigenous peoples and Ladinos. Naturally, there were some people whose racism became more radicalized, but others understood and realized that Guatemala could not go on without much needed change. These conditions greatly contributed to the increase in the number of Mayan organizations, especially in 1992.

REQUEST FOR DIRECT MAYAN REPRESENTATION

Given the existence of numerous organizations, the next step to advance politically was to demand direct participation for representatives of Mayan organizations at the negotiations. The reason for this demand was simple: no one among the army commanders, the URNG commanders, or the government representatives was indigenous. We believed that those most suited to negotiating aspects regarding the indigenous peoples were the people themselves.

Neither the government nor the URNG accepted the Mayan organizations' proposals. The government and the URNG made several arguments to justify this stance. Among them, they cited the Framework Accord for the Negotiations, which clearly indicated that the parties in conflict alone would discuss the agenda items. In that sense, since the Mayan People were not a direct party to the conflict, they could not be directly seated at the negotiations table.

Both the URNG and the government could have made modifica-

tions to the Framework Accord given that the issue in question was extraordinary. In particular, it involved events related to the life, history, culture, identity and rights of more than 70 per cent of the population. Yet they did not do so.

Seeing that it was impossible to make changes in the negotiating mechanisms, the indigenous peoples were left with no choice but to accept one previously established, that is, for the indigenous peoples to draft and agree upon a proposal and then submit it to the ASC.

I would like to share with you our experience and that of many Mayan organizations. We viewed our internal debates as a process of growth, as something positive. Others viewed it negatively, because they equated it with divisiveness. As such, they demanded absolute, indivisible, magical unity in every aspect.

Sometimes one or two organizations displayed a certain degree of dissent on an issue where another 90 or 100 organizations were united. In particular, if the issue touched upon the government or the army, then even a certain part of the international cooperative groups would refuse to support us. They would say we were divided and that they couldn't do anything to help us until we were united.

There were times when we anguished over achieving absolute unity, but later we realized that all societies, even the sectors in power and the international cooperation groups themselves, all have great diversity in their ranks. Absolute unity does not exist. We thus put into practice the philosophy of the Mayan people of working for unity through diversity of thought and political vision. This allowed us all to come close together and achieve greater strength in our actions.

SUBSTANTIVE DISSENT IN MAYAN MOVEMENT

As a result of the polarization, political/armed confrontation, social divisions, militarization and repressive methods applied by the State, there were diverse views on how to deal with issues related to the Mayan people.

There was distrust among our organizations. People hesitated to make proposals for fear of being tagged as having political affiliations with the army or with the guerrillas. Though no direct accusations were made, anyone presumed linked closely to either of the two parties in conflict would meet all-out opposition to their proposals. This situation provoked subjectivity in our discussions because there were speculations of political relationships with the

parties, leaving little attention to the proposals of the Mayan people themselves.

For example, some organizations called for the demilitarization of indigenous communities, the turning over of lands grabbed by the military, and the demobilization of the Civil Self-Defense Patrols. They felt that under a system of militarization and population controls, it would be impossible to speak of recovering one's rights, identity, culture, and history. Invariably, some organization would immediately come forward, questioning such proposals and casting doubt upon them. Or they would counter them by demanding that the guerrillas also demobilize. Proposals that were more objective were thus neutralized and limited.

Little by little, however, we learned to overcome our errors. We also became stronger by putting into practice the principle of complementarity: We all have a piece of the truth.

DEVELOPMENT OF SUBSTANTIVE POINTS REGARDING INDIGENOUS PEOPLES

We succeeded in having the agenda "Identity and Rights of the Indigenous Peoples" included as an item for the peace negotiations. The following step was to promptly work on developing the document's corresponding political content.

Several documents and political proposals had already been worked on. What remained to be done was to bring organizations closer together, find points of commonality, discuss points of dispute, and agree upon which ones could be put off for deliberations later.

This methodology worked and facilitated the process. Prior to arriving at the negotiations table of the URNG and the government, there were two scenarios:

a. Negotiations among Mayan Organizations

As stated above, there was distrust among Mayan organizations. For that reason, every attempt was made to prioritize the interests of the Mayan people as a basis for transparency, so as to avoid additional problems in our internal relations.

Mayan coordinating bodies were formed, whose networks had between 50 and 70 member organizations. These coordinating bodies corresponded to different Mayan political trends. Specifically, there were three such trends:

i. One political trend advocated political and territorial autonomy, with the creation of an independent Mayan State;
ii. A second trend advocated integration into the State in its current form, without modifications. What this trend sought was opportunities for participation within that structure;
iii. The third trend proposed that a State be created where the Four Peoples inhabiting the country would be represented. This would be a multicultural, multilingual State. Such an approach presupposed the right to self-determination, the right to territory, and the recognition of peoples as such. In this way, our people's own systems could be revived and put into practice.

We can take satisfaction in substantial political achievement of the agreements reached among the Mayan people's organizations, inasmuch as these agreements defined a political strategy to put an end to discrimination and racism. After lengthy discussions, analysis, and reflection, based upon in-depth deliberations, we concluded that, in accordance with our Mayan principles and worldview, we could build a new, inclusive, balanced, harmonious State. That outlook corresponded to the third political trend.

Once the political strategy was defined, what remained was to develop mechanisms for attaining our aspirations. For that reason, the proposals of the indigenous organizations that came together in the Accord on the Identity and Rights of the Mayan People were taken up as a political program to be developed in the short-, mid-, and long-term.

Some proposals seemed to appropriately correspond to the period of negotiations between the government and the URNG, while other proposals were deemed appropriate to put into practice at a later period.

We made a mistake in including all our proposals in a single document that we did not negotiate as indigenous peoples. Nonetheless, they are now in that document, and what remains for us, as a Mayan movement, is to take that document, make it our own, and put it into practice.

b. Negotiations with Assembly of Civil Society

Once the consensus document was reached among the Mayan organizations, that agreement was submitted to the floor of the ASC for discussion. For purposes of advocating the proposals and preventing them from being rejected by the ASC, a high-level Mayan negotiators' commission was formed.

The work at the ASC was intensely arduous, but the majority of the proposals were included in the "Accord on the Identity and Rights of the Indigenous Peoples." This document was taken to the negotiations.

The high-level Mayan negotiating commission included representatives from each political trend mentioned above. This made for a solid defense of the proposals. With that experience, we realized that we had overcome distrust and disunity among our ranks.

We also learned that most things could be attained if alliances are sought with other sectors of society. The isolationism or self-isolationism to which we often fall prey is not the best way to transform societies.

BIRTH OF COPMAGUA

The process of discussing and developing political proposals posed a significant challenge: that of creating a Mayan political coordinating mechanism entrusted with the task of generating political ideas for attaining our goals. As such, on May 11, 1994, we decided to create the *Coordinación de Organizaciones Mayas* (Coordinating Body of Mayan Organizations or COPMAGUA). This coordinating body was initially formed by the following preexisting coordinating bodies: the *Consejo de Organizaciones Mayas de Guatemala* (Council of Mayan Organizations of Guatemala or COMG); *Asamblea Permanente del Pueblo Maya* (The Permanent Assembly of the Mayan People – APM); the *Academia de la Lenguas Mayas de Guatemala* (Academy of Mayan Languages of Guatemala – ALMG); and the *Instancia de Unidad y Consenso Maya* (Mayan Unity and Consensus Coalition – IUCM).

A coordinating council was elected by consensus, with two representatives from each preexisting coordinating body. Here, the members streamlined decision-making principles for purposes of consolidating the coordinating council. For example, it was agreed that all decisions would be made by consensus and on the basis of consultations with the membership. All proposals would be sub-

mitted for discussion, provided they were made in writing. Members of the body rotated responsibilities so that no one would appropriate the initiatives. Representatives, both in Guatemala and abroad, also alternated. This created equilibrium and political harmony within the coordinating body.

After establishing this coordinating body, donors came forward, offering economic resources. It was decided that only those resources that would help support the representation functions of the coordinating body would be accepted, i.e., money for plane tickets and for expenses involved in a tour abroad. No funds were accepted for operating expenses, wages or other items, because this could compromise the nature of our mandate.

That decision precluded many problems. For example, it kept the coordinating body from being put in a position of competing against its member organizations. It also prevented in-fighting over positions or salaries. We suggested to the cooperating agencies that they should give the donations directly to the preexisting coordinating bodies and to the organizations so as to aid in their development. In fact, those were the organizations that had sustained the political process in the past, and that continued to do so.

COPMAGUA fulfilled its mandate. It generated political guidelines for national and international actions, bringing hundreds of organizations together around its proposals. Thus, they held public demonstrations and led political lobbying with representatives of diplomatic missions in Guatemala, political parties, sectors of civil society, government bodies, and the URNG. It also took decisive actions to build international solidarity.

When the negotiations between the parties in conflict came to a standstill and eventually broke down, principally over a necessary Accord on the Identity and Rights of the Indigenous Peoples, COPMAGUA prevailed over the impasse through political pressure.

Another fundamental role played by the Mayan movement was that it established its political agenda. That made it evident that COPMAGUA had become a direct communication channel between the Mayans and the State of Guatemala.

It was proven that the Mayan movement supported the proposals of civil society and adopted them as their own. The Mayan movement worked intensely for those proposals, because the Mayans understood that progress for other groups signified progress for the Mayan people.

SIGNING THE ACCORD ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

After many vicissitudes, the URNG and the government signed the "Accord on the Identity and Rights of the Indigenous Peoples" in Mexico City on March 31, 1995. Our organizations celebrated this event, since it marked the first time in Guatemalan history that the existence of a policy of racism and discrimination on the part of the Guatemalan State was being openly and publicly discussed. Yet we took care to immediately distinguish between our emotional response and our actual achievements.

A General Assembly convened on May 8, 1995 to evaluate the contents of the agreement reached at the negotiating table, to strengthen the transparency of the process and to ensure COPMAGUA's credibility.

The general assessment was that the accord did not embody all our aspirations as submitted, but that it was a good motivational instrument to continue working for our rights, and to continue to pave the way for our participation.

Under the policies of the State no binding mechanisms were established to resolve the problems of the indigenous peoples. Certainly, some were recognized as rights inalienable to the indigenous peoples. Still, declarations of principles were insufficient unless there were mechanisms created to implement them.

Both the URNG and the government agreed to establish the Joint Commissions which would be constituted following the signing of the Accord, under which representatives of indigenous peoples and government representatives, with equal status, would meet to discuss, negotiate, and establish legal, statutory, and constitutional mechanisms for implementing the Accord.

At the assembly called to assess the Accord, we also realized it would take all our wisdom and resources, both human and material, to implement the agreement.

IMPLEMENTATION OF ACCORD ON INDIGENOUS PEOPLES

An important aspect that I should mention is that Mayan organizations were not consulted when the schedule was drawn up for the implementation of the Accord. The parties in conflict established the implementation calendar in accordance with their own interests, not in accordance with the timelines and political processes of the Mayans themselves.

This situation imposed a dynamic on COPMAGUA and other Mayan organizations when the time came to implement the Accord. As such, technical, political, and professional difficulties hindered consultations and the generation of proposals for implementation of the Accord.

Nonetheless, the Mayans, demonstrating our sincerity and maturity, accepted the challenge of commencing the implementation of the Accord, even in a position of total disadvantage vis-à-vis the State.

COPMAGUA'S POLITICAL AND OPERATIONAL ACTIONS FOR IMPLEMENTATION OF ACCORD

In late 1995 there was a change in COPMAGUA's leadership, and two other coordinating groups joined as members: the *Consejo Tukum Umam* (Tukum Umam Council) and the *Unión del Pueblo Maya* (Union of the Mayan People). The *Asamblea Permanente del Pueblo Maya* withdrew, stating that it was unable to follow up on its commitments. This withdrawal was accepted, since membership in COPMAGUA is voluntary. In total, five coordinating groups continued belonging to COPMAGUA, that is: the *Consejo de Organizaciones Mayas de Guatemala*, the *Academia de las Lenguas Mayas de Guatemala* , the *Instancia de Unidad y Consenso Maya*, the *Unión del Pueblo Maya de Guatemala*, and the *Consejo Tukum Umam* .

I mention these important changes because they are indicative of a new process in the coordination of COPMAGUA, both in terms of its decision-making processes and in terms of its operations.

In a major assembly held from August 8 to 9, 1996, over 1,000 representatives attended from organizations and communities of the Mayan, Garífuna, and Xinka peoples. During this assembly, eight Permanent National Commissions were formed, five commissions established under the peace agreements, plus three additional commissions formed to meet the interests of the Mayan people. These Commissions had the following mandate:

- To engage in consultations on specific issues, aimed at determining the content of negotiations with the State;
- To elect the members of the Joint Commissions;
- To monitor the negotiations process between the government and indigenous representatives.

These Commissions, identified with the initials CNP (*Comisiones Nacionales Permanentes*), were as follows:

1. CNP on Constitutional Reforms
2. CNP on Educational Reform
3. CNP on the Official Recognition of Indigenous Languages
4. CNP on Indigenous Law
5. CNP on Reform and Participation at All Levels
6. CNP on the Rights of Indigenous Women
7. CNP on Land Rights
8. CNP on Sacred Sites and Areas

These Commissions fulfilled their mandate of holding assemblies and electing delegates for the negotiations with the government. Yet for a variety of reasons, best analyzed on another occasion, they were not able to follow up on the negotiations, and they abandoned those delegates entrusted with the difficult task of dialoguing and negotiating with the State.

In order to effectively carry out the work of developing proposals and negotiating, each commission contracted advisers. Unfortunately, most of those advisors overstepped their roles and ended up decisively directing the Commissions. This was somewhat of an error, because in overstepping their functions, they created dependency among the indigenous negotiators.

SOME HIGHLIGHTS OF COMMISSIONS' ACHIEVEMENTS

The Commission on the Official Recognition of the Indigenous Languages developed a congressional bill on mechanisms for the recognition of indigenous languages, but the bill was not submitted to the floor of the Congress. This commission is not functioning at present.

The negotiations of the Commission on Sacred Sites broke down, without any successes to report. They held meetings about ceremonial sites and spirituality, but no proposals came out of them.

The Commission on Indigenous Law participated in drafting the proposed constitutional reforms on the recognition of indigenous law. Though many changes were introduced to the bill, limiting its content and scope, the Congress of the Republic passed the law. Nonetheless, the reforms were rejected in the referendum held in May 1999.

The Commission on Constitutional Reforms drafted proposed

reforms to the Guatemalan Constitution. Twelve reforms regarding Indigenous Peoples were passed in the Congress, but were not approved in the referendum.

The Commission on the Rights of Indigenous Women succeeded in establishing the *Defensoría de la Mujer Indígena* (Indigenous Women's Defense Body). It continues to function today in a limited fashion and receives government funding.

The Commission on Land Rights succeeded in getting the Land Fund Act passed but drew much criticism because it does not provide a solution to the existing land problem. Furthermore, it fails to capture the true spirit embodied in the concept of "Territory of the Indigenous Peoples."

The Commission on Reform and Participation at All Levels is currently negotiating with representatives of the government. It has succeeded in drafting some proposals, including proposed reforms to the Municipal Code, the Law on Urban and Rural Development Councils, now under discussion, and the Law on Indigenous Communities.

The Commission on Educational Reform succeeded in drafting a proposal on educational reform. This proposal did not advocate or introduce Mayan education *per se*. Yet it did take a first step towards changing the ideology of education. With the budget cutbacks in education, however, it is doubtful that these reforms will be put into practice.

One aspect worth emphasizing is that despite everything, the participation in the Permanent National Commissions was an excellent learning experience. The errors and successes in this implementation process have taught us a great deal.

STATE'S POLITICAL ACTIONS VIS-À-VIS IMPLEMENTATION OF ACCORDS

The previous government administration, which left office on January 14, 2000, played a more active role than the current administration in implementing the Peace Accords. Its involvement was insufficient to bring progress on many issues in spite of active discussions and work meetings regarding the peace process. Convened in the past administration was the Joint Commissions for the "Accord on Indigenous Identity and Rights." The work was completed but few agreements were reached since the majority of the negotiators did not have the will to make progress on these issues.

The current administration has Alfonso Portillo as its president.

President of the Congress is General Efraín Ríos Montt, the worst perpetrator of genocide in the history of Guatemala. It would appear that this administration is out to crush the peace process and undermine compliance with the Accords through a process of attrition. Of course, in public they say the peace accords are Agreements of State, but in practice there is no implementation or compliance.

SIGNING OF FIRM AND LASTING PEACE

After years of work and constant struggle, the Accord for a Firm and Lasting Peace was signed on December 29, 1996 in Guatemala City. This marked the end of 36 years of armed conflict. There was no hiding so many people's high emotions and profound hope. At last, a long-held dream was achieved: an end to armed conflict, human rights violations, injustice, poverty, discrimination, racism and other structures that adversely affect the population.

Uncertainty regarding the immediate future was still present, but emotions ran so high that everyone celebrated this memorable day in Guatemala.

INCORPORATION OF URNG INTO CIVIL SOCIETY

a. Government's Strategy

As part of the operational agreements, the URNG began to dismantle its forces and surrender the weapons it had in its possession. The government complied with some of the material conditions for reincorporating the ex-combatants, but did not provide support to all of them. It should be remembered that the majority of the URNG's members were Mayan. For decades, these Mayans gave their lives for their people, yet they ended up in the same or worse conditions than they faced before they joined the guerrillas.

For its part, the government did not entirely dismantle its military detachments. Neither did it reduce the army's budget. The Presidential General Staff, which was the principal agency of State repression, remained in existence. In this sense, the operational accords were breached.

b. URNG's Strategy

As part of its approach to ensuring its members' survival and security, the URNG adopted a passive, "cautious" attitude in the face of

many government breaches of the Peace Accords. The URNG did not use the same language anymore. It no longer demanded the rights of the people. In a certain sense, its stance showed complacency and benevolence. It even gave its stamp of approval in some degree to the policies of the past two administrations. As a result, in the opinion of the population in general, the URNG had joined forces with the government in search of its own interests rather than those of the population.

Public actions taken by URNG representatives demonstrate that the URNG was effectively coopted by the system. In late October 2000, for instance, four URNG Congressmen voted with Ríos Montt's majority party. It was lamentable that the URNG had forgotten the revolutionary principles for which so many people died.

It could be said that the government achieved what it sought for at the onset of the peace negotiations since the URNG became politically immobilized. Furthermore, the conflict was ended without any change in the structures that caused the war.

We don't know exactly why, but the URNG did not prepare itself politically for its integration into civil society. It maintained the same military-style relationships among its membership as existed previously. That is to say, it maintained military discipline, even within an eminently political and social realm. As a result, many URNG members resigned. Many organizations that had once maintained a relationship with the URNG had severed their ties. Other organizations that continued the relationship under direct military discipline limited their activities and several disappeared.

The COPMAGUA was also affected by this situation, because several members of the URNG took control of the coordinating body's leadership following 1996. It is in this light that we mention changes in COPMAGUA's leadership, noting that the change ushered in a new phase in its development.

ONSET OF POLITICAL DIFFICULTIES WITHIN COPMAGUA

It should be noted that many of us contributed our efforts as members of this coordinating body. It should also be acknowledged that COPMAGUA fulfilled a large part of its mandate as a place for generating dialogue and negotiations between Mayans and several social sectors, both in Guatemala and abroad.

Political events totally outpaced the capacity and vision of the coordinating body's leaders, with the new leaders remaining in place from 1996 to the present. These difficulties are normal for anyone

dealing with a totally new situation. But it is also important to emphasize that it is harder to build than it is to denounce or to criticize. As such, the errors committed in the way COPMAGUA has been led are worth studying and analyzing, so that we can keep from committing the same mistakes in the future.

Unfortunately, the principles of equilibrium in decision-making, consultation, and consensus that were laid at the time of COPMAGUA's birth gradually eroded. This became a source of friction beginning in 1997. Since then, individual organizations started to resign from the group. COPMAGUA's structure, credibility and legitimacy crumbled.

A fundamental principle of COPMAGUA was also breached: that of not receiving funds for operating expenses. This created a crisis of leadership, a loss of political vision, and an inability to mount actions in fulfillment of the mandate for which COPMAGUA was created. As funds poured in to pay for offices, secretaries, delegates, coordinators, etc., people began to compete with one another, vying for positions. With that, our coordinating body fell apart.

This situation turned the coordinating body into an entity for the distribution of positions. Little effort was placed in revising strategies or providing political leadership for the Commissions.

COPMAGUA committed a major error when the organization yielded to the political decisions of the URNG. COPMAGUA thus lost its autonomy and its strategic vision that planning must be based on the interests of the Mayan people themselves. This was perhaps the determinant factor in COPMAGUA's demise. Contributing to major internal contradictions was this political dynamic concerning dealings within the coordinating body itself.

Towards mid-2000, the *Academia de las Lenguas Mayas* and the *Consejo de Organizaciones Mayas de Guatemala* withdrew from COPMAGUA. With that came to a close a phase in the process of the Mayan people's efforts at organizing to protect their rights.

YEAR 2000: TRANSITION TOWARD A NEW POLITICAL PERIOD

Fortunately, nothing is static. Something new is born out of the old. This coincides with the outlook of our grandparents, who taught us that everything has its time, its period, and its cycle. During the year 2000, various Mayan leaders and organizations exchanged points of view to reach agreements on how and when to continue creating a space for discussion and political decision-making among the Mayan people.

The current discussion revolves around how to move forward in building a multicultural, multilingual State, utilizing aspects of the Accord on the Identity and Rights of the Indigenous Peoples, along with other aspects to set our own political agenda, with full autonomy and without interference from outside organizations.

A working group is analyzing the shortfalls and accomplishments of the Permanent National Commissions, the Joint Commissions, COPMAGUA itself and other aspects, so that we will not stumble over the same obstacles in the future.

It is quite clear that a broad, participatory, inclusive political space needs to be created, with a deeply thought-out political vision on how to build the State as defined in the Peace Accords.

SOME MAJOR ACCOMPLISHMENTS OF PEACE PROCESS

The distrust that existed within communities and families owing to the armed internal conflict is starting to dissipate. Little by little, community ties are regenerating. A process of reencounter among families is taking place.

The justification for military control and human rights abuses no longer exists; the armed conflict and the guerrillas have gone away. People feel free to walk in their communities and towns, even though fear persists due to common crime and an upsurge in kidnappings and murders committed by paramilitary bands in recent months.

Even with all the errors committed during this short process, the fact that the issue of indigenous peoples was addressed is unprecedented and irrevocable. There has been a reaffirmation of indigenous identity, indigenous self-esteem, and indigenous values.

Mayan authorities that were displaced by militarization and the Civil Self-Defense Patrols have been reestablished. Extreme poverty persists. Yet the population is mobilizing to create small businesses and small-scale trade. People are organizing and associating to promote production and trade.

At elementary and secondary schools and in the universities, the rights of indigenous peoples are being discussed. For now, we can speak openly and anywhere about human rights and the rights of indigenous peoples. A report from the Commission for the Historical Clarification of Human Rights Violations now exists, whose conclusions could be implemented.

A Mayan political vision of what we want in the new State exists. There is greater participation of women in the struggle for

women's rights. Greater specialization exists among Mayan organizations for our political work. The government's international policies with respect to indigenous peoples are favorable to indigenous rights.

There are still things that remain to be done:

- Regain the political momentum of the social movement in Guatemala, which is in a state of transition;
- Define a national strategy for economic development;
- Continue to strengthen the Peace Process through new work for compliance with the Peace Accords;
- Build a space for reaching political consensus among the Mayan people;
- Dismantle existing repressive entities, such as the Presidential General Staff and military detachments in places considered strategic;
- The current administration must stop deceiving the population and must act upon the commitments it has assumed.

Some of the lessons learned in this peace process are:

- The indigenous peoples must have solid organizations and entities with clear political vision for negotiations;
- The indigenous peoples must directly negotiate our aspirations. The fewer intermediaries, the better;
- We must be sufficiently broadminded, requesting support and advice, while being careful that functions agreed upon are fully performed;
- Broad political alliances are indispensable for attaining our objectives;
- Dialogue, lobbying, and fostering sensitivity among the sectors in power are fundamental for changing attitudes;
- Unity is important but the establishment of consensus is indispensable to keep our proposals from being weakened;
- As indigenous peoples we must once again put to practice the principles and historical foundations upon

which our forebears developed. These are our best instruments for being different and for being able to persuade others;

- We must put self-determination into practice very carefully and do less talking about it.

RECOMMENDATIONS

We ought not to have a distrustful attitude towards the proposals of the indigenous peoples. The best way to consolidate democratic processes is to be open to dialogue and create spaces for the active, decisive participation of the indigenous peoples.

We must make the required substantive changes in legal, economic, statutory, and constitutional terms in order to prevent conflicts.

We must invest in the development of the indigenous peoples in a manner that involves consultations with them and with their direct participation.

We must develop public policies of the State in such a way that they directly benefit the indigenous peoples.

To the Cooperation Agencies

We ask you to provide economic support to indigenous organizations and communities, without conditioning that support in any way.

We ask you to review your policies, and establish policies in support of the indigenous peoples.

We ask you to monitor the results of investments or donations made to governments that request money in the name of indigenous peoples.

To Civil Society in General

We ask you to give your unconditional support to the proposals of the indigenous peoples.

We ask you to contribute in facilitating access for indigenous representatives to decision-making positions.

In conclusion, we must all make an effort to create conditions for dialogue and negotiation before armed conflict breaks out, as their consequences are irreparable. Of course, if the State oppresses its people and leaves them no other option, peoples have every right,

using a variety of means to seek a better life and demand respect for their rights.

Juan Leon is the Executive Director of Defensoria Maya de Guatemala.

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In Search of Creative Solutions to Gender Conflict among the Indigenous Populations of Mexico

Nellys Palomo Sánchez

This paper explores elements of conflict among indigenous populations. These conflicts have become more acute in connection with the Zapatista uprising that began in January 1994, and the resulting militarization has spread to other regions of the country.

Basically, I will attempt to address this issue within the context of Mexico's southeastern region, which includes the states of Oaxaca, Guerrero, and Chiapas. From there, I will examine how militarization affects women. The objective is to recognize and analyze the militarization of Indian peoples in the country and the consequent gender conflicts.

INTRODUCTION

Since ancient times, Mexico has been a multicultural, multi-ethnic country, comprised by distinct cultures and peoples. This diversity has been accompanied by a long history of armed and/or religious conquests, assimilation, resistance, subjugation, and discrimination against Indian populations.

In recent times, these contradictions have been clearly resurfac-

ing. We find ourselves enduring profound injustices, facing needs that tend to polarize us: between Indians and mestizos, men and women, and rich and poor.

Feasible solutions are becoming increasingly difficult, since the approach to resolving these types of contradictions and differences is being pursued by attempting to annihilate the other party, by imposing force and resorting to violence.

Our cultural, ethnic, and social diversity and our gender differences, instead of enriching us, have led to an atmosphere of intolerance, where difficult situations and conflicts are seldom resolved through dialogue, negotiation, mediation, and consensus-building. A clear example has been the Mexican government's approach to the conflict in Chiapas since 1994. This particular approach spawned innumerable conflicts that invariably caused the breakdown of family relations, exclusion, humiliation, fights and even armed confrontation as a form of solution.

In this context, indigenous women have started to demand their rights. This has brought about a power struggle, not only with the State and the prevailing legal system, but also within the indigenous communities themselves. Women are defending specific interests and questioning certain customs and practices that violate their rights as women. Particularly challenged are asymmetric gender relations and distribution of power within their communities. Indigenous women are working to protect the integrity of their culture but their perspective is not that of blind acceptance of established traditions. Bringing in fresh dynamism, they are questioning the relevance of some customs, seeking new ideas and reference points upon which to build their own dignity. This has resulted in conflict within the very peoples affected by the military presence.

SITUATION OF THE INDIAN PEOPLES

Mexico's indigenous population is at least ten million, or approximately 10 percent of the country's total population. This population comprises 56 ethnic groups, making for a rich variety of cultures, languages, customs, and traditions, spread throughout the nation's territory. The majority of the indigenous population is located in the southern and central regions of the country, concentrated in the states of Chiapas, Oaxaca, Veracruz, Yucatán, and Puebla.

In general terms, the indigenous population faces extreme poverty and marginalization. For indigenous women the situation is even more demanding. Many of them are not literate, do not speak



Spanish, and are denied the right to decide the number of children they will have. According to the 1990 Census of the National Institute of Statistics, Geography, and Information Sciences (*Instituto Nacional de Estadística, Geografía e Informática* – INEGI) close to half of the indigenous female population (45.8 percent) have no formal schooling. Monolingualism, illiteracy, low levels of education, and extreme poverty limit the women's decision-making capacity with regard to many fundamental aspects of their lives, particularly those involving health. The women are extremely vulnerable to poor health services, medical abuse, and imposed demographic policies. INEGI sources recognize that the women with the least access to schooling are found in rural indigenous zones, and that these women are the ones who have the most children. Similarly, the highest levels of maternal mortality are seen in the states of Oaxaca, Chiapas, Hidalgo, San Luis Potosí, Puebla, Veracruz, and Chiapas, precisely where the largest indigenous population is located.

Southern Mexico, comprised by the states of Chiapas, Guerrero, and Oaxaca, covers a region measuring 233,045 square kilometers (89,955 square miles). This accounts for 11.84 percent of Mexico's territory. The region includes 756 municipalities, representing 31.67

percent of the national total. The great majority of these municipalities are indigenous peoples.

This region is considered "backward," given the intense social contradictions and severe lack of socioeconomic equilibrium that persists to this day. This part of the country also has the largest number of ethnic groups, such as the Mixtecas, the Zapotecas, the Tzotzils, Tzetales, or Nahualts who are settled in pre-Hispanic zones, as is the case in Chiapas and Oaxaca.

Another significant feature of this region is its age distribution. The female population in the southern region is predominantly young with an average higher than the national level. The state of Chiapas has the highest with 43.8 percent, followed by Guerrero and Oaxaca, both of which surpass the national average of 37.3 percent. With regard to marital status, young single women account for slightly over one-third of the population in each state of southern Mexico. At least 16.5 percent of the female population of Chiapas over the age of 12 live in a common-law relationship. As a result, Chiapas ranks first in common-law unions and maternal mortality.

Over one-third of the country's indigenous women, or 38.8 percent of the total national indigenous population, reside in these three states. Statistical data also show that rural and indigenous areas have the highest rate of population growth, far surpassing the national average. According to healthsector figures, women in Chiapas of reproductive age have an average of 3.6 children, while the national average is 2.7.[1]

This region also has high rates of illiteracy. Among the female population, illiteracy is 30 percent, or twice as high as the national average. Chiapas has the highest illiteracy rate at 37.5 percent, followed by Oaxaca with 34.6 percent, and finally Guerrero with 31.3 percent. More than one-third of Mexico's female illiterate population is concentrated in these three states. This explains in part the conditions of backwardness and marginalization of the women in southern Mexico. If we examine the factors of gender and ethnicity associated with illiteracy in greater detail, we can see a striking drawback for these women.

INEGI does not believe that the census accounts for 100 percent of the indigenous population, and notes an underreporting of maternal deaths among indigenous women. As for sexuality and conjugal responsibilities, it is known that indigenous women become sexually active prematurely. Nonetheless, other aspects need to be researched further. Along these lines, several government institutions recommended the need to pinpoint and complement studies

with "appropriate research on sexuality, fecundity, and culture," to sufficiently understand the context of the conditions faced by the indigenous women. That could expand the parameters, provide better knowledge, and allow women to make decisions involving their bodies.

Currently, the Indian peoples with their ancient and modern histories are reshaping our paradigms. "The hidden faces" speak to us about changing reality, eliciting doubts and hopes in many of us. They have taken us back to our roots, reminding us of our essence. They question our model of development, globalization and our confidence that a happy future would await us once we signed the Free Trade Agreement (NAFTA, signed by Mexico, the United States, and Canada) in January 1994.

Through their visible presence, they are courageously working to overcome the oppression and marginalization they have faced for more than 500 years, so as to ensure that these conditions do not persist. It is in this context that indigenous women have begun to participate. In these changing times, these women are conscious that they do not want to be the subordinate sector of the new millennium, or continue living in servitude for "others." Their struggle focuses on wanting to be heard. They are willing to dialogue to convince others that they cannot go on with so much oppression, sexist relationships, and exclusion.

INDIAN PEOPLES IN "REGIONS OF REFUGE"

For Indian peoples the road to the recognition of their rights has been a jagged one, full of deceit, denial, and forced assimilation.

Manuel Gamio, in his book **Forjando Patria** (Forging a Nation), stated that indigenous cultures are a degeneration of the great pre-Hispanic cultures. He argued that what needs to be promoted is their integration into mestizo cultural progress. This way of thinking called for assimilation of Indian peoples, purportedly leading to full citizenship. It is worth noting that in contrast to this position, Lombardo Toledano advocated the building of a multicultural Mexico, taking up the Leninist theory on *small nationalities and self-determination of nations*.

For many years, the official offensive hushed any position other than *indigenismo* (assimilation of indigenous peoples). The transition of official discourse from "mestizo Mexico" to"'multicultural Mexico," just as the transition being made by women, finds its explanation in pressure from indigenous sectors and organizations.

Yet it is also a modern adaptation of control mechanisms used by the Mexican State. Obviously, the imposition on indigenous populations and the subordination of women have not worked. Thus, mechanisms are being sought to integrate these sectors into the national mainstream under conditions of supposed equality. The sense of "being Mexican" was expanded to incorporate these two sectors left out during the post-revolutionary era.

On January 28, 1992, the **Official Federal Daily Journal** published the amended text of Article Four of the Constitution, transforming indigenous status and granting indigenous persons full citizenship. This amendment recognizes "the multicultural composition" of the Mexican nation, "derived from the indigenous peoples." At the same time the amended article states that:

> *The law shall protect and promote the development of their languages, cultures, practices, customs, resources, and specific forms of social organization and shall guarantee their members effective access to the jurisdiction of the State.*

Two years after the amendment of Article Four, the Zapatista movement launched its cry of "enough already" demanding "justice, freedom, and democracy." They protested that despite changes in Mexican law, the Indian peoples are still subjugated in a system of exclusion. They still face various forms of oppression and exploitation and are still denied their civil rights. The uprising in January 1994 forced us to take a new look at their history, their particularities, and their cultural identity. They stood up to globalization with a powerful sense of identity. They criticized modernity and denounced the negation of their rights.

THE CONFLICT IN CHIAPAS

Without question, January 1994 was a watershed in Mexican history. The revolt of the Zapatista Army of National Liberation (EZLN) placed the indigenous peoples' issue on the national agenda. The Zapatista uprising clearly demonstrated the various facets of oppression and exclusion faced by Indian peoples and women.

The government answered the Zapatista insurrection with bullets and militarization. But the government did not project the response of civil society to the massacres in Chiapas. The demand to lay a basis for dialogue was a major blow and a challenge to the belligerent Mexican government.

In order to promote dialogue, a Peace and Reconciliation Commission (*Comisión de Concordia y Pacificación* - COCOPA) was created, comprised by representatives from different political parties in Congress, as well as a National Mediation Commission (*Comisión Nacional de Intermediación* - CONAI) headed by Bishop Samuel Ruiz and other distinguished individuals.

After January 1, 1994 and another 22 months of political and military tension, the first phase of negotiations began in Chiapas. The parties met after many rounds of conciliation regarding the conduct of the dialogue. Organized civil society groups made this negotiation possible, putting pressure on the government to reach a solution through dialogue and negotiations, and not through the use of military force.

As a starting point for the negotiations, they agreed to fully discuss the root causes of armed conflict in Chiapas and to find alternative solutions for those. In accordance with this approach, the following work sessions were agreed upon:

- Indigenous Rights and Culture
- Democracy and Justice
- Welfare and Development
- Women's Rights in Chiapas

Involved in this phase of the negotiations were the initial players in the conflict, representatives of Indian peoples, specialists and university professors who were advisors of the Zapatistas.

Out of these work sessions, a consensus document was drawn up. Named the "Accords of San Andrés Sacamchem," it was earmarked for incorporation into a legislative bill under which the Mexican Constitution would grant recognition to the Indian peoples.

Based on the San Andrés Accords, a bill was introduced by the Peace and Reconciliation Commission to the Mexican Congress. Yet the federal executive branch submitted another bill that contradicted the essence of the accords, once again reducing the Indian peoples to the category of simple communities, with no rights as peoples, no right to their territories, and no right to recognition of their autonomy.

This resulted in a breakdown of the talks in September 1997. The parties have not come back to the negotiating table and mediation mechanisms such as CONAI have been rejected by one of the parties.

It must be recognized that the reality regarding the rights of In-

dian peoples, denied for so many years, was historically vindicated in light of the Zapatista rallying cry of "Democracy, Freedom, Justice, and Dignity." These demands were upheld by other groups throughout Mexico and in other countries where the Zapatista exercised some influence.

Over the past six years (1994-2000) a variety of initiatives, actions, proposals, studies, and research have been seen regarding the struggle and conflicts of Indian peoples. Indigenous organizations, women's groups, and organizations of civil society, academic and government sectors, each from their own very particular perspective continue to seek solutions and alternatives to the indigenous insurgency and ways for resolving the conflict. Nonetheless, the government position has been closed. Hence the dialogue and negotiations between the conflict's players have not resumed since September 1997.

CHALLENGE OF RECOGNIZING RIGHTS OF INDIAN PEOPLES AS NATIONAL DEMAND

Today, it appears that Mexico faces a dual challenge: the struggle to open democratic spaces and to seek recognition of civil rights for "vulnerable" sectors—like women, indigenous populations, and children. The government is adopting the language of respect for human rights. At the same time, however, it orders restrictions, exclusion, and extermination against a part of the population that is struggling for social equality and justice such as the indigenous populations.

There is a discreet but constant violation of human rights. The government commits these violations under the pretext of fighting subversion and drug trafficking. It will resort to any method of repression, including torture, forced disappearances, and paramilitary groups, as it wages its silent war.

In certain zones, militarization intensified involving paramilitary groups, para-police groups, and armed civilian groups.

This escalating militarization in indigenous regions is approved and supported by the United States, one of the principal sponsors of military aid to Mexico. The government received at least a million dollars in 1997. In addition, Mexican soldiers comprise one-third of all the military students enrolled at the controversial School of the Americas of the U.S. Army in Fort Benning.[2] In 1997, 305 Mexican soldiers trained abroad. This special training covered counterinsurgency and insurrection, jungle operations, patrol and

infantry actions, revolutionary war and communist ideology, terrorism and urban guerrillas, interrogations, combat intelligence and analysis. They were also trained in armed combat, psychological warfare, and battle tactics.

This strategy, seen since 1994, seeks to exterminate members of the indigenous communities, peasants, defenders of the autonomous municipalities; and little-known local leaders who support the tradition of struggle and defense of political, social and economic rights.

The violence has grown, as has the supply of arms. More and more civilians, including indigenous persons from the communities themselves, are receiving military training. Military encampments have mushroomed, and harassment of individuals, members of social organizations, NGOs, and communities has intensified. Already persons just disappear in the midst of all the patrols, checkpoints, surveillance, investigation of foreigners, threats, and finger-pointing.

Police and military designate their tasks to groups of armed civilians trained in military techniques. This practice has led to polarization within the communities, creating conditions for a civil war.

The majority of the Mexican Army's actions have been concentrated in the country's southeast. Yet they have been seen in other regions that have indigenous populations such as the Huasteca zone or the Sierra Tarahumara. For reasons of a different sort, northern Mexico also has a strong concentration of military presence. The militarization of the northern region under the pretext of controlling drug-trafficking has led to an increase in murder and violence. Some of these cases have directly affected women, as seen in the more than 130 young women murdered in Ciudad Juárez, Chihuahua[3] since 1993. The perpetrators of these crimes are still unknown.

An examination of the conflict involves the identification of at least five elements:

1. *The main players:* Who are the parties and what are their interrelations? How has this changed in the course of the conflict? What mechanisms have been used to mobilize people both for and against? What role has been played by Mexican institutions, the UN, and outside influence and support to the Zapatistas and to the Indian peoples?;
2. *What are the interests at play?* Threatened collective identity, or the indigenous populations on the one hand and on the other, the government and its refusal to

recognize them as a part of Mexico; attempts to assimilate the Indian peoples into the globalization process; the wealth of the territories inhabited by the indigenous populations;

3. *What leadership exists and what strategies are being taken?* The perception of indigenous leaders, including Zapatistas and non-Zapatistas; how the situation is approached; how the Zapatista experience extended to other regions and countries; historical reflections regarding this conflict;
4. *What is the current dynamic of the conflict?* The breakdown of the social fabric, displaced communities, prisoners, rape of women by the military, forced sterilizations, a permanent military presence in indigenous regions, the breakdown of dialogue and negotiations;
5. *What are the tactics of this war against the indigenous populations?* The war of extermination applied to the indigenous communities does not only consist of bullets, murders, and disappearances. There is also an endemic hunger that plagues the indigenous populations. A strategy of *war by hunger* is applied. Lack of food diminishes family and community resistance. Applying this strategy is the worst form of violence on the part of the government. Displacement and eviction prevent thousands upon thousands of indigenous persons from cultivating their fields or returning to their homes.[4]

   Displacement cuts off entire populations from their means of survival and production. These people are driven into the mountains, where they are constantly in flight, moving their camps from one place to another, without food or the most basic elements for survival. According to the testimony of these populations, both the army and the paramilitary forces go into the mountains to hunt them down and murder them. Meanwhile, women who remain in their communities are harassed and threatened with rape by members of the official party, PRI (Revolutionary Institutional Party), and paramilitary groups. Survival becomes a primary goal that all other demands for justice, peace, and democracy have to be postponed.

PARAMILITARY FORCES IN CHIAPAS AND OTHER INDIGENOUS REGIONS

What is a useful concept for defining the paramilitary forces? These are groups of white guards, gunslingers, armed groups, and criminals, who have party and organizational affiliation and after a short time become paramilitary groups.

The question we ask ourselves is: What makes paramilitary groups different from other groups that already existed in Chiapas prior to the conflict?

These groups emerge in a context of low intensity warfare as a strategy to undermine political, social, religious, and women's organizations.

They are not only groups that assault, steal, or kill. They engage in specific actions to undermine or weaken those who directly or indirectly oppose the current regime. They have a relationship to the state apparatus. Their actions take place at key political moments. Their objectives or players are well defined. They play a very concrete role in the struggle against the insurgency or any other type of opposition to the government.

There are identifiable characteristics of these paramilitary groups: they are visible in the indigenous regions; they develop in the municipalities with the highest levels of marginalization and poverty; the majority of the police forces and the military are involved with them, through their checkpoints or camps; they are in municipalities governed by the official party; they are linked to some local or federal representative from the PRI party; they have some religious connection, particularly with evangelical groups or the official church; some are openly identified as PRI sympathizers or activists; they are linked to ex-military officers and ex-police officers; they are found where autonomous municipalities or bases of Zapatista support exist; they are linked to key supporters of municipal mayors or ex-municipal mayors, or persons in other positions of authority in the municipality from the official party; their principal targets for attack are the Diocese of San Cristóbal de las Casas, the PRD (Party of the Democratic Revolution), the EZLN, NGOs, international observers and human rights organizations; they receive paid training; they use high-caliber weapons; they operate in regions where there are major economic interests over the land, production, or investments.

In addition, their distinguishing features consist of the following actions: murder, ambush, kidnapping; displacement of the popu-

lation; denial of freedom of religion and closing of places of worship; destruction of homes; theft of production infrastructure (mills, work tools, warehouses, etc), domesticated animals and corn produce; checkpoints and demand payment from those opposed to them; coercion to join their paramilitary group or the official party, harassment, death threats; demand payment for the maintenance of the paramilitary group; and rape of indigenous women.

Today in Chiapas the presence of these groups is recognized, and they are fully understood to be an additional player. As of 1994 only two such groups had been identified: the Aguileras and the OCOPECH (*Organización Campesina Obrera Popular de Chiapas* - Popular Peasant and Worker Organization of the State of Chiapas). In 1995 another three appeared: *Paz y Justicia* (Peace and Justice), the Chinchulines and the *Alianza San Bartolomé de los Llanos* (Alliance of San Bartolomé de los Llanos).

If we were to continue counting, we would find at least 31 documented groups. These paramilitary groups are located in municipalities where there is a clear Zapatista influence or in areas known today in Chiapas as the autonomous municipalities. The increase was particularly substantial between 1997 and 1998. In fact, the 27 groups known as of that date (December 1998) represented a 44 percent increase, according to information provided and processed by the Community Action Center for Economic and Political Research (*Centro de Investigaciones Económicas y Políticas de Acción Comunitaria* – CIEPAC).

The influence of these groups is seen in 37 municipalities, in other words, at least 33 percent of the 110 municipalities of Chiapas. Out of nine zones in the state, at least seven have a presence of these paramilitary groups.

Although several leaders of these groups have been arrested, they are freed almost immediately. They either pay a bond or no evidence is found against them, since they are protected by police entities and the government attorney's offices. In several places where these groups operate, they receive support, information, and protection from the military and from police forces. The argument used the most is that the military should not leave the state, since Chiapas, Guerrero, and Oaxaca constitute a drug-trafficking route and Mexico's southern border needs to be protected.

Another element reinforcing paramilitary groups in Chiapas involves federal government support to the state of Chiapas for strengthening its police forces.

Secretary of the Interior Francisco Labastida Ochoa signed a

Public Security Agreement. This measure earmarked 127.5 million Mexican pesos in federal funds for increasing the salaries of the deputy government attorneys, and for hiring 267 judicial police, 40 experts, and 50 agents, in addition to the 500 female riot squad members hired to counteract marches and meetings, thereby effectively impeding the participation of women.

All these measures form a part of a strategy of low intensity warfare, which, as Carlos Montemayor says, seeks to socially undermine the population. What the Mexican government has done is to apply a policy aimed at making it impossible for thousands of people to work, study, and survive. During its four years in office, the government promoted a policy of war.

Another element of low intensity warfare is that it seeks to break down dialogue and negotiations at all costs. To this end, a smear campaign has been waged against the CONAI, and every means possible is being used to eliminate the COCOPA and other mediation bodies.

The government, using a variety of pretexts, has also prevented the International Committee of the Red Cross from continuing its work in Chiapas. In January 1998, the Red Cross received a categorical order to suspend all activities in that state. As a result, the situation of the displaced in Polho and Acteal has worsened. With this stance, the Mexican government is violating the Convention of the International Conference of Geneva of 1986, which grants the International Committee of the Red Cross legal status as a guarantor of all types of humanitarian and mediation initiatives.

Another tactic utilized in this low intensity war is immunity, which is turning into a "culture of silence." Immunity is enjoyed by those who have murdered and raped indigenous persons, by those responsible for the massacre of Acteal in Chiapas and the massacre of Aguas Blancas in Guerrero. The cases we have documented clearly demonstrate this situation (See Annex).

An additional way used to pressure the indigenous communities and, in particular, to target the base of support for the Zapatistas is known as *señalamiento* or "finger-pointing." Indigenous and peasant leaders, along with human rights advocates, have been assassinated in recent months immediately following protest actions or during raids conducted in the autonomous municipalities.[5]

This government strategy increased the number of indigenous prisoners in jails. It has resulted in the eviction from lands, intimidation, threat, wounding, death, and displacement, while allowing the Mexican Army to consolidate its positions. In Chiapas, at least,

the installation of camps in the communities has increased. The same holds true for Guerrero. An example of this is the military siege in the region of La Montaña, in an area measuring 70 hectares (173 acres) belonging to the *ejido* (communal farm) of Tlapa, where a zone commander was installed to coordinate military operations for the entire region.[6]

All these strategies aim to create favorable conditions for extermination, "normalization," and militarization of the indigenous communities. It is not surprising, therefore, to see an escalation of violence. The events in Chiapas, Guerrero, and Oaxaca indicate that we are indeed facing an "across-the-board war" targeting all of the community's vital aspects and spaces. Unable to defend ourselves against this situation, we become paralyzed, fearful, and terrorized by the inhumanity surrounding us in the country.[7]

This situation has turned the Indian peoples into a wandering and terrified population. Losing their homes and that sense of their vital space has made them more vulnerable. The displaced or *émigré* population has no decision-making power. Their survival depends on external aid. They lack sufficient water, food, and clothing. They live in overcrowded conditions and face inevitable deterioration of both their physical and mental health. Their capacity for resistance and organization within their communities is disintegrating. The Mexican government further promotes counterinsurgency through division, cooptation, and psychological manipulation.

The government's inclination is to impose its own interests. It resorts to violence, coercion, and murder whenever the indigenous population gets in the way.

HOW DO INDIGENOUS WOMEN SURVIVE THIS SCENARIO OF MILITARIZATION?

Militarization has led to greater interference by the military in civilian life. Military presence has deteriorated conditions in the communities of the Indian peoples, introducing a number of "vices and customs" that did not previously exist in these regions. Known for notoriety, the military controls and rapes women. Public installations (schools, *ejido* and community structures) have been occupied.[8] This has led to prostitution and drug abuse.

In response, indigenous women are coming forward and publicly raising their voices; their grievances have turned into accusations.

Indigenous women have responded in different ways. Some stay

in their communities to defend their vital space, their belongings, their animals, and their homes. These are the women who have expelled the military from their communities, using their own bodies and those of their children as shields. Others like in El Bosque just fled when the military entered. Still others have had to leave their communities. More than 6,000 women in Chiapas have been displaced.

As a consequence of this low intensity warfare, many indigenous women have had to abandon their homes and find refuge wherever they could. The majority of the displaced, both in Chiapas and in Guerrero, are women and children.

The massive displacement evokes a sense of being uprooted. One loses that sense of identity and that sense of belonging to a distinct people.

The women in the refugee camps in Chiapas live under persecution and constant pressure[9] from the army's presence. Prisoners' wives in the region of Loxicha in Oaxaca, whose husbands are accused of belonging to the Popular Revolutionary Army (*Ejército Popular Revolucionario* – EPR) are subjected to interrogation each time they go to the jail to visit the prisoners.

Rape has been used as way of teaching a lesson and for revenge. Some victims have named the perpetrators and publicly denounced the crimes. Most of the victims remain silent for fear of reprisal. In the Chiapas state jails there is not a single person who has been arrested for these war crimes.

HOW DOES THE OVERALL ETHNIC CONFLICT AFFECT INDIGENOUS WOMEN?

In this context of conflict between the federal government and the Indian peoples, we women have begun to experience two types of conflicts: the conflict responding to the presence of the military in the communities, and gender conflicts within the community. I will address this issue on these two levels:

Effects of Militarization and its Consequences on Lives of Women

The strategy of militarization is distorting the dynamics of community life. Daily existence comes under the control of the military structure, impinging upon the work routines of communities and, above all, subjecting the population to constant surveillance, taking away the people's joy of living.

Sexual violence is a dreadful problem for women in the "zones of conflict." Since 1994, when the war was declared in Chiapas, aggression against women grew rapidly. Rape cases of indigenous women have increased by 50 percent. Military encampments are breaking down patterns of daily life. Harassment, prostitution, alcoholism, and drug addiction are new forms of relationships within the communities undermining the people's mental health, making the women vulnerable to situations of violence, abuse, fear, and rape.

What is being implemented in some areas of the country against the indigenous populations, and more specifically against women, is the counterinsurgency war tactic for subjugating the defeated. Paramilitary groups, the army, and local authorities rape the women as a form of punishment, possession and humiliation. This situation has created enormous emotional, social, and gender conflicts directly affecting women.

Intracommunity Conflicts

This process has also created extensive problems related to gender issues within the communities and indigenous organizations, as it radically affects customs and practices. Moreover, it intensifies the oppression we face as women, as the men continue to enjoy privileges and many of them are not willing to share them or give them up.

Our participation as women and our integration in the struggle of our peoples has made it possible to open discussions on customs and practices. We suffer discrimination and daily human rights violations under the cover of alleged respect for "custom." Many of us are conscious that we need a law that protects men and women equally, and that we cannot continue being beaten by our husbands.

This daily violence that we face both in the community and in the cities, characterized by sexism and racism, has led to a total negation of our identity and existence. It has led us to leave our communities. It has fragmented our lives and disconnected us with our culture.

OUR RESPONSE

We face a real possibility of ethnocide. In response, we women consider it necessary to have the tools that will enable us to confront this situation on a global and community level.

Our response to the conflict has taken the following approach:

1. Participation in the negotiations between the government and the EZLN at the negotiating table in San Andrés, where the issue of indigenous women was addressed;
2. Working at the community level and organizing educational processes and analysis of the conflict;
3. Going back to the traditional ways of our ancestors (Council of elders, traditional authorities, community police, etc.).

AWAKENING OF INDIGENOUS WOMEN

When the Zapatista movement became known, one of its first measures addressed the rights of indigenous women with a stipulation in the Revolutionary Law on Women Zapatistas.

The Revolutionary Law on Women Zapatistas, in my way of thinking, synthesizes part of the demands set forth by the women's and feminist movement in the country and in the state of Chiapas over the past 10 years.

The following articles of that law clearly reflect demands women have been making and that indigenous women today take up as their own:

- Women have the right to decide the number of children they can have and care for;
- Women have the right to choose their partner and not be forced into marriage against their will;
- No woman may be beaten or physically mistreated by relatives or others;
- The crimes of attempted rape and rape shall be severely punished.

And finally, Article 9 relates to the issue of representation. Women may occupy leadership positions in organizations and have military rank in the revolutionary armed forces.

In my opinion, the struggle for the rights of indigenous women runs parallel to the struggle for recognition of our peoples. It has been nourished by the essence and spirit of being an indigenous woman. Many of the demands incorporated into the Revolutionary

Law on Women Zapatistas are core concerns that have mobilized the women's movement. These demands have yet to receive a positive response under Mexican law, but are being taken up today by Zapatista women insurgents and non-insurgents.

Indigenous women today demand the right to a voice and to their lands. They seek recognition for autonomy with a woman's face and a woman's consciousness. As they say, "In that way, the forgotten half, the female half of the community can be rebuilt." Then, they shall rebuild as protagonists, with rights, as citizens in their own country.

Today they cry out in a clear voice, "Indigenous women are the majority of our peoples, and today we do not wish to continue being the *shadow of what the men do.*"

Indigenous women now see that their own rights can be respected to the extent that the autonomy of their peoples is also recognized. Indeed, it is from within their peoples that their citizenship will be exercised. The right to representation, eligibility, and to be elected, the right to political parity with men and to occupy positions of public responsibility necessarily demands their peoples' autonomy.

ANALYSIS AND CONCLUSIONS

What makes us vulnerable as indigenous peoples?

Our previous self-conception as women has been based on a paradigm that *we are defenseless in the face of the permissiveness and violence* of our patriarchal culture. We have tended to accept the violence over our bodies. We are a *body*, an *object for others.*

We have been socially constructed so that we would put up with suffering, both our own and that of others. Often, we have been so numbed that we no longer feel a sense of commitment to stop the violence inflicted on us.

This situation has extended to all of society. The apathy that permeates us today impedes us from reflecting on what happens to others. We do not feel directly affected by what could happen. We have a self-righteous view that the other person deserves his or her fate. "She was asking for it," or "He was asking for it." With those words we dismiss the need to assume any risk. Widespread violence plagues all the vital spaces of our country today: the society, the community, the family, and the couple. In this context, we tend to see the high percentage of militarization as "normal." Yet we know that this is insidiously affecting the indigenous populations and could have a bearing on the rest of society.

In this regard, on April 3, 2000, Olara Otunnu, UN representative for Children and Armed Conflict, made the following statement in Toronto:

> *The world has lost all ethics of war. Today 90 percent of those killed and wounded in armed conflicts are women and children, because the cynics of the world have a free hand to target these sectors of the population as objectives for their massacres. Today all's fair: murder, theft, and rape of women and of children, while the international community does nothing in this regard. What's happening to the world?*[10]

Dr. Marcela Lagarde further wrote:

> *The war that millions of women experience each day in the institutions of social coexistence: the family, the couple, the community, at work, in the street, at school, and at home, has damaged and injured millions, leading to silent death at home or public, news-breaking deaths, as in Ciudad Juárez and Acteal. More and more women are being victimized. We are facing an outbreak of femicide.*[11] .

We do not want more war crimes in the form of rape. We demand that these cases be investigated and that the perpetrators be punished.

Today, as women who are aware of this increasingly alarming problem, we cannot be silent. We demand a just, humanitarian treatment for women who find themselves in situations of armed conflict or other types of conflict both in the indigenous communities and throughout the world.

As women, we cannot sit back with our arms crossed as our country turns into a war zone. Our demand to the Mexican government and particularly to the government of Guerrero is to find a way to keep the war from escalating to the indigenous communities and to other Mexican states, while strengthening the rule of law.

Today, it is urgent to prevent a recurrence of crimes such as the rape of women in Chiapas, which remain unsolved and which are now starting to occur in Guerrero.

We women have to make a commitment to put a stop to acts that violate our integrity. *If we make that commitment today, the future will be better for other women.*

The indigenous populations face increasing hostility, aggression and violence. This has led us as an organization to call atten-

tion to the need and right to learn new ways for handling and resolving the conflicts among the Indian peoples, women, and other players in Mexican society.

If we are to achieve and guarantee a lasting, sustainable peace, it is urgent to learn and put into practice a deeper level of communication. In that way, we will attain a greater awareness of the local and global situation and of the role played by indigenous women in the struggle of their peoples. In the same light, it is important to go beyond words and discourse, and work at highly efficient levels of conflict resolution and democratic decision-making within our organizations and communities.

The search for solutions through mediation, negotiations, and addressing conflict can help, especially if women are included from the start. Women can provide another type of leadership. Above all, women can help create a climate of coexistence, accepting the fact that despite the growing hostility, aggression and violence, we need not be divided by our differences. Women can contribute by facing these issues with maturity, creativity and the wisdom of our ancestors, exercising our right as human beings to seek new forms through which conflicts can be managed and resolved.

We indigenous women have assumed the challenge, proposing a series of measures and actions that call on our conscience and move our hearts. Our goal is to resolve the conflicts we now face within the framework of an environment of tolerance and of respect for others.

1. We demand a just and humane treatment for the women of Chiapas and especially for the displaced;
2. As women committed to the struggle for women's rights and to the struggle of Indian peoples, we seek an affirmation for a life of dignity. We seek an end to belligerent approaches that violate the human rights of women, men, girls and boys, and other Indian peoples who inhabit this earth;
3. We demand that the Mexican government prevent the expansion of war to the indigenous communities and strengthen the rule of law, which conceives in principle the defense of the population's fundamental rights;
4. We need to introduce actions that neutralize the impact of the war on the civilian population. This must be an active, collective act, so as to take away the fear

that tends to stymie us;

5. We propose non-violence as a commitment and as a way of restoring respect for others, recognizing differences as a dynamic element for society. We must take up the principle of respect for a life of dignity and the right to live in a world where conflicts are resolved without recourse to arms, but rather through social pacts.

The failure to recognize the San Andrés Accords is a historical step backwards for Mexico. It opens the way for the Mexican government to continue denying the rights of the indigenous populations, perpetuate its power, and continue discriminating against and subjugating the indigenous populations.

As the new millennium approaches, new horizons are seen for the Indian peoples and indigenous women. Women will continue advancing, becoming stronger, cultivating and developing their identity as indigenous peoples and as women. The challenge is great in the long term. Many of us are clear that even if the Constitution and Mexican laws recognize the rights of peoples, those documents will be useless unless a change takes place in the attitudes and mentality of non-indigenous society. It is insufficient to mention and recognize the contribution of indigenous peoples in our history textbooks or in the museums. What is needed are deeds. The challenge facing non-mestizo society today, to win recognition as active players with political rights, is the same challenge that indigenous women are now posing to their class and ethnic brothers. The question I ask myself is the following: Will we be entering the next millennium without recognizing the rights of Indian peoples and of women?

So far, only men take positions of power and represent us. What indigenous women are now saying is:

> *We want a level road. We want to walk side by side, without gender divisions. We want to be a complement, to have tasks assumed equitably at all levels. We women should not be bearing the greater burden. We should not just be recognized as mothers, as elders, and as wives. We want to be recognized as human beings. We want a level road for both men and women. In that way, our hearts will be content, and the autonomy of our peoples can be achieved.*

The challenge is to form new attitudes in our children, who will be the men and women of tomorrow. The women say, "Our brothers

of today are not going to change much. They give recognition in words, but not in deeds." That is why we must continue promoting our own agenda and creating our own spaces, to awaken our minds and the conscience of our men.

Many women are clear that the autonomy to which we aspire for is a mature act. Autonomy starts with us, in our homes, work, organization, community, and people. Autonomy is understood to be the right to *be able to say things, not be subjugated, silent, or submissive*. Women today are struggling and demanding the rights of their peoples, but they are also lifting up their voice to fight for their specific rights. Full autonomy will not be achieved if women continue to be subjugated within their own communities.

The autonomy to which we aspire for must guarantee a new relationship between the national state and the indigenous peoples. This relationship must be based on a democratization of the nation's political life and the establishment of a true State of Law. It must be based on legal pluralism, the right of persons to defend their interests and control their lives, their resources, and the biodiversity of their territories. It must be based on the free exercise of political life, on respect for the laws and customs of our ancestors and of a recognition of our rights as active players in the democratic process.

With these demands as a foundation, women speak out, defining the type of autonomy they envision: "Autonomy begins at home, at work, in the community, and in the region. It is necessary to guarantee parity between men and women in decision-making bodies, seeking forms of organization and participation."[12] These words clearly speak of the need for democratization of the State, which must go hand in hand with democracy in one's home. Feminist ethics call for a change in one's private life, so that changes on the public level will reach down to the most intimate level, in the family, in one's love life, effecting change at the level of the individual.

This autonomy involves confronting powers, not only at the level of the State and the prevailing legal system, but also within the indigenous communities themselves. Women are asserting their specificity and questioning certain customs and practices that violate their rights, outstanding among which are the asymmetric gender and power relationships within the communities. Women strive to protect their culture and certain customs, but do not do so blindly. They raise questions and seek new ideas and reference points to build their own civic participation. Their focus includes recognition of diversity, difference, tolerance, and plurality.

As Virginia Vargas stated:

> *Thus, autonomy as a concept is not only useful for analyzing processes of participation and/or empowerment of women. It is not a privilege of women alone. Rather, it extends to all other sectors of society who, based on their specific positions in society and their demands, seek to overcome their status of subordination.*

Marcela Lagarde also spoke of autonomy in the following terms:

> *The various dimensions of autonomy start with physical, biological autonomy, which implies having total control over one's sexuality and maternity. Autonomy also implies living without violence in economic terms, with equal access to and control over the means of production. It also encompasses political autonomy, that is, basic political rights to representation, including the right to self-determination and to forming interest groups based on one's own, freely chosen orientations and objectives. Finally, it includes social and cultural autonomy, meaning the right to an independent identity and self-esteem, the right to assert our specific identity as indigenous women in a dimension sustained and enriched through one's personal and collective life, through one's community and everyday experiences.*

These elements, which mutually reinforce one another, have been taken up by some organizations of indigenous women or mixed organizations. Sometimes, however, obstacles and contradictions arise. Mutual understanding is interspersed with misunderstanding, which at times have held back progress and discussions in the organizations. When women step forward to turn their dreams into a reality, the response in many communities has been repression, discredit, and even expulsion and rejection from one's own family. The women are seen as if they no longer were part of the community. This affects many women, since some decide that it would be best not to participate if that is how they are going to be treated. But achievements and changes have made it possible for other women to see this as positive and think, "This has to change."

There are many cases of indigenous women who have had to leave their communities. They live with the pain of having lost their homes, living in isolation, silence, censure, and punishment. Traditional authorities and the family have often exerted pressure in this regard.

These experiences led me to understand autonomy as a multidimensional and dynamic component. There are many knots that in-

digenous women themselves have to undo in order to weave their own history. Achieving autonomy, whether in the indigenous or mestizo world, requires us to negotiate in terms of plurality and the diversity of interests we represent as women. For that reason, I believe that the struggle for *gender democracy* sets a general pattern for negotiations involving a multiplicity of interests and conflicts, where one calls for an end to the imposition of specific interests that negate and destroy others. As such, attaining autonomy implies looking at the objectives of all players with a view towards action, pressure, and mobilization. In that way, democratic mechanisms can be generated that guarantee equal participation for all.

As Marcela Lagarde stated:

> *Women have the right for their peoples, their genealogical references and their identity references to be recognized socially in the State through legal status as peoples. They have a right to a charter guaranteeing their autonomy, that is to say, the right to self-determination and self-governance, to exist with wellbeing and to survive. Women have the right for their peoples, societies, and cultures to be respected and considered indispensable components of the Mexican nation and of the new federal pact. Women have the right to be considered inhabitants and full citizens, that is to say, not to be relegated to inferiority, discrimination, discredit, disdain, harassment, exclusion, or mistreatment based on their ethnicity or gender. Women in Mexico, likewise, have a right not to be victimized by racism, ethnic phobia, or sexism.*

I believe that autonomy is a manner of building democracy, and in a democracy every voice is important. Women's rights must be respected. For that reason, indigenous men should not deny women their due place. "Otherwise, they would be doing the same thing, or even worse, than the mestizos do with our peoples, trampling upon our rights." Autonomy as sought from the point of view of women is just, democratic, inclusive, and pluralistic. Autonomy must necessarily include the women's voice. It entails recognition of the discrimination and marginalization we women face, as is seen in the lack of equality experienced on many levels. It entails recognition of the fact that, under the cover of invoking respect for the customs and practices of peoples and communities, women continue to be beaten, harassed, and raped, and half of the population is marginalized.

Today, autonomy for the Indian peoples takes shape in a call for self-determination. Yet this movement must also recognize that in-

ternally women must gain their freedom. Otherwise, we are not honestly seeking a new relationship between men and women, and between indigenous peoples and mestizos, that will lead to peace and harmony.

Autonomy as proposed by the Indian peoples sees a world in which they will neither live in captivity nor act complacent about their traditions. Rather, this strategy seeks emancipation and mobilization. This means that collective life would be organized based on a conception of each individual as capable of acting in his or her own way. Each person would be free and independent in the context of his or her social life, on the basis of freedom and responsibility.

Nellys Palomo Sanchez is with K'nal Ansetik (Tierra de Mujeres).

Annex: *Cases of Rape of Indigenous Women*

Cases abound in Chiapas: six rape cases of women committed by persons believed to be members of the PRI and the public security forces. Three cases in Amparo Watertinta and three more in Tzaquiviljo, municipality of Tenejapa.[13] They were raped by six and seven members of the military; the rest "let them do it."

- On October 4, 1995 in San Cristobalito (San Andrés Larrainzar) three nurses from the Department of Health were sexually attacked by 25 men whose faces were covered;
- That same month Cecilia Rodríguez was raped by three armed men at the lakes of Montebello. Her attackers were professional rapists;
- Julieta Flores is a member of the Francisco Villa Popular Peasant Union of the municipality of Angel Albino Corzo. She testified that on December 15, 1995, after a series of peaceful land takeovers and mobilizations calling for the creation of a pluralistic municipal government, she and other peasants of the organization were detained by judicial policemen, who were in turn accompanied by the local public police. They took her to the closest military base, where she was tortured and repeatedly raped. She was later freed. No charges were filed against her and no

record whatsoever exists of her detention. The government itself has ignored the agreements signed at the Fourth Conference on Women, which set out to reduce human rights violations against women in situations of military conflict. Nevertheless, the events in Chiapas, now spreading to other states such as Guerrero and Oaxaca, indicate an increase in human rights violations and in cases of sexual assaults;

- As of March 8, 1997 the Women's Group of San Cristóbal de las Casas was aware of more than 300 cases of rapes against women during the period of the armed conflict;
- Two girls, Minerva Guadalupe Pérez Torres and Rebeca Pérez Pérez, ages 13 and 15 respectively, were kidnapped by members of the "Peace and Justice" paramilitary group in August 1996. The girls were held captive for 10 days in the community of Miguel Alemán, municipality of Tila, where they were tortured, raped, and finally murdered.
- Many of the displaced of Chenalhó told us that the women who were trapped were forced to "make tortillas" and wash clothes, and were raped;[14]
- According to the representatives of the municipal rural agency of Jolnachoj (municipality of San Andrés Larráinzar), military personnel constantly harassed the population: "they rape women, get drunk, disturb the peace late into the night and foment prostitution." The rural authorities of Jolnachoj submitted at least 10 official letters to the state government regarding the harassment experienced by various inhabitants, but not a single denunciation was ever investigated;[15]
- "Outside influences have created an increase in prostitution. Condoms are thrown just anywhere. Schoolchildren pick them up and blow them up like balloons;"
- Increasingly, indigenous women in Chiapas "go off with the military," who reserve the prettiest ones for the officers. Their husbands and sons, according to the testimonials, push the women to engage in prostitution;[16]

  The presence of the Mexican Army instigated domestic violence, an increase in alcohol consumption, psychosomatic illnesses, as well as the breakdown of many indigenous marriages, as women have sexual relations with soldiers in exchange for a payment of 50 pesos;
- Many young indigenous women have resorted to prostitution because of the money. The military pay 50 pesos to married women and 100 pesos to young women who have not lived with a man;
- Several members of NGOs in Chiapas received death

threats, particularly those of K'inal Antsetik.
In Guerrero as well, the militarized climate is intensifying violence and human rights violations against women.;

- In Zapotitlán Tablas, three military personnel from Military Zone 35 intercepted Delfina "N. N." They raped her and days later arrested her family members. This case was reported to the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos* - CNDH), but the perpetrators have yet to be arrested;[17]
- Pascuala Baltazar Arreola, an activist in the PRD, received death threats from PRI members in the region of Cucuyachi, which forms part of the municipality of Atoyac de Álvarez, on account of her involvement in politics.
- In Taxco, Inés Nazario León was murdered together with her husband on August 16, 1997;
- In Acapulco, a member of the Union of Organizations of the Southern Sierra, Gloria Roque Bautista, was kidnapped;
- In the Guadalupe Malinaltepec neighborhood, a woman was raped, along with her 14-year-old daughter, both of whom were indigenous. Catalina Antonio Martínez, the mother of Odilón Ambrosio, was reported as kidnapped and disappeared by Bertha Ramírez Ramírez. Donaciana Antonio Almaraz, a Zapoteca Indian woman, was arrested.

Cases Documented to Date in Oaxaca

- The Zapoteca indigenous women Catalina Ambrosio and Honorina Ambrosio were arrested;[18]
- In San Sebastián, Tutla, Alicia Roque de Martínez was arrested and tortured;
- Antonio González García, Mayor of Acatepec, denounced members of the Mexican Army who raped two indigenous Tlapanecas on August 5, 1996. In a document addressed to the National Human Rights Commission, the municipal administration noted that over the past two years, members of the Mexican Army raped 12 indigenous women.[19]

Endnotes:

[1] **Reforma Newspaper**, 4 January 1998, 38.

[2] Latin American Working Group, **La Jornada** (Center for International Policy).

[3] "Five years have had to transpire in order for society to begin to feel a sense of indignation. That indignation came after 133 women were raped, mutilated, tortured, and murdered, and their bodies were dumped

in the desert areas around Ciudad Juárez at a rate of one every two weeks, starting in January 1993." See Del Valle, Sonia, "El silencio frente a la misoginia," **Cuadernos Feministas** 5 (July-August-September, 1998).

[4] See **Enlace Civil.**

[5] The women of Unión Progreso who are displaced in La Montaña fled when the army arrived. These women stated that the problem began in the community of Los Plátanos. Security Forces and personnel from the Federal Attorney General's Office, the military and paramilitary groups entered. Then the shooting started. Two hooded persons accompanied these groups and pointed out individuals. Those individuals were then detained and charged with murder. Report from the Women's Brigade that fled to El Bosque.

[6] Hugo Pacheco León, **La Jornada**, 30 June 1998, 35.

[7] Rosa Gómez was pregnant when she fell, dying, in an open area in the camp. Her murderers came up to her to finish her off. One of them, "with a knife (relates a witness, making a stabbing gesture), cut out the baby and just threw it aside." H. Bellingahausen, **La Jornada**, 24 December 1997, 4. (Case of Acteal on December 22, 1997, where 9 men, 21 women, 14 children, and one baby were massacred).

El Bosque, El Charco, and the young women killed in Ciudad Juárez.

[8] The soldiers took over the soccer field, at the edge of town (El Bosque), and "that made the municipal officials unhappy, because they know quite well that the soccer field is for the youth's recreation," stated the authorities of the communities of El Bosque. E. Henríquez, **La Jornada**, 6 April 1997, 10.

[9] Prostitution has changed people's lives in the three regions inhabited by the militia members and sympathizers of the EZLN. Children play with condoms recently used by the military. Tattooed women stroll through the streets of town with soldiers, who are dressed in T-shirts. Naked prostitutes bathe in the rivers. Women have been impregnated by the soldiers and indigenous couples have separated. J. Balboa, L**a Jornada**, 23 December 1997, 4.

[10] **Reforma**, 4 April 1998, 22.

[11] Marcela Lagarde, "Igualdad y diferencia en el umbral del tercer milenio," **Cuadernos Feministas** 4, p. 20

[12] Declaration of the National Indigenous Forum

[13] "Women have had enough of weapons and have had enough of the armies, because we're afraid, and also because they're surrounding the well where we get our water," argued the Tzotziles, who have already held two demonstrations against the military encampment in X'oyep. The women stated that on those two occasions they were scratched and beaten by the military, who refused to leave X'oyep. The Tzotziles also denounced that, "some of them picked up the women's skirts and told the women to kiss them, so they could make them fall in love." J. Gil Olmos, **La Jornada**, January 6, 1998, 10. Castro Gustavo, **CIEPAC Bulletin**, Report: "La insoportable levedad de la Ley: La impunidad."

[14] Sonia Del Valle, "Las muertas vivas de Chiapas, doble jornada," **La**

Jornada, 5 January 1998, 5.

[15] J. Balboa and E. Henríquez, **La Jornada**, 18 August 1997, 3.

[16] M. Pérez. "Report of the International Service for Peace (SIPAZ)," **La Jornada**, 9 February 1998, 15.

[17] "Uno Más Uno," 9 January 1998, 20.

[18] **La Jornada**, 13 August 1997.

[19] **El Diario**, 26 August 1996.

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15

The Kuna People and Conflict Resolution

Flaviano Martínez

Conflict is understood to mean confrontation or discrepancies between two or more persons whose objectives are incompatible. In every culture, mechanisms have been created to regulate internal daily coexistence and resolve domestic conflicts. The guiding principles are perhaps universal, but the norms and the ways such principles are put into practice are culture-specific. In our case as Kunas, we have our own justice system, which is not written or codified. It is derived from and validated by practice.

Among the Kunas, conflict resolution is eminently conciliatory and compensatory. The principal aim is to restore harmony to the community. Few conflicts arise in the Kuna communities and the cases are not severe. When conflicts occur, they are heard and decided by the community as a whole, either through local assemblies or the general assembly. Thus, the cases are not judged by an individual acting in isolation. These norms can be understood only if the community (the collectivity), the relationship with nature, and the sacred order are taken as their foundation. When cases are severe, they are remitted to the courts of the State that function in the *comarca* (District).

This paper aims to share the manner in which Kunas proceed when one of its members infringes upon the social equilibrium in his or her daily relations. In such a case, the Local Assemblies play a major role in resolving the conflict. The Local Assemblies and General Assembly have provided the Kuna people with organizational self-empowerment. Thanks to this structure, we are able to confront external pressures from the State and/or from domestic and foreign private sectors seeking to embark on large-scale economic projects in our communities.

Before delving into the specific issue at hand, it would be worthwhile to briefly relate the Kuna people's history and current situation. This will facilitate our understanding of conflict in Kuna society.

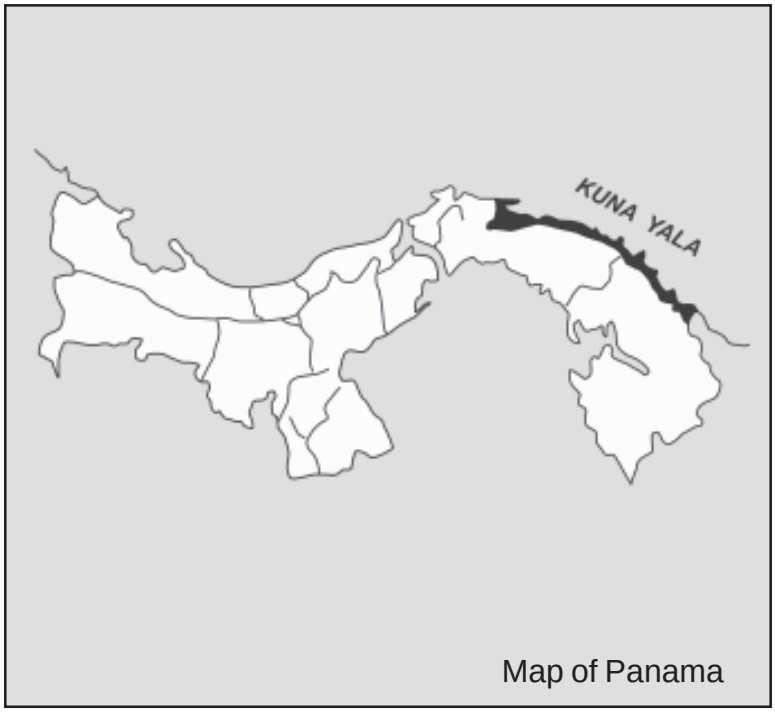
THE KUNA PEOPLE

Some Background Information

The ancestral origins of the Kuna have been handed down as a mixture of myth and history. Nonetheless, when examining traditional Kuna versions and documentary references from the era of the conquest, it is universally acknowledged that the Kunas originally populated the region near the Gulf of Urabá (Colombia), from which they emigrated to the continental Darién under pressure from the Spaniards. One of the most distinguished scholars of Kuna history, the *Sahila* Horacio Méndez, stated:

> *…as a result, the people migrated from the Colombian foothills, specifically through the plains irrigated by the AMUKADIUAR (known today as the Atrato River). Later, in response to pressure from neighboring tribes and massive incursions in the colonial period, the Kuna were forced to emigrate into regions farther inland in the colonial Darién.*[1]

Migration from the interior of the Darién to the Atlantic coast, and finally, migration to the islands, where the Kuna are currently located, occurred in the last half of the eighteenth century. This migration was gradual and appears to have taken place in response to various factors, among them, health conditions on the islands as compared to the mainland, the ravages of epidemics, and flight from the colonial Spanish system.



Origin of the Name 'Kuna'

According to the majority of the *Sahilas* (chiefs, heads, leaders), the term "Kuna" derives from the Kuna's preferred landholdings. The reasoning of the *Sahilas* is based on the archaic lexical unit "Kuna," which is now a linguistic remnant. In the Kuna language "*kuna*" and "*neba*" have the same meaning: that is, a "plain." The term "*neba*" continues to be used today, while the term *kuna* has become relegated to use by the elders or a very reduced population. The Kunas, when asked by the settlers: "Who are you?" or "Where do you come from?" would respond: "*an kuna dola,*" meaning, "I am a man of the plains," or simply, "I come from the plains."

Location and Population

The Kunas populate two completely distinct types of habitat. The majority Kuna population is located in the coastal island region, that is, the islands that form the *comarca* of San Blas, known today as

Kuna Yala. A smaller population of mainland Kunas, in the Provinces of Panama and Darién, inhabit the basins of the Bayano River, the upper region of the Chucunaque River, and the tributaries of the Tuira River in the zone bordering Colombia. An additional Kuna region is located on the western coast of the Gulf of Urabá, in Colombian territory, in Caimán, Arquy, and Unguía.

The Kuna Yala *Comarca* is located on the Atlantic coast of the Republic of Panama. It occupies a territorial strip measuring 3,200 square kilometers in mainland Panama, along with an archipelago exceeding 230 kilometers in length, comprised by more than 300 islands, 50 of which are inhabited. According to the latest census, taken in May 2000, the population of Kuna Yala is approximately 50,000. One can reach the islands of the *comarca* by air, using Panamanian commercial airlines, as several of the islands have airports or landing strips, by sea from the city of Colón or by land during the dry season.

The Kuna Yala *Comarca* and Other Kuna *Comarcas*

The Kunas of the Kuna Yala *Comarca* were the first indigenous group whose territory was recognized under the name of *Comarca de San Blas* known today as Kuna Yala. The concept of "*comarca*" predates that of indigenous reserve in Panamanian legislation as it is derived from Colombian legislation. Nonetheless, the concept of "*comarca*" did not make specific reference to the indigenous zones. Indeed, in the late nineteenth century, there were *comarcas* in the provinces of Darién and Bocas del Toro. Even though both these *comarcas* had indigenous populations, those populations were not borne in mind when they were established. Rather, these *comarcas* were meant to designate hard-to-access territories located at a distance from the center of political power. When one speaks of a *comarca*, one generally refers to two basic elements: the territory it comprises and its internal form of administration.

The adoption of the reserve system in Panama dates back to the bloody Kuna revolt of 1925[2] and the creation of the indigenous reserve of San Blas through Law 59 of 1930. The concept of indigenous reserve is a legal construction taken from the experience in the USA and adapted to the colonial tradition of the indigenous *resguardo*, which had a limited application in Panama. The significance of the indigenous reserves, such as in the proposed indigenous *comarcas*, was that the lands were non-transferable. "This suspends the principle of the right to property and to free competi-

tion in the supply and demand for land. The aim was to guarantee the indigenous peoples that their lands would not be alienated on behalf of the interests of third parties."[3]

The current demands of Panama's indigenous peoples revolve around the *comarcas*, to the exclusion, in fact, of the reserves, which for the indigenous peoples have a strong racist, historically paternalistic content, an opinion shared by non-indigenous sectors as well. The concept of *comarca* in reference to indigenous territories appeared for the first time in the Legislative Act of September 25, 1928, which reformed and expanded Article 4 of the Constitution of 1904. Article 4 states: "The territory of the Republic is divided into Provinces and these in turn are divided into Municipalities, (...) the National Assembly may create *comarcas* (Districts), regulated under special laws, whose territory shall be set aside from one or more provinces."

The *comarca* is contemplated in the Constitutions of 1941 and 1946, and is subject to special treatment. Nonetheless, the Constitution of 1972, now in effect, no longer mentions the traditional concept of *comarca*, but instead refers to "other political divisions." Article 5 states, "The law may create other political divisions, either for purposes of subjecting them to special treatment..." Although the Constitution no longer refers to the *comarca* as a political division, this has not impeded the recent creation of other *comarcas*, such as the *Comarcas* of Mandungandi and Wargandi.

The *Comarca* of Mandungandi, created through Law 24 of January 12, 1996, is located within the east of the Province of Panamá, in a place known as Alto Bayano. Twelve communities, some of which were relocated after the Bayano Dam and Hydroelectric Project was built in the 1970s, comprise the Mandungandi *Comarca*.

The *Comarca* of Wargandi, created through Law 34 of July 5, 2000, is composed of three communities (Uala, Morti, and Nurra) located in Alto Chucunaque in the Province of Darién. This 77,500-hectare *comarca* borders on the Kuna *comarcas* of Mandungandi (in the province of Panama) and Kuna Yala, as well as the districts of Chepigana and Pinogana in Darién province.

Political and Administrative Organizational Structures

The *Comarca* of San Blas or Kuna Yala, was created under Law Two of September 16, 1938. On February 19, 1953, the National Assembly enacted Law 16 "organizing the *Comarca* of San Blas." Under this law, the Kuna Yala *Comarca* is a territory given special adminis-

trative treatment. The land is under collective ownership and the traditional authorities are recognized, as are the General Assembly, the Local Assemblies, and the internal authorities of the communities, who are given jurisdiction over misdemeanors and minor civil cases.

The General Assembly is the *comarca's* highest political and administrative body for deliberation and decision-making, bringing together authorities from the fifty communities. Meetings of the General Assembly are held once every six months in different places in the *comarca.* Special sessions may also be called when problems demand immediate solutions. The General Assembly must first approve a project before it is carried out in a community, most especially major projects that could affect the entire *comarca*. If the project in question is small (construction of schools, aqueducts, health clinics, etc.), approval by the Local Assembly is sufficient and the General Assembly's consent is not needed. The General Assembly also has Permanent Commissions, such as the commissions on natural resources, tourism, projects and the Kuna Yala Integral Development Institute (*Instituto de Desarrollo Integral de Kuna Yala* - IDIKY).[4]

The General Assembly is comprised of the *Sahilas* and representatives from the communities chosen at the plenary session of each local assembly. Each community delegation is presided over by the *Sahila*, who has the right to a voice and a vote on the community's behalf. Among the powers of the General Assembly are the creation of plans, programs, and projects for social, economic, cultural, and political development benefiting the *comarca's* communities. In addition, the General Assembly analyzes, approves or rejects, and implements development programs, plans, and projects for the *comarca* that are submitted to it for consideration. Finally, the General Assembly has the power to apply penalties or coercive measures upon institutions or persons that engage without the General Assembly's authorization in projects, programs, and plans that significantly impact the social, cultural, religious, and economic order of the *comarca*. The General Assembly is led by three *Sáhilas Dummagan* (General *Sahilas*), who are the representatives and spokespersons for the Assembly and the *comarca* vis-à-vis the State, public and private authorities, and international entities.

In addition to the Local Assemblies, the Kuna Yala *Comarca* has a General Assembly of Kuna Culture, which is its highest body in matters of religious expression, and in the protection, conservation and dissemination of the Kuna people's historical and cultural heritage.

THE KUNA LEGAL SYSTEM

Under National Legislation

Within Panama are seven indigenous groups (the Kunas, the Wounaan, the Emberás, the Ngobe-Buglé, the Teribe, the Bokotá, and the Bri-Bri). Nonetheless, Panama's Constitution does not recognize the multi-ethnic, multicultural, and multilingual nature of its society, unlike the majority of the countries of our region. Given the variety of cultures, there are legal differences in the manner of regulating relationships and ways of life, and of resolving interpersonal contradictions or conflicts. In this regard, the concept of justice has been understood from the official point of view — the justice of the State. But other forms of conflict resolution are ignored, even though they are widely accepted in the indigenous communities and correspond to our own cultural roots.

In the Kuna communities, Kuna law is in effect and is constantly applied, without necessarily entailing constitutional recognition. In the absence of expressed recognition for legal diversity among the indigenous peoples, one manifestation of which is the Kuna legal system, we understand that such recognition is encompassed within the concept of identity, as set forth in Article 86 of the 1972 Constitution. The Article reads, "The State recognizes and respects the identity of the national indigenous communities, and shall engage in programs to develop the material, social and spiritual values of each one of their cultures...."

Recognition was granted to the Kuna legal system under Law 16 of 1953, though ineffectively. Article 12 of that law provides:

> *The State recognizes the existence and jurisdiction of the Kuna Assembly, the Assemblies of the people and tribes, other authorities established under indigenous tradition, and the Organic Charter of the Indigenous Communal Regime of San Blas in matters concerning violations of law, except as concerns the application of criminal law.*

The Kuna Legal System

The Kuna legal system is based on values and principles that are not written or codified, but practiced and transmitted orally. The system is characterized by its non-punitive nature. Its fundamental objective is to restore the equilibrium that was broken by the perpe-

trator and to reincorporate the perpetrator into the community. This reincorporation is of great importance, since there are no jails in the communities, and as such, the victim, the perpetrator, and the authorities sitting in judgment must all continue living in the same place.

Kuna law makes a much less radical distinction between religious, legal, moral, and social norms than is generally seen in official legislation.

Under the Kuna legal system, one can find norms that refer to civil, criminal, and family matters. Criminal and civil matters are broken down into felonies or major civil matters on the one hand, and misdemeanors or minor civil matters on the other.

Felonies and major civil matters include murder, rape, incest, drug abuse, severe injuries, and adultery. They are not heard or resolved under Kuna law. When they arise, the authorities transfer the case to the official justice system functioning in the *comarca* (*Comarca* Court and *Comarca* Prosecutor).

In these cases the *Sahila* turns the defendant over to the National Police or contacts the judicial authorities by radio. But generally, it is the community itself that takes responsibility for transporting the prisoner, assuming the expenses of maritime transportation.

Misdemeanors and minor civil matters include such crimes as the theft of agricultural products (coconuts, bananas, corn, etc.), minor injuries, inheritance or distributions of property, family conflicts (fights between a man and wife, failure to perform a parent's obligations towards one's children, child abuse, etc.), disturbing the peace under the influence of alcohol, tampering with land markers, and gossip. Our authorities resolve these matters.

Traditional Authorities Involved in Administering Justice

The system of authority is based on the notion of exemplary behavior. *Sahilas* (chiefs), *Argars* (liaisons), and *Suaribeds* (marshals) are appointed for life, but may be removed from office if they commit a felony. Other authorities such as the community secretary and the members of communal public works committees are appointed for a specific term.

Onmaked Nega (Assembly House)

The Local Assembly is the community's highest body for religious, cultural, and political/administrative affairs. Its decisions are binding on the authorities, members of that community, and other per-

sons present in the community. A Kuna community "is meaningless without its *Onmaked Nega*, which is the cornerstone of a Kuna community's identity." There are two types of assemblies: the sacred assembly and the traditional assembly.

Our focus will be on the traditional assembly, which handles all matters related to the community, and makes community management decisions. The traditional assembly plans communal public works and receives reports from the various working committees. Above all, this assembly serves to maintain peace within the community, as it is here where the conflicts brought before the community authorities are resolved.

Sahila (chief, head, leader)

The *Sahilas* of the communities are the legitimate authorities among their respective peoples. The *Sahila* is the community's representative to the General Assembly and before other communities. Each community has one principal *Sahila* and other alternate *Sahilas*, whose number varies from one community to another, depending upon the number of inhabitants. *Sahilas* have two functions, one of which is related to community matters and the other to religious functions.

The *Sahila* is elected at the community assembly, taking into account his experience, respect, wisdom, honesty, conduct, and service to the community. The *Sahila* carries out his task with complete simplicity. His decisions are the product of consultation with all community members. He has prestige based on his age, moral values, and experience in life. He is not given special privileges, as he also has to perform all the obligations demanded of other members of the community. "The *Sahila* is a religious and political leader, and provides the foundation for our Historical Memory. He is the visible representative of the General Assembly. He represents the backbone and the life of the community. For this reason, the *Sahila* is not a person who gives orders, but is rather a servant of the people."[5] His services are always performed *ad honorem*.

Argar (Community Liaison)

The *Argar* is a close collaborator of the *Sahila* who serves as his advisor. The *Argar* admonishes persons who commit an offense, constantly reminding the community of the standards of good conduct and other social norms, encouraging respect, providing advice on how to receive visitors, etc.

Suaribed (People's Marshals)

This is a group that is responsible for maintaining order in the community and in the area around the assembly. The *Suaribed* summon the people to meetings, attend to visitors, and bring defendants or persons who have violated community norms before the assembly. During the day, the *Suaribed* make rounds in the community and report any incidents in the area to the authorities. They also directly collaborate with the *Sahilas*, whom they accompany on visits to other communities.

Sikui (Community Secretary)

This is the person in charge of writing certificates, taking notes, and preparing other community documents. The *Sikui* reads correspondence received by the community and accompanies the *Sahila* on official visits to public and private institutions. This position requires the ability to read and write in Spanish.

Imar Bulaled Dummagan (Chiefs of Communal Public Works)

These are the true leaders of the communities. They administer communal public works and organize the work they entail. Community members are expected at some point in time to occupy a certain number of posts in the public works committees on a temporary, rotating basis. Each communal public works project has a treasury, financed by the project's proceeds and by fines from those who do not participate in the work. These funds are earmarked in part for maintaining the project and for community expenses.

One committee that is important to mention is the Justice Committee, which is in charge of aspects involving justice. The Committee's secretary keeps records of community members who commit violations in the community and of the term for complying with their penalties. We stated previously that all cases are discussed and decided by the Local Assemblies. Nonetheless, we have found that on occasion, the authorities prefer to handle a matter privately. Such a decision *per se* does not stop the public from attending, however, because everyone attends the assemblies, including children. Yet, at times, if the issue is delicate, it is not recommended to hear a case in public. Under such circumstances, the Committee Chairman will simply inform the assembly at night about the decision reached during the private meeting.

Penalties

The following penalties are applied: public admonition, reparations, restitution, community service, and fines. Incarceration is not applied.

Since conflicts are resolved publicly, dishonor has an even greater significance than jail or other penalties. In this sense, moral sanctions are stronger than anything that the State system could impose. What happens if the guilty party should fail to comply with the penalties? There are coercive measures, such as the seizure of property, denial of permission to leave the community, and, in extreme cases, exclusion from community life.

Procedures

Kuna law provides for oral, public, immediate proceedings, and is simple and flexible. Conflicts are resolved in a short time. The *Sahila* first tries to reconcile the parties. Thus, greater emphasis is placed on conflict resolution than on the punishment itself. Conflict resolution seeks to contribute to restoring social harmony between the persons involved.

> *The Complaint.* The aggrieved party appears before the *Sahila* or submits his case directly to the assembly. The information can also be submitted through a complaint made by any member of the community or be provided by a *Suaribed*;
> *Summons.* The authorities summon the parties to hear their versions. Generally, the persons are present at the Assembly. Otherwise, the *Suaribed* are sent out to go find them;
> *Confrontation.* In the event of discrepancies among the parties with regards to the events, a proceeding takes place where their testimony is jointly examined and compared;
> *Testimony of Witnesses.* If there are witnesses, they are called to testify;
> *Intervention of the Assembly.* The authority asks questions to clarify any doubt regarding the incident. Any community member with knowledge on the case may intervene or provide any information he knows;
> *Pronouncement of Judgment.* Once the case is clear, judgment is pronounced and the party found to be liable or

guilty is informed of the applicable penalty.
Advice or Recommendations. Whatever is decided, the authority gives his advice, orientation, and recommendations;
Transfer of Cases to the Government Court System. If the matter is serious, the authorities will solely remit the case to the appropriate official body. The authorities know that they do not have jurisdiction over serious cases such as murder, rape, drug trafficking, etc.;
Proceedings and Records. The justice committee is in charge of making a record of the assembly's decision, in which the liable or guilty party is informed of the terms of his penalty.

The Communities and the Official Justice System

Article 178, Book I of the Judicial Code (organization of the court system) provides that "in the Indigenous *Comarca* of San Blas there shall be a Judge and a Prosecutor, who shall have such functions as are set under a special Law." This provision goes on to state that in order to "be a Judge of the *Comarca* the same requirements apply as to be a Municipal Judge." These official bodies were created in 1968, and are located on the island of Akuanusadub. They handle and decide cases in accordance with the jurisdiction established for the court system (Municipal Courts) and for the Municipal Prosecutors.

In our communities the number of cases are few, and severe cases are almost non-existent. Thus, recourse is seldom sought in the *Comarca* court or the *Comarca* Prosecutor. For that reason, the Supreme Court of Justice in 1994 deemed that the *Comarca* Judge is an Itinerant Judge in the First Judicial District, which includes the provinces of Panamá, Colón, Darién and San Blas, where the *Comarca* Judge may be temporarily assigned. The Judge remains in his assigned court throughout the month. He appears in the *Comarca* only for two or three days, or when there is an urgent case that must be heard.

According to the *Comarca* Judge, the majority of cases he hears involve family support (civil matters), followed by crimes involving domestic violence. As for the *Comarca* Prosecutor's Office, the most frequently heard cases involve drug consumption, drug trafficking, and domestic violence.

CONFLICTS WITH THE STATE, PRIVATE PARTIES, AND FOREIGN COMPANIES

Several governments and domestic or foreign private parties have taken an interest in Kuna territory to impose their large-scale economic projects. These projects have brought severe problems and pose a true threat for the Kuna people. Worth mentioning are the following projects, which have required attention and decision-making on the part of the Kuna authorities.

Natural Resources and Territory

Time and again since the colonial era, outsiders, who have employed violence, deceit, and all types of abuses, have invaded the territories of the indigenous peoples. The land and natural resources have served as a source of wealth for a small handful of persons, while the legitimate rights of the indigenous communities have been ignored. For us Kunas, land is the essence of our existence, without which we cannot speak of culture, because all life comes from the land. Obviously, the Kuna people live and coexist with all the resources of nature. Land is life for the Kuna. From there the concept of Mother Earth is born, because land, as our mother, gives life.

Invasion by Settlers and Deforestation

Over the course of history the Kuna people have waged major conflicts against invaders to defend their territory, and that struggle has not ceased. Indeed, in recent times the Kunas have faced the threat of invasions from settlers, generally landless peasants from the central provinces where the large *latifundio* plantations are located.

In the Kuna Yala *Comarca* the problem of deforestation is not as accentuated as elsewhere in the country, principally due to the Kuna's self-management system and subsistence production. Furthermore, the Kunas are clearly aware of the need to preserve nature. For that reason, the danger of deforestation derives more from exogenous than endogenous factors. The existence of a natural barrier in the form of a mountain range (the San Blas Cordillera), which geographically divides the provinces of Panamá and Darién and the absence of roads into the *comarca* held back settler incursions into Kuna territory for a long time. Nonetheless, the Kunas face a real threat of incursions by settlers over both of their boundaries between the Province of Panamá and Colón and from Colombia.

Along the Colombian border, the Colombians for years have been intruding into Kuna land, exploiting the Kuna Yala's natural resources and gold. In 1994, the Kuna General Assembly's Sustainable Development in Kuna Yala Project (*Proyecto de Desarrollo Sostenible en Kuna Yala* - DESOSKY) instituted an agricultural project, setting criteria to ensure the sustainability of the natural ecosystem. This project aimed to curtail the incursion of undocumented Colombians.

In the Panamanian border zone, the construction of the Bayano Hydroelectric Dam and the extension of the Pan-American Highway in the east of Panamá Province during the 1970s attracted settlers from the central provinces to the Kuna region. This unleashed an incursion as settlers searched for lands to farm. A roadway was also opened, joining Panamá Province and the *comarca*.

In response to these incursions, the Kunas commenced public works aimed at protecting their territory in the border zone of the Kuna Yala Cordillera. This situation also led to the founding in the 1970s of the Union of Kuna Yala Workers (*Unión de Trabajadores de Kuna Yala* - UTK) to address boundary problems. Workers from the military bases of the Panama Canal Zone, whom Kuna banana workers from Bocas del Toro supported, comprised the Union. The idea was presented to the *comarca* leaders and received support from the General Assembly and Kuna organizations. Thus, a settlement was established in the Kuna Cordillera to stop the passage of settlers.

In 1983 the UTK became the Kuna Employees Association (*Asociación de Empleados Kunas* - AEK), a non-profit organization aimed at empowering Kuna workers in the public and private sectors. For the first time, an indigenous group initiated a project for the conservation and protection of natural resources in a primary rainforest (measuring approximately 60,000 hectares [150,000 acres]). The Ecology and Management Program for Wildlife Areas of Kuna Yala (*Programa de Ecología y Manejo de Áreas Silvestres de Kuna Yala* - PEMASKY) was founded in order to create a protected area. This project received technical and financial support from several regional conservation agencies and from international conservationist agencies. The Project was integrated into plans to manage a system of protected areas, making it possible to conserve the Kuna People's rich biodiversity, natural resources and environment.

The Fundamental Law of the *Comarca* of Kuna Yala[6] included a new Chapter VII, whose Articles 43 to 47 addressed the issue of natural resources. The inclusion of this chapter provides evidence of the Kuna leaders' concern over the defense of their resources.

- Article 43 states: "Natural resources and existing biodiversity in the Kuna Yala *Comarca* are declared to be assets of the Kuna people. Their use, protection, and conservation shall be handled in accordance with the traditional practices set forth in the Regulations of the *Comarca*;"
- Article 47 states: "All projects or activities that affect natural resources and biodiversity shall require an environmental impact study in which representatives of the Kuna General Assembly shall participate."

In the absence of clear policies to deal with the issue of settlers, the various governmental administrations of my country have preferred to leave the conflict in the hands of the Kunas themselves, and our authorities have known how to act wisely.

Struggle against a Mining Company

Another major struggle indigenous communities are waging today is to preserve the natural resources in their *comarcas*. Mining activities continue to pose a great threat for our survival as a people. The governments and multinational corporations are only interested in exploiting the natural resources, and have not shown even minimum respect for the owners of the territories or the environment. Panama does recognize and promises to continue recognizing the *comarcas*. Yet, in contradiction to its policy, the government is granting concessions to multinational corporations within Kuna territory without consulting the legitimate owners.

In 1996 the Commission on Indigenous Affairs of the Legislative Assembly of Panama summoned the Minister of Trade and Industry, who testified that a concession already existed in the Kuna Yala *Comarca* and in other indigenous *comarcas*. The Minister also stated that there was no reason to pay any type of indemnification, saying government had met the requirements to prevent environmental damage and to consult indigenous peoples. She argued that the law does not require government to consult indigenous communities in a given area. She also claimed that according to applicable law, the subsoil belongs to the State. Thus, she argued, no permission is necessary. With this, the State is insisting that indigenous territory is "national land," and is thus owned by the State, not by the indigenous peoples.

Since 1994 the government has granted five mining concessions

to Western Keltic Mines, Inc. (a Canadian corporation), which affects 124,156 hectares (306,789 acres) of Kuna territory. The government did not expect the firm, top-to-bottom opposition of the Kuna authorities against those concessions, and therefore, we have been "considered enemies of development, isolated from progress."[7]

The technicians in charge of the study for these projects entered the *comarca* to study the soils, attempting to pass themselves off as interested in buying *molas* (traditional Kuna women's clothing). Little by little the Kunas realized that the technicians' principal objective was to mine the minerals in the *comarca's* subsoil. They tried to paint a lovely social, political, and economic picture, enormously favorable to developing the mine.

As earlier stated, the Fundamental Law of the *Comarca* sets forth that all projects or activities affecting natural resources and biodiversity require an environmental impact study in which representatives of the Kuna General Assembly must participate. The law also sets forth that within the boundaries of the Kuna Yala *Comarca,* individual or collective mining activities are prohibited without the express consent of the Kuna General Assembly. All applications for concessions within the Kuna Yala *Comarca*, which are submitted to the State whether for mining exploration or exploitation, must be relayed in writing to the Kuna General Assembly for approval or rejection. The General Assembly reserves the right to reject any concession granted for mines in the *Comarca*.

Furthermore, in its Resolution No. 1, the Special Session of the Kuna General Assembly held in March 1996 indicated that it "rejects and repudiates all activities related to the award of mining exploration or exploitation concessions granted by the national government without the consent of the Kuna General Assembly." The resolution also "opposes all activities concerning the mines, such as seminars, workshops, and conferences that involve leaders in representation of the Kuna people without the consent of the Kuna General Assembly."

The issue of mining is a very delicate one for the authorities of the *Comarca* and "we know that the leadership and the Kuna people oppose and will continue to oppose the projects." How long can we Kunas resist the avalanche and violence going on in our territory?

Project for Installation of a Naval Base

Since 1996 the Panamanian government, with support from the United States, has attempted to install a naval base in Kuna Yala,

allegedly to support the war against drug-trafficking and to address border security problems. But they have not respected the conditions requested by the Kuna people, among them an environmental impact study. For its part, the General Assembly, through a resolution, indicated that although it agreed to having a base constructed, it felt that the base should be located in Puerto Obaldía (in the Colombian border region), and not in Puerto Escocés. The government continued to insist that the Naval Base had to be built in Puerto Escocés where there is a Kuna settlement with a rich archeological and cultural heritage.

The Special Session of the General Assembly, held in February 1997, formed a Special Commission to study various alternatives for places where it would be feasible and beneficial to build the naval base requested by the national government. The Special Commission submitted its report in June 1997, indicating the disadvantages of the government's proposed site. After listening to the report, the General Assembly issued a resolution, insisting once again that the naval base ought to be located in Puerto Obaldía and not in Puerto Escocés. Furthermore, the resolution states that through its representatives, it shall work jointly with the authorities of the national government to find the necessary, beneficial means of proceeding. The government has not brought up the issue again.

Tourism

The *Comarca* of Kuna Yala is an attractive place for developing tourism. Since the 1970s, the Panamanian Institute of Tourism (*Instituto Panameño de Turismo* - IPAT) has made several requests to the General Assemblies to develop a tourism project in the *Comarca* with an investment of a half million dollars. The government indicated that Kuna labor would be hired in the construction phase of the project and that the hotel's personnel would all be Kunas. In response to the government's proposal, the Kuna authorities understand that even though tourism can be a source of income for our communities, large-scale tourism also constitutes a grave danger to our culture and to the delicate ecological systems. The construction of that major hotel in Kuna Yala is still on the shelf due to the opposition of the Kuna people.

North American Hotels

There have been two cases of hotels owned by U.S. citizens that were not authorized by the Assembly, in open violation of Law 16 of

1953. One of them was owned by Barton Enterprise, S.A., on the island of Islandia, near the community of Ailigandi, and operated until 1969.

The second was owned by Thomas Moody, who obtained a private concession in 1967 to exploit the Pidertupu tourism center for a term of fifty years. The presence of this North American on the island for more than fourteen years caused public discontent. He was considered to be a "parasite on culture and tradition" and a person sowing "intranquility" or disorder in the region. Indeed, on numerous occasions and in various resolutions the national authorities were informed about the Kunas' complaints against Moody. The special session of the General Assembly held in 1979 resolved to petition that the national government, in the person of the President of the Republic, order this North American to leave. Moody himself was also informed of the resolution. Nonetheless, the national government did nothing to respond to the petition of the Kuna people, and Mr. Moody continued to operate the hotel. Apart from the ridiculous sum of money he was paying for the concession (200 dollars a year, equivalent to 16 dollars per month), Moody trampled upon the most inalienable rights of the Kuna people.

On June 21, 1981 a group of Kunas, tired of such disrespect, appeared at the hotel and confronted the hotel owner, creating serious disturbances. They demanded that the hotel owner leave the island immediately and turn over the hotel installations. This confrontation pitted a group of Kunas, determined to enforce the Kuna General Assembly's resolutions and decrees and to expel Moody, against Moody's bodyguards and Kuna hotel employees. The National Civil Police, who were Kunas as well, were brought in. A violent confrontation ensued, and two members of the National Police lost their lives amid the chaos. The Minister of the Interior and Justice, in his first statement to the press, expressed that the events of the early morning hours of June twenty-first were the fruit of "mafia hotheadedness by madmen unconnected to the Assembly and the violence of some traditionalists."[8]

On June 27, a Special Session of the General Assembly, addressing the Minister of the Interior and Justice, clearly delineated responsibility for the events. The General Assembly affirmed that the cause of the fatal incident was Moody's abuses and the central government's slowness or failure to respond to the Kuna General Assemblies' deliberations, resolutions, and Commissions. For his part, the Minister, addressing the Special Session of the General Assembly, stated, "The government will not permit foreigners to be

disrespectful, abusive, and scornful toward the Kuna people." Based on the recent incidents and the resolutions of the General Kuna Councils, the Minister added that a firm, irrevocable decision had been made not to allow U.S. millionaire Moody on the island of Pitertupo or in any other part of the *Comarca* of San Blas.

But the Minister stated that the perpetrators had to be turned over to the police to be tried by the competent Courts of Justice, "owing to the respect merited by society and the fact that this is a country where rights are respected." The General Assembly ruled in favor of turning over any person who had participated in the events (where Moody was wounded and two policemen died). The suspect was turned over by the General Assembly to the justice system and absolved three years later by the Superior Court of Justice in a public hearing.

For his part, after leaving the country, Moody, from the United States, filed a claim against the government over the destroyed installations. The authorities responded that they could not accede to his demands, given that he had no concession agreement or lease with the nation. Nonetheless, Panama was included among the "benefited countries" under the "Reagan Plan," that is the "Caribbean Basin Initiative," which required indemnification to U.S. citizens, companies, or firms that have filed a claim with the national government for "expropriations." For that reason, the government had to pay Moody a multimillion dollar indemnification.

Hotel Iskardup Ecoresort

In 1994, Rutilio Herrera, an indigenous Kuna, applied to the General Assembly for permission to operate a hotel for tourism purposes, which was granted. Once the hotel was built, the Assembly realized that the project had been financed by the Jungle Adventure Company, and not with money from the island "owner."

The hotel, consisting of 16 cabins, with 40 rooms, and representing an investment of 600,000 dollars, failed to comply with the standards set by the Kuna General Assembly. With the aim of preventing an adverse effect on the investors, the General Assembly engaged in a long negotiation process so the hotel could continue operating. An agreement was reached in August 1997. One of its points stated that "the parties agree that the Hotel shall be administered by the Kuna General Assembly on a private basis, which shall define its personnel, modes of operation, and conditions, in order to ensure the hotel's maintenance and quality of service." The parties also agreed that in approximately five years, the Hotel would be

turned over to the General Assembly, after the bank loan was paid. As for revenues, each package of 168 dollars per night would go directly to pay the bank after the corresponding deductions, out of which the General Assembly would receive 10 dollars. The agreement further stated that, "any increase in the prices of the packages shall be jointly determined."

The businessmen did not comply with the agreement. They changed the price of the package without respecting the fact that those prices were the product of long discussions between the parties. Thus, in June 1997 the Kuna General Assembly resolved to suspend the tourism activities of Hotel Iskardup because it violated the Fundamental Law of Tourism of the *Comarca* of Kuna Yala. Likewise, the Kuna General Assembly informed the authorities of the Panamanian Institute of Tourism (IPAT) and tourism agencies about a ban on sending tourists to the hotel.

Finally, the General Assembly ordered that the hotel be dismantled and that the owners withdraw their equipment and furnishings. If the hotel failed to comply, the General Assembly authorized the Tourism Commission jointly with the community where the hotel is located to confiscate the assets. To date the hotel is closed and the property has not been withdrawn.

Hotel Guadule Development, Inc.

In 1994 another hotel opened operations, also without authorization from the Kuna General Assembly. Initially, the General Assembly did not suspect that the financing of the hotel came from nonindigenous business persons. At all times the Assembly sought to work out the situation with the owner of the hotel and thereby normalize the hotel's operations.

In June 2000 the General Assembly evaluated the situation of the hotel. On several occasions it had called the attention of the hotel management to irregularities in the way the hotel had been operating from the onset. The irregularities openly violated Article 50 of the Fundamental Law, which states that the exploitation of all tourism activity and all modes thereof in the *comarca* were reserved to the Kunas.

Along these lines, the General Assembly, in its resolution of June 2000, issued an order to "immediately suspend all tourism activities of the Hotel Guadule of Akuanusadub until a new order is made, which may only be issued by the Kuna General Assembly itself." Furthermore, the Tourism Commission was authorized to carefully study the case and seek quick, definitive, alternative solutions.

Kuna Yala Comarca Fundamental Law and Tourism Regulations[9]

The Fundamental Law of the *Comarca* of 1995 includes a chapter on tourism, whose Articles 50, 51, and 52 regulate all tourism activity in Kuna Yala:

- Article 51: "All Kuna who wish to exploit tourism activities or install infrastructures for said purposes must have written authorization from the Kuna General Assembly. The respective requirements, conditions, and enforcement procedures shall be established in the Regulations of the *Comarca*;"
- Article 52: "All tourism activities that fail to comply with the preceding articles shall be null and void, and the Assembly corresponding to the community where they are located shall confiscate the property."

In accordance with this law, only Kunas may exploit tourism in the *comarca.* Furthermore, for said purposes, they must have authorization from the General Assembly. The *comarca's* regulations contemplate that all tourism activity in the *comarca* must respect, conserve, and defend natural resources, the environment, biological diversity, and social, cultural, and spiritual values, as well as Kuna norms and customs. A Tourism Commission has been created to enforce the regulations. Another power of the Assembly is to suspend and modify tourism activities in accordance with the needs of the Kuna Yala population. The Assembly can even confiscate tourism infrastructures or property in case of irregularities. Furthermore, anyone who engages in any type of tourism activity must contribute economically to the Assembly.

Finally, it is worth mentioning that tourists must also comply with certain requirements during their visit to the *Comarca* of Kuna Yala. Article 22 of the Regulations mentions, among those requirements, the obligation to respect the norms of the Kunas, their cultural and spiritual expressions, and their sacred sites. It is also prohibited to have firearms or to extract or destroy any component of the *comarca's* natural resources. For that purpose, the local authorities may inspect tourists as they enter and leave Kuna Yala.

Even though no law requires the government to consult the Kuna community, thanks to the power of the General Assembly, we have succeeded in getting the national authorities and private companies to sit down and engage in consultations over large-scale projects.Thus, for example, the Americas Region Caribbean Ring

System (ARCOS-1) consortium is currently negotiating a fiber-optics installation project directly with the General Assembly and not with the government. This is a sign of great progress for us as Kunas.

ARCOS-1 Project in the Kuna Yala Comarca

The ARCOS-1 consortium is proposing the installation of an underwater fiber-optics infrastructure to link Panama with countries in Central and South America and the Caribbean, and with similar telecommunications infrastructures worldwide. The cables would be placed along a route within the territorial waters of the *Comarca* of Kuna Yala.

The ARCOS/CWP Consortium submitted the project in November 1999 to the General Assembly for feedback and for purposes of receiving information on the respective requirements. The principal conclusion at that time was that the participation of the Kuna community should be coordinated through the technical representatives of the General Assembly's Institute of Integral Development of Kuna Yala (IDIKY). The persons selected were a marine biologist, a land biologist, a chemist, an organic chemist, and an environmentalist, all of them Kuna professionals.

ARCOS/CWP Consortium representatives participated in the Kuna General Assemblies of November 1999 and February, June, and September 2000. They made presentations on the project, provided several informational documents, and addressed the concerns of the Kuna community. Joint visits were made to other cable installations with technical representatives of the CGK/IDIKY to present the conditions of other landing sites and explain the system's operation.

In June 1999, the authorities of the Assembly and others in attendance requested a Preliminary Environmental Impact Study. In September 2000, authorization was granted to prepare the Environmental Impact Study, which was submitted in October 2000. The November 23, 2000 General Assembly would request final approval for the project, at which time the Environmental Impact Study would be submitted. In the event it would be approved, economic negotiations would commence between the General Assembly and the consortium. The decision thereon would be made at the General Assembly in session.

Flaviano Martinez is an indigenous lawyer belonging to the Funcionario de MINUGUA(Mision de las Naciones Unidas en Guatemala).

Endnotes:

[1] Aiba Wagua. **Anotaciones para el encuentro misional**.(Panama, 1985).

2 During the period of 1915 to 1925 the Kuna People were subject to a series of assaults on their culture, which provoked a bloody uprising in February 1925 against the colonial police, resulting in 27 deaths (mostly of policemen). On March 3, 1925 the "Peace Treaty between the Kuna Indians of San Blas and the Government of Panama" was signed. One of the principal clauses of the treaty sets forth that the national authorities shall respect Kuna customs and traditions.

3 Francisco Herrera, "Reservas y comarcas indígenas en Panamá y la viabilidad de la conservación de los recursos naturales," **Pueblos Indígenas de Panamá** (Panama, 1998).

[4] The IDIKY was established as an entity under the General Assembly in 1994, and was granted legal status by the Ministry of the Interior and Justice, with the aim of developing projects that would benefit the Kuna communities. It also provides consultation to the communities for the development of social, economic, and ecological projects, and it protects the natural heritage of the Kuna Yala with participation from the communities.

[5] Juan Perez, "Memoria histórica, estructura social y teología de la nación Kuna," **Revista Abisúa** (Panama, July, 1997)

[6] The Fundamental Law of the Comarca of Kuna Yala is a legislative bill that reforms Law 16 of 1953. It was passed by the General Congress in 1995 and submitted to the Legislative Assembly for consideration. The bill includes 77 articles. For the Kuna authorities it is in fact a law, and compliance therewith is obligatory for all Kunas and non-Kunas who enter the Kuna Yala Comarca, even though the Legislative Assembly has yet to pass it.

[7] Atencio López, "Las concesiones mineras y los pueblos indígenas de Panamá" (Panama, undated.)

[8] Aiban Wagua. "¿Por qué tanta violencia en Pitertupu?" Panama: **Diario La Prensa** (Panama), July 6, 1981.

[9] The General Assembly approved the Regulations on Tourism in Kuna Yala in 1996, which implement Chapter VIII (Articles 50, 51, and 52) of the Fundamental Law of the Kuna Yala Comarca, 26 articles of which address tourism in Kuna Yala. These regulations are of great importance, given the many problems have occurred when non-indigenous persons exploit tourism.

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16

The *Tinku*: A Model of the Philosophy of Conflict

Reynaldo Paredes Alarcón

The date is May third, the eve of the festival of Sta. Cruz, and the place is the Province of Chayanta, in the Department of Potosi, Bolivia. The plaza is divided into four parts: one for each *ayllu* (community) that will be fighting in the *tinku*.

Divided by *ayllus*, rows numbering ten to fifteen men each face one another. The rest of the people form into a compact mass watching the fight. Everyone is dressed in their ritual gear: their *monteras* are firmly tied to their chins; nails stick out of the terrible *zapatón* footwear. The binding on their knuckles is lined with stones to intensify the blows. They begin to strike one another, hard. Blood starts to flow from people's noses and lips. Others pair off and join the fight.

The women have begun a confrontation of their own, passionately pulling one another's hair and rolling on the ground over a confusion of *ajsus*.[1] The number of wounded increases at each instant. Some complain that their ribs or back hurt. Teeth have been knocked out; hands have been dislocated. The atmosphere is tense. Everyone seems to be working to make sure that the ritual is carried out in keeping with the rules. The *jilakatas* raise their hands to stop

the fight if anything violates the ritual. Those on the sidelines shout out their support for such measures. Were the rules always like this? Will they always continue to be this way? Does the *tinku*, with its pain, blood, and risk of human life, embody some lesson? Is there some rationality behind it?

What violates the rules is when the *ayllus*, in large, disorganized groups, engage in a relentless battle, in a fight to the death. The people of the *Jukúmani* ethnic group tend to journey into other regions, such as Chayanta, to engage in *tinkus* and assault the Layme and Gacachaca peoples. The boundary between the Laymes and Jukumanis is located in Qamapampa, near Lagunillas, a place of violent confrontations between the two *ayllus*.

The *tinku* here lives on as a vestige of territorial conflicts that date back to ancient times and break out year after year. Even at the turn of the century, the indigenous world continues in an attempt to deal with conflicts using its own means, though the conflicts are, in fact, beyond its control. Meanwhile, the communications media falsely report on the *tinkus* as a sort of primitive, savage, gut struggle. When the war that recently broke out turned into an armed struggle, fraught with pillage and death, the press and the government presented those involved as common criminals that needed to be identified, captured, and sentenced.

One of the root problems here is that the lands of the *ayllus* do not belong to the community or even to the individual members of the community. They belong to the "*taseros,*" that is, "tax collectors." These *taseros* are apparently descendants of Indians designated during the colonial period to collect taxes for the king. The lands are in the names of persons who no longer exist. It is believed that there are approximately 150 such titleholders in the *ayllu* of Jukumani.

Generally, the *taseros* are elected as authorities or "*pasantes*" who are economically solvent. The rest of the people are "*canturunas,*" who must ask for land from the "*taseros*" on an annual basis, promptly paying them with a part of their harvest. The institution of *taseros* appears to trace its origins to Inca authorities, who were in charge of the annual distribution of lands. For example, in Belén, with a Jukumani population, arable land is scarce and found in scattered parcels. The land is insufficient for large families, who always work rented lands. The Agrarian Reform never made it to Belén, and what's more, there is a water shortage. Thus, the bloody, "gut" wars between the Laymes and the Jukumanis are not baseless. They are a self-defense mechanism, albeit one that inflicts damage on themselves.



Map of Bolivia

THE MARGINALIZING STATE, ACTING AS A THIRD, EXCLUDED PARTY

These two possibilities leave out a third for resolving the conflict. As such, the State acts as if it has nothing to do with the conflict. So long as this official stance predominates within the State, and so long as the State administers the lands, the *ayllus* in conflict can continue to bleed eternally. Under these circumstances, the true solution to the underlying problem is beyond the reach of the *ayllus* at war.

Meanwhile, State officials, with all their "civilized" pomp, come into the zone of conflict with a juicy excuse for apprehending those involved, while disarming the bands through buying their weapons and promising to take them as settlers to new lands. No one says anything about the legal status of their lands.

ARCHITECTURE OF THE CONFLICT

External Level:

- Inter-ethnic conflict;
- Jukumanis, Laymes, and Cacachacas in an armed struggle, marked by pillage;
- Indians grouped into bands and confronting one another in a primitive, savage, pre-modern ritual (the *tinku*);
- Confrontation and pillage between poor Indians due to conflicts between them;
- A conflict among Indians only.

Conceptual Level:

- Problems with the distribution, ownership, and titling of community lands;
- Problems with the administration of lands (Agrarian Reform, The INRA[2] Act);
- Problems with agricultural development policies;
- Problems with State policies on indigenous development (education, health, production).

Internal Level:

- Ethnic/State conflict;
- Reduced land access and poor lands;
- People split into bands and living in extreme poverty;
- A marginalizing State, without development policies for rural and indigenous peoples;
- Land divided into *minifundios* in poor condition as compared to a concentration of fertile *latifundios;*
- High rates of malnutrition, high mortality rates, and shortage of basic services;
- High emigration rates resulting in begging.

RATIONALITY, METHODOLOGY AND INDIGENOUS STRATEGIES

The *tinku,* as a regulated model for equalizing differences, is based on a code where the two parties are united on a principle for the relationship between them. This two-way relationship is based on a principle that recognizes the existence of asymmetry and aims to break down the differences by creating a complementary antagonism. This is the concept of *yanantin*.

In order to attain *yanantin* (conflict solution through the complementarity of the counterparts), several strategies or logical forms exist to diffuse the conflict. For example, there is the *kuti* or a mutual exchange of things of value. There are also the *kimsakus*, or forms of bringing in a third party, that is, mediation. In the case of the *tinku,* the structure of the solution is based on breaking the bands into two parts and then breaking each of those parts into another two, for a total of four bands. During the confrontation, the parties come together. Naturally, this is a symbolic ritual form of dealing with a conflict.

On the plane of reality are historical examples of ways about how *yanantin* was attained. Thus, the *Mitmajkunas*[3] consisted of the massive transplant of bands of people for economic or political purposes. Politically, this was an institution designed to instill peace and order within the State. In *Tawantinsuyo*,[4] the conflictive bands were moved into pacified zones. In economic terms, this strategy was used to exploit sparsely populated but fertile lands. The central idea was to resolve conflict through bringing the bands together in pacified spaces that sustain and promote life.

GEO-THINKING

The central zone of Bolivia, which encompasses northern Potosí, southern Cochabamba, and part of Oruro, was the habitat of the Charca dominion, one of the most powerful confederations south of the Kollasuyo. It included the Caracara, Yampara, Caranga, Chicha, and Charca nations. The area was invaded by the Incas and influenced by confederations and political ties with other Aymara peoples. It was also parceled by the *encomenderos*, subjected to the creation of myths and decimated by Viceroy Toledo, who saw danger in allowing these peoples' power to remain intact.

Charca territory covered what is now the provinces of Gustillos, Ibáñez, Bilbao, and Charcas. In the period of the Viceroys, a good part of Charca territory was assigned to the district of Chayanta. This is a region with great contrasts, including zones that are very mountainous, along with high mesetas, ravines, valleys having a warm climate, and regions with very rugged terrain. There is a notorious difference between the cold zone of the *Puna* (the High Andean Plateau) and the warm zone of the valleys. The high plateau contains numerous silver mines, such as the ancient mine of Ocuri or the Aullagas mine. (In contemporary history, mines of importance include the Llallagua, Siglo XX, Catavi, and Uncia mines.)

In contrast, the valleys are temperate and mild, producing grains, fruit, and vegetables. According to Cañate, it once had wood such as oak, tipa, carob, mazo, soto, and pine trees. He also added that there were 168 mills in the zone, which showed abundant irrigation. Indeed, the Morochada, Guanuni, Moscaria, San Pedro de Buena Vista, Pitantora and Guaycama Rivers come together to form the great river.

Nonetheless, access to these lands was blocked during the colonial era. The best lands were confiscated and later sold by the crown. Currently, simultaneous cultivation takes place in the high plateau and the valley, making it possible for families to access products from both ecological planes. The inhabitants frequently move from one zone to the other. According to Marris, the relationship between the high plateau and the valley is interpreted as the "kitchen" and the "pantry." The high plateau would be the kitchen, where people reside, eat, and sleep. The valley would be the pantry, which provides the necessary raw materials.

Thus, the *ayllus* do not possess a continuous territorial space. Their space was originally distributed between the high plateau and the valley. This symbolic duality responds in general terms to the control of the ecological planes (Murra-Condarco). The highlands provide salt, minerals, dehydrated potatoes, wool, quinine, etc. The lowlands furnish wood, honey, chili peppers, etc. In this way the territory is divided into: the cold (*Chirírana*) high region (*Patarana*) and the warm (*Qunirana*) low region (*Ururana*). Between the two is an intermediate zone (*Chaupirana*).

We can conclude that the Andean topography of major changes in relief within a short distance creates various geographic planes, each with its own given products. The Andean economic system consisted in the control of various islands of territory in a variety of geographic environments, forming an archipelago of discontinuous territories under a system differentiated between lands of two categories: highlands and lowlands.

This vertical control system, in all its variations, has a common feature. It was developed in an early era, based on temporary migration patterns, and was adopted as a system in periods of State expansion. The system survived the State centralism of the Inca period, during which it was adopted. During the colonial era, this system was maintained, despite pressures, as it integrated vertical control with the crown. During the Republic it endured as a conceptual approach to a space fragmented into departments and provinces.

From the territory's vertical control system comes the basic political power system. The ethnic domains have their center or *taypi* of political power in lands of high altitude, from which they rule over various islands of territory populated by permanent *mitmas* separated from the center. The nuclei had a larger population than the islands of territory. Their authorities had control over the settlers and the production of those "islands." The *mitmas* on each ecological plane identified ethnically with the center or *taypi* and maintained their right to lands in the High Plateau. Relations of reciprocity and redistribution regulated production.

The Layme *Ayllu* forms part of the Chayanta ethnic group, in opposition to the Macha, both forming part of the Charca confederation. Over time the *ayllus* of the former Charca confederation underwent changes, from the Toledo ordinances to the Agrarian Reform of 1952. Despite these changes, basic elements have endured, such as the control of various ecological planes or dual domicile. The conceptual world that governs the life of the Laymes has been maintained despite the passage of time.

AYMARA DUALISM

The Kollasuyo nation is divided into two bands: the Urcusuyo and Umasuyo, those who inhabit the mountains and those who live in the low plains respectively. The Urcusuyo are symbolically male and strong; the Umasuyo represent that which is female. The

Choquelas	Tinku	Urus
Male	Marriage	Female
Fire	Lake	Water
Hanan	Yanantin	Hurin
Urco		Uma
Cordillera	Axis	Cordillera
Occidental	Aquatic	Royal
Lands:		Valleys:
Low	High Plateau	Temperate
Pacific		Amazonas

Urcusuyos are the Aymara conquerors, while the Umasuyos are related to the Puquinas, the ancient inhabitants of the lowlands. Both bands are divided by the principal hydrographic system (*taypi cege*) consisting of the Azangaro River, Lake Titicaca, the Desaguadero River, Lake Poopo and Lake Coipasa.

This geographic duality is also reflected in the realm of history, which is divided into two periods: Puruma, the dark era, and Auca, the era of war and struggle. These poles are represented by the Choquelas, who were highland hunters, and the Urus, who were lowland fishermen. The Auca era saw major conflicts between the Urcusuyo and Umasuyo. Each respective band controlled the two sides of the high plateau as well as the lowlands along the coast and the temperate valleys.

FOUR-WAY DIVISION

The longitudinal hydrographic system that divides the highlands from the lowlands was later adapted into the system of the Inca conquerors, which consisted of a four-way division around a central point. (The Uma and Urco formed the Kollasuyo, the two low sectors became the Conti and Antisuyo). In other words, Aymara space was politically broken down after the invasion from Cuzco. Nonetheless, economically, these spaces continued to depend upon

Identity	**Aymara**	
Confederation	Charcas	
Nation	Caracara	
Ethnic Group	Macha	
Partiality	Anansaya	Urinsaya
Ayllus	Alacuyana	Majacuyana
	Alapicha	Majapicha
	Sulhawi	Sullkhata
	Warahata	Wakhuata
	Taphunata	Kunthawata

the original Urcu and Uma centers. The center or natural *taypi* of the lake was replaced by Cuzco for political reasons. We can conclude that Aymara duality maintained a geographic symmetry of an ecological type, while the four-way division under Cuzco answered to the political needs of the Inca State.

SYMBOLIC THOUGHT

Political and social organization was divided into two halves, each of which was divided in turn into minimal *ayllus,* patrilocal groups and domestic units. Thus, the basis of thought is the duality originated in the differentiated geographic structure. The environmental duality corresponds to symbolic social duality.

SYMBOLIC DUALISM

This refers to an axis of symmetry comprised by symbolic dualism: female vs. male, and the dualism embodied by *yanantin* pairs. The first type of dualism can be called environmental dualism; the second, political dualism.

The patrilineal family groups are exogamous, while the *ayllus* are endogenous. Blood alliances are formed vertically between the Anan (high plateau/valley) and the Urin (high plateau/valley).

This four-way division allows for the following four possible combinations:

1. Anan – high plateau
2. Anan – valleys
3. Urin – high plateau
4. Urin – valleys

This combination is complicated, and is represented by birds and squirrels embodied in characters of the same sex. To further complicate matters, one bird is represented by code 11 and the other bird by code 01. One squirrel is represented by code 00 and the other squirrel by code 10. In other words, the relationship between birds and squirrels is not equal. This type of dualism is called imperfect or complementary. The underlying ideal is to achieve *yanantin*, for which reason both squirrels and birds are represented metaphorically by characters of the same sex.

The *tinku* is a confrontation between the Anansaya band and the Urinsaya band. Men fight men and women fight women. In other words, on the one hand, it is a *tinku* between Code 11 and Code 10, and on the other hand, between Code 01 and Code 00.

The relationship of complementary dualism between men and women constitutes a unit of production. The Laymes believe that within marriage, the men do harder, more intensive work, while women's work is lighter, but longer in duration. Behind the differ-

ence is a complementary balance between the productive capacity of men and women. The basic system of geographic division among the Laymes is inverted: Suni, the high plateau, is female. This is a dry, barely productive zone, in need of cycles of rest. The Likina is fertile land with abundant, continuous production, and is characterized as male. Nonetheless, it is the highlands that dominate politically and impose demands upon the valley (as happens with women within marriage). The *curaca* (*cacique*) of the Layme *ayllu* comes from the highlands.

Jilasullka is an Aymara term that designates the relationship between brothers as determined by hierarchy, age, and similarity. *Jilasullka* has characteristics that are not contradictory; rather, they represent distinct forces that complement one another harmoniously. The *jilasullka* are not opposed to one another, they are simply unequal. The *jila* or older brother is the one with greater experience and strength, and is therefore male, but the *jila* is not one with the greater advantage within the Laymes. *Sullka,* the younger brother, is the one in charge. In other words, the *sullka,* who is apparently weaker, predominates in the domestic unit among the Laymes. The dualisms between man and woman and within the *jilasullka* are balanced relationships. But from an abstract point of view they are in opposition to one another, with an inverted structure of primacy favoring the economically weaker of the two.

On an abstract level, an opposition exists between *liquina* and *suni* and between *jila* and *sullka*. The Laymes, in order to keep the stronger of the pair in check, counteract their decision-making power or their power to impose their demands. This reestablishes equilibrium between the parties. In other words, political power is wrested from the *liquina* and from the *jila*. The negation of *liquina* and *jila* and the affirmation of *suni* and *sullka* results in a complementary opposition, technically referred to as tautology by opposition.

If not all *liquina* command, then some *suni* command. If not all *jila* govern, then some *sullka* govern.

The first premise says the same thing as the second one. Both are balanced, but are not *yanantin*. They are not a mirror dualism. Of course, in the abstract realm, one can equalize two partialities, but it is in the realm of reality where problems arise, when the two bands seek to restore the equilibrium of the abstract realm using the rationality of the *tinku*.

The *tinku* as model for relationships or encounters between bands is referred to by various historians as "ritual battles" seen throughout the sub-Andean region. Thus, Bertonio refers to the Chausiña as

a barbaric game where young men divided into bands shake and hurt each other considerably, with each town having a day set aside for the game. Molina of Cuzco states:

> *They called the month of December* camaykilla, *in which, on the first day of the moon, armed young men from the Anan Cuzco band and from the Urin Cuzco band would come out to the plaza with slings known as* huaracas *in their hands. The Anan Cuzco fighters and the Urin Cuzco fighters would throw slingshots at one another. Sometimes they would fight hand to hand to test their strength. This would continue until the Inca in the plaza raised his hands and imposed peace among the fighters.*

According to Vasquez de Espinoza, this type of confrontation was frequent in the Kollasuyo before the arrival of the Incas. "There, two cacique kings would battle in cruel confrontations, squaring off young men against young men, Machas against Caracaras. These cacique kings were the lords of Pocoata, up to the snow-covered peaks of Tapacari."

Those pre-Colombian ritual battles have developed into the modern *tinku*. It is a ceremony deeply rooted among the current inhabitants of northern Potosí. The modern *tinku* has combined pre-Colombian religious elements with other new ones, such as the Church tower and the Plaza. Its formal structure is the same: a confrontation of two bands based upon a symbolic division into two and four parts.

On occasions the Anansaya occupy the right side of the plaza and the Urinsaya occupy the left side. This placement alludes to the symmetry of the human body, seen in the symmetry of our arms, legs, eyes, etc., incorporating the core concept of *yanantin*. In the most violent *tinkus,* the two bands come from one and the same ethnic group (*Macha, Pocoata*, etc.).

Some authors justify the almost frantic violence, aggravated by the liquor and many times resulting in deaths, as a rite of fertility, as ancient territorial battles, or as the reaffirmation of a given social strata. Despite the violence unleashed in the course of the fight, none of the bands declares itself the winner. Once the opponents have come to terms with one another, the original equilibrium of the *ayllu* is restored. The *tinku,* on the plane of male-female dualism, makes sense in terms of equalization and marriage.

The *tinku,* in early origins, was an endogenous event of an ethnic group that would square off its bands as a self-regulating mechanism. This aspect is the one that has been described and studied the

most. The challenge facing the *tinku*, as manner of dealing with conflict, is whether or not it functions externally. Could it become a model for exogenous conflicts, or be incorporated into a strategy of balance and equilibrium, not only within an ethnic world, but within a non-ethnic world as well?

The pressures of the contemporary world, on the one hand, have made the indigenous world resistant to penetration, while at the same time tearing down ethnic barriers. Indeed, the result of this situation has been extreme poverty and social marginalization. The rich are ever richer, the weak are ever weaker. All of this is characterized by an irrational lack of equilibrium and balance.

The rationale behind the *tinku* consists in regulating conflicts between imperfect dualities that are predisposed towards confrontation. The *tinku's* true strength lies beyond metaphoric ritualism in times of war or times of conflict. Its essential condition is a predisposition towards struggle. The ancient *charcas* and *ayllus* hold the ancient warriors of the past in high esteem.

The *tinku* as institution is nothing less than the regulation of ancient tendencies towards warfare that were channeled into a rite favoring sedentary life over nomadic life, agriculture over hunting, and exogenous conquest and combat over endogenous conquest and combat. It would appear that the structure of conflict formalized by the *tinku* operated on the outside of the *ayllu* as a strategy of conquest and defense. The Aymaras of northern Potosí engaged in waves of conquest, settling in the central and northern High Plateau. Thus, what was once the Quillaca kingdom is now the zone of Pasajes (Machaca).

During the Inca era, the strategy changed from an offensive one to a defensive one. The *charcas* resisted the Incas until they were defeated by Tupas Inca Yupanqui. Once integrated into the Inca empire, they served the Incas as warriors. During the colonial period they formed a part of the armies of Tupas Katari. As a consequence, they had to seek refuge in the inaccessible zones they now inhabit. During the era of the Republic, their participation in the *Chayanta* uprising against the regime of the hacienda was notable. Similarly, their proximity to mining centers, coupled with the fact that the Laymes became miners, made the mining industry of the zone one of the most militant within the labor movement.

The events of 2000 initially took the form of rites that had not been modified by contemporary history. The persistence of the *tinku* at the dawn of the 21st century, with all its characteristics of violence

and bloodshed, overstepped the limits set for the ritual, and turned into an interethnic war between Laymes, Jucumanis, and Cacachacas.

The core principle of compatibly matched bands around an axis of symmetry in equilibrium could not be properly applied because such axis of symmetry was represented by a territorial boundary line that could not be mutually agreed upon. Due to the disagreement in regard to an axis of symmetry based on a boundary line, the *tinku* became prolonged and out of control, turning into an outright conflict between the bands.

The territorial limit between the Laymes and the Jucumanis has been the cause of cyclical *tinkus.* A practical solution to these problems had been proposed through a cartographic determination of boundaries and the setting of boundary markers. Nonetheless, the problems have persisted, as the boundary markers were destroyed by the bands. The dispute has become a recurring problem.

Moreover, the ritual terms of the *tinku,* which limited the confrontation to a single date on a specific holiday, were disregarded. Instead, a war of pillage, theft, and death ensued, with a mutual rendering of accounts without end. Besides failing to establish an axis of symmetry, as *tinku* conventions require, the *tinku's* traditional fighting implements were replaced by modern weapons, such as rifles and machine guns.

All of these ethnic groups: Laymes, Jucumanis, and Cacachacas, provide military service in the army. There, they learn combat strategies and obtain weapons. Nonetheless, the perspective of viewing the confrontation as an issue involving two parties only is the same as before. The problem has been viewed as internal, as if the issue of delimiting the symmetric or territorial axis were a problem involving them alone.

In the recent events, the problem and the effects of the conflict far exceeded the dominion of the two parties. The deaths, thefts, and robberies transcended the ethnic world, spread to the urban centers, and involved the government. The communications media publicized the conflict's sensationalist aspects, such as the violence, robberies, etc.

RECURRING QUID PRO QUO

The government, stunned by such an unusual *tinku*, ended up responding with acts of repression. For the government, this response

was a necessary pacification effort through the armed forces. From the point of view of the *ayllus*, it represented the symbolic reestablishment of an axis of symmetry. The government thinks that its promises of development and other actions can definitely solve the problem. The *ayllus* believe that there will always be a need to restore equilibrium. According to the *ayllus,* such equilibrium tends to be lost after a certain amount of time, which means that there will always be a *tinku*. Thus, it is necessary to understand its structure, as an interpretative framework of events that appear to be a relic of the past.

RECENT SOCIAL CONFLICT IN BOLIVIA OR NATIONWIDE *TINKU*

The *tinku* between the Laymes, Jukumanis, and Cacachacas unleashed a problem that exposed issues involving not only the governmental administration, but the very system of democracy that governs the political life of the country. One core group consisted of an Aymara Confederation of Bolivian field workers, which acted as the band from the high plateau and was the most militant and hardline during the negotiations. The other consisted of a Confederation of settlers from the temperate valleys. Between the two of them, the government was truly placed in a compromising position.

The two-way political and environmental division is not just a thing of the past. The high plateau and valleys were clearly established and distinguished. The chain of command and the placement of roadblocks was exercised by the confederation of the high plateau, and was not disputed by the valley confederation. At the time of the negotiations, the high plateau determined the decisive elements, and the valleys had to follow in their footsteps. Even at the negotiating table, the two-way model of the *tinku* was implemented.

A division into four parts is a structure that is still in effect today. The confederation of settlers of the valley is divided into the Tropic of Cochabamba - Santa Cruz and the settlers of the jungles of La Paz. Both form part of the Yunka, originally Alaa and Manqa Aymara. The high plateau, in turn, is divided into one subdivision of original inhabitants and another of trade unionists. The inhabitants of the high plateau practice political dualism. The inhabitants of the lowlands practice environmental dualism. The Aymaras of the high plateau have a political vocation; those of the lowlands have an environmental vocation. The first group struggles to develop political instruments. The second struggles to secure its rights over pro-

duction from the land.

The complementation of partialities is not a mere conceptualization. Indeed, it was a reality that terrified and shook the social conscience of the nation with respect to Bolivia's multiethnic, multicultural roots.

Reynaldo Paredes Alarcón is with Taype Ceqe.

Endnotes:

[1] Note: *Ajsu* is a Quechua word, referring to a traditional woman's wrap-around dress.

[2] INRA - Instituto Nacional de Reforma Agraria, the "National Agrarian Reform Institute."

[3] An ancient Incan institution often described as a system of forced migrations.

[4] The ancient Inca or Quecha native land or country was referred to as *Tawantinsuyo*, which literally means "four" (*tawa*) "nations" (*suyo*).

17

Experiences with Legal Pluralism, Culture, Biodiversity and Conflict[1]

María del Pilar Valencia

For indigenous peoples, territory is a necessary condition for cultural survival. Indeed, the relationship between man and nature creates an interdependence, such that one cannot speak of cultural integrity outside of one's vital space. Historically, multiple evidence abounds of the consequences of being territorially uprooted: many peoples have been victims of physical disappearance (genocide) or cultural death (ethnocide).

At numerous times throughout history the indigenous peoples have faced manifold conflicts that have deprived them of their territorial base. Various groups have not responded passively. Rather, they have been protagonists of several forms of resistance, and because of these approximately 80 ethnic groups survive in our country today.

The areas of greatest biodiversity are located in the ethnic territories (whether indigenous or Afro-Colombian). Depending upon the prevailing trends of development in different eras, these regions have experienced different degrees of integration or marginality vis-à-vis the market economy. For example, Amazonia, Orinoquia, and the Chocó biogeographic areas were for a long time considered mar-

ginal zones, as they were located outside of the agricultural areas and were thus unimportant to the national economy. Today Amazonas and Chocó are principally viewed as regions with strategic ecosystems, on account of which the concept of marginality, in effect for many years, must now be reassessed.

As an outgrowth of the resistance waged by the various ethnic groups, the contemporary indigenous movement in Colombia and other countries, as a core demand, insists upon respect for cultural integrity, with territorial rights as an essential element. Based on such a stance, the indigenous peoples of Colombia at the National Constitutional Convention were able to introduce a change into Colombia's legal tradition, under which the nation was recognized to be multiethnic and multicultural. Implementing this principle, the indigenous peoples won the inclusion of a series of rights guaranteeing cultural integrity and territoriality, both in political/administrative terms and in terms of collective ownership. They also gained the right to participate in decision-making processes related to the environment and to the exploitation of natural resources.

A nascent recognition of Colombia as a multiethnic, multicultural State was incorporated through recognition of Indigenous Territories as political/administrative entities (Articles 286, 329, and 330), recognition of special indigenous jurisdiction (Article 246), and participation of indigenous *resguardos*[2] in national government funding (Article 357).

Any analysis of environmental conflict related to indigenous peoples must necessarily address the issues of territoriality and culture, if one's starting point aims to guarantee a territorial base; respect for the rights inherent thereto; conservation of natural resources; the use, management and enjoyment of those resources by the respective peoples and communities; and, finally, exercise of autonomous administration and control. Based on the preceding considerations, an examination of conflicts over the appropriation of nature and indigenous rights can make positive contributions if certain features are borne in mind. For such analysis to make sense, it must inevitably refer to territory as a central principle. It also needs to focus on possibilities and obstacles for turning Colombia's monocultural State into a multiethnic, multicultural one that transcends rhetoric and goes beyond mere coexistence of cultures in a single geopolitical space.

Much has been stated regarding legal pluralism, autonomy, and indigenous cultures. On the one hand, the phenomenon of pluralism cannot be limited to the single aspect of indigenous peoples'



"traditional law."[3] Nonetheless, the experiences related in this document are significant experiences in the communities of the Ticuna, Cocama, Yagua, and Emberá.

Traditional indigenous legal systems predate the existence of the Colombian State. They survived without recognition under official law and have only recently received legal recognition. Yet some questions remain: Is it possible to exercise legal pluralism, if limitations exogenous to indigenous cultures (such as human rights conventions and the National Constitution) are imposed as a precondition upon indigenous forms of justice? Do these traditional indigenous systems cease to be an expression of legal pluralism when they are recognized under positive law?

With the phenomenon of acculturation imposed by national society, do real possibilities still exist for indigenous legal systems, especially under current conditions of globalization and an internationalized economy? Do possibilities exist in Colombia to promote the transition to a multiethnic, multicultural State? How have indigenous peoples resisted and maintained control of their territory and natural resources and how have they been coopted by na-

tional society and the market economy? What obstacles must be overcome to guarantee indigenous peoples' autonomous control of their territories and the full enjoyment of their rights, within the context of building a multiethnic, multicultural Colombia?

This paper does not attempt to respond to all these questions, but does try to address the issue in order to provide a framework for discussion. In particular it tackles the following aspects: a brief look at territorial conflict and natural resources as they relate to indigenous peoples; some conceptual elements from a cultural, legal, and methodological point of view; a brief cultural and political overview of the Ticuna, Cocama, Yagua, and Emberá indigenous peoples; a description of the issues being addressed through conflict resolution methods; social control and preventive mechanisms and management of environmental and territorial conflicts; and finally some conclusions and recommendations for strengthening our indigenous peoples as protagonists of their future, for that is indeed the basis upon which peace and coexistence will be built in their territories.

SOME CONCEPTUAL ELEMENTS FROM A CULTURAL, LEGAL, AND METHODOLOGICAL POINT OF VIEW

The search for alternative resolutions to indigenous conflicts is aimed at reaffirming the right to autonomy, the right to be different, and the right to cultural identity. To this end, certain elements have been proposed for discussion, which could be enriched by other points of view.

Political Objectives

This is sought to strengthen the decision-making capacity of the communities in a manner that is consistent with their culture, their vision of the future, and their priorities. It calls for empowering community legal systems, whether indigenous, Afro-American, or peasant, so as to contribute to building local communities that are social actors capable of interacting with other players.

Participation

This is considered both from a community and political perspective. Participation is a prerequisite in the process. At the community level,

the various members and strata of the collectivity must participate: men, women, boys, girls, youth, male and female elders, traditional physicians, herbalists, and other persons with expertise in various realms of knowledge and functions.

In the political sphere, this means improving participation by local communities in political, legal, and civic affairs so that the communities may reaffirm their rights and culture.

Control of Cultural Change

All cultures, whether urban, indigenous, Afro-Colombian or peasant, are in a constant state of change. Nonetheless, at present, it is the dominant society or culture that is controlling and determining that change. In order for the local communities to reaffirm their identity and determine cultural change for themselves, it is proposed that the strategy of "the 4 R's" be employed, as developed by the Ipkikuntiwuala community of the Kuna Culture:

- **R**ecover that which is possible from the past;
- **R**eaffirm that which is relevant from the present;
- **R**eadapt that which is necessary from other cultures;
- **R**ecreate or generate that which is required through new things, when unknown in our own cultures or those of others;

This implies that our starting point needs to be a recovery of the historical memory of social and political organizing, territory, authority, and the application of traditional justice. Such knowledge must be enriched with elements from the present and lessons from the experiences of others. That will make it possible to develop alternatives for facing problems that tradition leaves unresolved, but that indigenous authorities must address. The Emberá of Cristianía added a fifth **R** that ought to be added to this list: **R**esist integrationist and acculturating attempts, as an alternative for maintaining one's cultural identity.

The anthropologist Guillermo Bonfil Batalla, approximately two decades ago, came up with a definition of ethno-development that makes a useful contribution regarding control of cultural change. In his understanding, ethno-development is a people's capacity to autonomously make decisions that determine their future. Here, what is of interest is to support the strengthening of an autonomous cul-

ture. For that purpose two reference points are needed: resources (one's own resources and outside resources) and decisions (one's own and those of others).

In advancing towards an autonomous culture, one aims to strengthen the decisions made by the people themselves, using elements from their own culture as well as the culture of others. The essentials of one's own culture that were taken away are reappropriated, while any irrelevant ones of the imposed culture are eliminated. In the case of the recovery and control of traditional knowledge and territory, intangible elements relating to symbolism (ideology, politics, spirituality, and legal systems) as well as tangible elements (territory, natural resources, etc.) are involved.

Resources	Decisions	
	Own	Of Others
Own	AUTONOMOUS Culture	OUTSIDE Culture
Of Others	APPROPRIATED Culture	IMPOSED Culture

The Case Study as a Methodological Resource

Community territorial control requires the development of a system of regulation within a framework of legal pluralism. This requires an understanding of a community or culture's forms of parallel law (norms of coexistence, prevention, and internal conflict resolution). These norms are an indispensable element for ethnic identity and for social and cultural preservation and reproduction. Specialists in law have generally ignored this approach to regulating society, as for them law is only constituted through written or codified norms.

The anthropologist Rodolfo Stavenhagen has proposed that the *case study* be adopted as a methodological resource because it allows us to discover norms and rules not only as abstractions, but as living, dynamic elements of a society's legal system within a historical and structural context. This makes it possible to identify cultural values and ideologies; the society's character, psychology and symbolic world; its degree of acculturation, syncretism, cooption by the State, and autonomy; as well as family, religious, and economic structures, etc.

BRIEF CULTURAL AND POLITICAL OVERVIEW OF INDIGENOUS PEOPLES INVOLVED

Territory of the Ticuna, Cocama, and Yagua of Puerto Nariño

This territory is located in the municipality of Puerto Nariño in the Amazonian Trapezium. Today, these peoples' traditional territory spills over international borders (Colombia, Peru, and Brazil). In Colombia their territorial jurisdiction forms part of the municipalities of Puerto Nariño and Leticia (Department of Amazonas). That is to say, the territory to which this paper refers is only one part of what in ancient times was their traditional territory.

This interethnic territory partially overlaps an area of forest reserve and the National Natural Park of Amacayacu, in addition to the seat of the municipality of Puerto Nariño. A large part has been titled as an indigenous *resguardo* since 1993, although its boundary with the urban area has not been delineated. The Colombian Agrarian Reform Institute (INCORA – *Instituto Colombiano de Reforma Agraria*) left that task undone, to be coordinated between the communities and the municipal council. The rest of the territory is comprised by untitled communal areas, which the institutions of the State would like to characterize as idle lands belonging to the nation.[4]

The territory has 21 communities. Their population, according to the data obtained in a diagnostic study for a Plan of Life in 1999, was approximately 5,200 inhabitants. The majority belongs to the Ticuna ethnic group although in one community the Cocama predominate. There are also a few dispersed Yagua families, many of whom have been integrated into Ticuna communities or have mixed with the settler population. Almost 100% of the municipality's rural population is indigenous, and the rural population, in turn, constitutes 78 percent of the municipality's total population. The remaining 22 percent inhabits the urban area, whose population is 75 percent indigenous. One could thus state that the indigenous territory is not so much located in the municipality, as the municipality of Puerto Nariño is located within indigenous territory.

The traditional organization is based on a system of clans, whose denominations correspond to animals such as the rattlesnake, heron, macaw, tiger, the *paujil* bird (blue-billed curassow), blue jay, wolf, *paukara*, etc. Traditionally, these peoples have not had centralized social and political forms of organization, as it has been the chief of each clan who exercises authority internally. Colonization and evan-

gelization have led to a deterioration of traditional culture, to such an extent that many indigenous persons do not even know the clan to which they belong. The tradition of the *maloca* as a sacred site and privileged space for the transmission of knowledge and for fundamental decision-making, which is common to many Amazonian cultures, has practically disappeared. Political leadership by the elders is in major decline, and is tending to be substituted by persons capable of handling themselves in political circles (both liberal and conservative), religious groups (various Christian sects), or youth who have received elementary or secondary schooling.

In the past decade these peoples have decided to use the *cabildo* (council) as a form of political organization and representation for their communities. First, each community created a *cabildo menor* (Local Council) and in 1998 a *cabildo mayor* (General Council) was established. The *cabildo mayor* was entrusted with the task of representing the entire territory while simultaneously exercising authority over indigenous persons who have settled in the urban areas. During the process of formulating the Plan of Life in 1999, however, it was decided to establish a *cabildo menor* for the municipality's urban area.

Two principal reasons emerged for adopting the *cabildo* as a form of government. The first was the need to have a representative body to deal with external agents, especially the State. The second was the need for a representation of the territory as a whole. Indeed, due to fragmentation of authority and of government, matters related to managing federal funds earmarked for the *resguardo* ended up being handled through a single legal representative, who did not necessarily reflect the will of the communities. Above all, an urgent need existed to establish a body that would work to protect and control the territory and its natural resources. Analysis of community work and various assemblies concluded that public and private entities were influencing the *Curacas* in a manner encouraging fragmentation, in some cases with a high degree of misinformation. Without consulting one another, they were making decisions that compromised the interests of all the communities, as there was no space for reflection and decision-making.

As can be seen, the institution of the *cabildo* is still in an embryonic stage. In contrast to other regions of the country, however, where the *cabildo* was originally imposed, here it was instituted through an analysis regarding its necessity, relevance, and political role for defending territorial rights and creating current norms of social control in response to today's issues. Follow-up is needed to assess

how the *cabildo* interplays with the traditional authorities still in existence, though in weakened form. That will ensure that this legal construction will be properly suited to the cultural and social conditions of the region.

The Emberá: From Fragmentation to Centralization

The various groups of the Emberá People are currently situated throughout the Pacific Andén region, dispersed over the countries of Panama, Ecuador, and Colombia. In Colombia they are found in the Departments of Chocó, Antioquia, Córdoba, Caldas, Risaralda, Quindío, Valle del Cauca, Cauca, Putumayo, Nariño, and Caquetá. This ethnicity includes several sub-groups with dialectal variations such as among the Eperara Siapidara, the Chamí and the Katíos.

The indigenous community of Cristianía belongs to the Emberá Chamí group. Its population, according to the latest census, is 1,246 inhabitants, without counting the migrating population (that was not included in the census) with roots in the territory, who for reasons of subsistence leave the community for certain periods in search of temporary jobs or to work as casual labor. This community is located in the municipality of Jardín (southwest of Antioquia), which covers an area of some 408 hectares, of which 73 hectares are traditionally occupied, 251 hectares correspond to lands returned by the State between 1982 and 1994, and 85 hectares are those returned between 1994 and 1996.

The community's lands are partially recognized as an indigenous *resguardo*, while part of the territory has no collective land title. Individual landholdings coexist with traditional possessions. Some of these landholdings (even though located along the same road) do not form a part of the principal settlement. Others are located along the Santa Inés road, in the place known as Santa Bárbara. This sector has been traditionally utilized as communal working lands, and it appears that some *jaidé* (sacred sites) are located there.

The community is situated in the coffee growing zone, and its members are deeply integrated into the market economy, principally through crops such as coffee (70%), sugarcane (5%), cattle (20%) and other consumer products (5%). As a result, biodiversity is low. In their backyards, people cultivate edible and medicinal plants. The 1997 development plan for Cristianía mentions two forest areas.

The traditional pattern of social organization was based on small fragmented groups or settlements whose supreme leader was the

"war chief," a temporary position. Each family band had its own "family chief," who fulfilled the functions of an authority. The family chief also engaged in relations with the other family bands for purposes of mediating or resolving conflicts between members of the various family groups.

In the colonial era Indian towns, *resguardos*, *cabildos,* and *caciques* were developed. The *caciques* achieved a certain degree of legitimacy for resolving internal conflicts. When the colonial organizational structure dissolved and was replaced by the republic, a high degree of disintegration occurred in traditional structures and in the colonial *cacique* system. What emerged was a pattern of territorial and political dispersion revolving around small, fragmented, dispersed organizations.

The Emberá's traditional forms of social organization have not set aside an entity or a sector of society devoted to public office, except in recent decades when the communities decided to form *cabildos* as contemporary forms of government. Over the past 20 years the adoption of the *cabildo* as such has gained popularity among the majority of the Emberá communities. At first its fundamental role did not focus on the exercise of authority but on representation of the community for the defense of its rights, principally territorial rights. Gradually, the *cabildo* has taken on functions of authority and administrative management. The latter role has not followed traditional patterns. Rather it has grown in response to settler pressures and the need to build new ties of social cohesion, so that the Emberá may survive as a cultural group immersed in a national society that is integrationist and ethnocentric.

The adaptation of *cabildos* to serve as current forms of social and political organization and as authorities has been a rough journey. The relationship with western society has forced the communities to join together, despite a cultural pattern marked by dispersion and fragmentation. Cristianía was the first community in the Department of Antioquia that decided to adopt autonomously the *cabildo* as a form of authority and government, and has set a challenge for itself to develop autonomous mechanisms applicable to our times to resolve internal conflicts.

CHARACTERIZATION OF ISSUES TO BE ADDRESSED THROUGH CONFLICT RESOLUTION MECHANISMS

In the territories of the Ticuna, Cocama, and the Yagua of Puerto Nariño, the principal conflict in recent years has been over illegal

logging and the management of federal funds earmarked for the indigenous *resguardo*. Another problem that has been identified is the superimposition of the Amacayacu National Natural Park whose administration, eco-tourism activities, programs, and research are conducted without the approval of the indigenous authorities. Constant eco-tourism excursions are conducted without any consultation in these territories, including in the area of Lake Tarapoto. Legislation regarding this issue is seen as a problem, since requirements for engaging in eco-tourism and ethno-tourism end up preventing the communities from carrying on such activities for themselves.

Pursuant to the General Law on Culture (Law 97 of 1997), cultural heritage areas are established by the territorial entities. Under this law, projects and infrastructure works require consultation with the Ministry of Culture, which shall define the manner of mitigating impacts. Nothing is stated about areas of cultural significance as defined by the communities themselves, nor is a procedure clear to involve them in consultations or in the decision-making process.

Government-owned companies such as Corpoamazonía, along with private companies, are proposing to turn Tarapoto Lake and its surrounding wetlands into an Integrated Management District. The indigenous authorities oppose the superimposition of new legal constructs in the territory, and instead advocate increased support for them. In this way, they could strengthen their control over these zones and put a stop to environmental deterioration, which they attribute to improperly conducted eco-tourism activities, indiscriminate fishing, and motorboat fuels that pollute the waters.

This situation has been discussed with officials of national institutions and leaders of indigenous organizations from other regions in the country. The conclusion reached is that the situation in Puerto Nariño is not exclusive to that region. In this regard, certain questions remain unanswered: To what extent does indigenous jurisdiction apply in matters involving territory and the environment? What are the mechanisms for creating the political will to fully recognize the rights of indigenous peoples over their natural resources?

As for the Emberá community of Cristianía, the diagnostic for its development plan showed that, as in Antioquia, it has a growing territorial deficit. At the same time, in proportion to its population, it has increased rates of criminality, internal conflict, impunity, and acts of blood vengeance.

A direct relation could be established between scarcity of territory and internal conflict. Among other factors, circumstances had

forced people to live together as a community. Yet that was not an autonomous decision of the group. The overcrowding had several implications, outstanding among which were the overpopulation of *Jaibanás* (medicine men) in a small territorial space, the appearance and intensification of problems involving boundaries, inheritances, water pollution, waste management, loss of forests, insufficiency of lands to work, marriages between Emberá and Kapuría, and abandonment of children by parents forced to work outside the community.

These problems were aggravated by the high cost of land in the coffee-growing zone, which created delays for expanding the community and finding sufficient areas on which to work. On top of that, the offshoot of the highway expansion for the coffee region (without the corresponding environmental impact study) destroyed the community's productive structure, further increasing hardships for subsistence.

MECHANISMS FOR SOCIAL CONTROL, PREVENTION, AND MANAGEMENT OF ENVIRONMENTAL AND TERRITORIAL CONFLICTS

Community regulations over use and exploitation of natural resources and implementation of projects in the territory

In May 1999 the *cabildo mayor* for the *resguardo* of the Ticuna, Cocama, and Yagua of Puerto Nariño commenced the drafting of its own Plan of Life, with participation from the 21 communities in the territory.[5]

For purposes of creating the Plan, an average of five representatives from each community gathered together in June 1999 to hold one workshop to prioritize issues and identify alternative solutions. The workshop resulted in a community consultation guide on how to respond to the situation of the indigenous peoples of Puerto Nariño, placing particular emphasis on the issues of territory, control of natural resources, and indigenous government.

After several months of community work, some 200 indigenous authorities and leaders held a General Assembly on November 5-9, 1999 aimed at making decisions on the most heartfelt issues. On "territorial control" the Assembly focused on regulations for the exploitation of natural resources within indigenous territory. Participants raised the point that the institutions were promoting a mistaken idea, since indigenous territory is not solely confined to

the *resguardo* but also includes untitled communal lands that belong to the community through cultural appropriation. Noting the significance of these lands, male and female elders located sacred sites, narrated events related to the origin of the current settlements and explained the relationship of these settlements to the untitled area. In this way, an internal procedure was adopted to control the manner in which the indigenous authorities and the communities would participate effectively in decision-making. Internal regulations were also laid down for control of forest resources, research regarding the territory, natural resources, traditional knowledge, and, in general, any type of project to be conducted in the *resguardo* or on untitled communal land.

The workshop further entrusted the *cabildo mayor* with the responsibility to follow up on the process promoted by the Colombian Agrarian Reform Institute for expanding the *resguardo*. Specifically, the General Council had the task of preventing the untitled land located in the northern zone from being categorized as idle land, and thus avoid any misunderstanding in this regard. All of the communities, *cabildos menores* and *cabildos mayores* pledged to enforce the norms adopted and control the logging activities being conducted within their territories.

On February 25, 2000 in furtherance of Resolution 001 adopted at this Assembly, the community of San Martín of Amacayacu and the *cabildo mayor* of Puerto Nariño, with collaboration from the Police and the National Army, placed an attachment on approximately 1,018 pieces of cedar wood that had been cut illegally by a person from outside the community. The logger defended his case using an official letter issued by Corpoamazonía, DRA 0053, in Leticia dated February 9, 2000 and signed by the regional director for Amazonas de Corpoamazonía (headquartered in Leticia). The letter declared that the timber "is in the process of legalization," and that "it can only be moved with the respective safe-conduct document."

At first, both the Corporation and the police authorities supported the actions of the *cabildo*. Nonetheless external pressure on the institutions created an adverse climate for the latter's exercise of authority in the territory; the argument used was the *cabildo* was exceeding its authority. But in furtherance of its enforcement functions, the *cabildo* undertook the task of investigating the usage permits in effect. A review of the files of the Corporation established that the commercial usage permits under which the safe-conduct documents were issued had expired for more than a year.[6] This served as a basis for the seizure and following this others took place

in an amount exceeding more than 4,000 pieces of wood. Some of the loggers attempted to defend themselves with expired permits or by camouflaging fine wood with light timber that had been extracted under home usage permits, but for commercial use.

With the aim of clarifying this situation and adopting joint measures related to forestry control, Corpoamazonía and the *cabildo mayor* of the Ticuna, Cocama, and Yagua of Puerto Nariño discussed the problem in a meeting on May 12, 2000 in the community of San Martín de Amacayacu, resulting in the signing of a certificate of agreement .[7] One provision, which gave weight to the agreement, recognized the *cabildo* as an environmental authority with jurisdiction in its territory, both in the titled and untitled areas. This established relations of coordination among the *cabildo*, Corpoamazonía and other entities entrusted with supervision and control functions. Based in part on this authority, several measures were specified and among the most significant were the following:

- For future exploitation, the necessary prior consultations must be made, as required under national legislation and the internal regulations of the indigenous authorities. Joint reviews by both such authorities shall apply for purposes of processing, implementation, and control;
- A timber control post shall be established in the community of San Martín de Amacayacu;
- The commercial usage permits that were the subject of the controversy shall be immediately suspended and their legal viability to be studied jointly;
- Control shall be exercised over home usage permits to prevent them from being fraudulently used for commercial purposes;
- A joint procedural manual shall be drafted regarding timber usage to be disseminated in the region.

Despite the abovementioned agreements, the Corporation authorized new timber extractions that failed to meet legal requirements or comply with the terms of the agreement.[8] Furthermore, in June 2000, a written proclamation was issued regarding the internal regulations of indigenous authorities.[9] The document abstractly recognized indigenous jurisdiction, but argued that such jurisdiction does not extend to establishing procedures for exploiting natu-

ral resources. The proclamation's central argument is that natural resources are already regulated under decrees and resolutions, and that under such circumstances it would be improper for internal indigenous regulations to supercede national legislation. The Regional Director headquartered in Leticia concluded by stating that resolutions of the Indigenous Assembly and the *cabildo* are only valid internally and exclusively for community members, for which reason they are not binding on outsiders. Part of this proclamation reads:

> *It is clear that the National Government established the procedure for granting environmental licenses for the development of projects or activities that cause or could cause environmental impacts, as well as for granting permits, concessions, and authorizations for the use and exploitation of natural resources within indigenous territories, which the Corporation shall abide by and enforce pursuant to Decree 1320. Therefore, regulation through a procedure in addition to the one already established is considered improper.*
> *Internal regulations issued by the indigenous communities are applicable to the communities themselves and within their resguardo, but do not supercede rules and regulations established by the government.*
> *The indigenous communities of the Ticuna, Cocama, and Yagua* Resguardo *shall submit to the procedure established by the government for the use, exploitation, and management of natural resources established through Law 99 of 1993 and Decree 1791 of 1996 as regards forestry products and wild flora within their resguardo.*

In correspondence sent to the Office of the Attorney General in mid-June, the General Manager of Corpoamazonía stated that prior consultations are only obligatory on the indigenous *resguardo*. He further indicated that the untitled territory is idle land, and therefore, the legislation on consultations is not applicable to exploitation of those areas.

This situation provides an example of inequities in the institutional treatment of indigenous peoples. Law 160 (on Agrarian Reform) demands that the indigenous peoples fulfill ecological functions over their property as a prerequisite for constituting a *resguardo*. However, when they try to enforce order in their territory in pursuit of that mandate, bureaucratic obstacles are placed in their way.

But this situation is not only attributable to Corpoamazonía. The

logging associations of Leticia and Puerto Nariño have met to discuss the issue without inviting the *cabildo* to attend. In those arenas, they disregard the essence of the problem and issue statements that are political in nature, in an attempt to turn an issue on protecting natural resources and the rights of communities into a problem of coexistence and of public order. Indeed, they have made frightening statements against community leaders and against advisers who have promoted the defense and protection of natural resources.

EMBERÁ CONSTITUTIONAL CONVENTION: AN EXPERIENCE WE CAN LEARN FROM

In the latter half of 1998,[10] existing mechanisms and rules of play for resolving internal conflicts in the community were ratified through a process called the Emberá Constitutional Convention (*Cabildo*, Social Control Counselor of the *cabildo,* and the Assembly). It also led to the creation of a new entity, the Conciliation and Justice Council. While bodies already in existence were maintained, their functions and relationships to other entities, including the official justice system, were defined and specified. Many lessons can be learned from this experience, only a few of which are summarized below.

Conciliation and Justice Counselor

Even though in a strict sense this is a position within the *cabildo*, it is mentioned separately on account of its having specific social control functions that set it apart from other positions. The Social Control Counselor is a relatively new construct, dating back less than five years. It embodies the spirit of a traditional mechanism (the *ituadé*) through which the indigenous authority (normally an elder) would bring together the parties in conflict, advise them and propose a way to conciliate. This approach has demonstrated a certain degree of effectiveness, especially in resolving family conflicts and gossip (which, if not controlled in time, may lead to greater problems).

The person who occupies this position is in charge of promoting conciliation, conducting investigations, arresting individuals, ordering pre-trial detention, applying penalties for infractions or misdemeanors including incarceration in the community jail, and seeing to it that penalties are enforced. Arrest warrants sent to the jails can only be issued under the signature of the Social Control Counselor or a person acting on his behalf.

Conciliation and Justice Council

The *cabildo* participates in the Conciliation and Justice Council through its Social Control Counselor, who has a voice and a vote in the council and serves as its coordinator. The secretary of the *cabildo* acts as the council's secretary, while council marshals serve summonses and make arrests. Other *cabildo* members may attend council sessions and are expected to participate in preparing and holding community assemblies. This council should also be included in the investment plan for *resguardo* federal funding earmarked for the administration of justice. As the legal representative of the community, the Conciliation and Justice Council is additionally in charge of formalizing agreements with the official justice system regarding coordination, support, and eventual remission of files.

Cabildo members other than the Social Control Counselor may participate at the Council meetings with a voice, but without a vote. Furthermore, neither the *cabildo* nor the *cabildo's* governor may change the decisions adopted at the council.

Jurisdiction

The Conciliation and Justice Council is authorized to hear, decide, and settle severe cases or incidents within and among members of the community, even in cases where the incident occurred outside the territory. Types of cases over which it has jurisdiction include homicide, great bodily injury, thefts, burning of land, damage to water sources, theft or misappropriation of community resources, rape, abandonment of children, severe spousal abuse, *jai malo* (use of *jaibanismo* or shamanism for evil purposes), etc.

The Council's jurisdiction also extends to incidents that have occurred within the territory involving indigenous persons from other communities. Council decisions are to be upheld not only in Cristianía but also by other *cabildos* or indigenous authorities and by the official justice system. If for any reason the community feels that an incident cannot be resolved within indigenous territory, it may send the case to the official prosecutor's office and judges for purposes of investigation and trial. The Conciliation and Justice Council will also hear cases remitted by the *cabildo* through the Justice Counselor (Assistant Governor) or a person acting on his behalf.

Composition

The Conciliation and Justice Council was initially comprised by

four persons with a recognized sense of commitment to the community and ethical behavior (reserved in their affairs). These persons must display impartiality with respect to their family members and have no criminal record.

Term

Members of the Council are appointed for a one-year term, which can be extended if they demonstrate responsibility and fulfillment of their duties. Members can be removed by the Assembly if they fail to fulfill their obligations.

Investigations

When dealing with cases of *jai malo* or the harmful use of *jaibanismo* or shamanism, the *jaibanás* will be consulted for purposes of investigating and decision-making.

When the *cabildo* and the Conciliation and Justice Council deem necessary or appropriate, they may request support from forensic medical personnel, from the Technical Investigations Corps, from the National Attorney General, or other official entities.

The General Assembly

Both the *cabildo* and the Conciliation and Justice Council shall inform the General Assembly regarding their investigations, procedures, and decisions.

Any person receiving a jail sentence shall appear before the General Assembly to have the judgment read. The penalty shall serve his own peace of mind and set an example for the community. When a settlement is reached, the heads of family of the reconciled parties shall also appear before the General Assembly and agree to comply with the terms of settlement.

The power of the Assembly to change decisions adopted by other bodies is not formally defined. Nonetheless, in the event of a disagreement, the Assembly would have the authority to do so, since as a general rule in the Emberá communities, the Assembly is the highest body in the decision-making process.

Conciliation and Penalties

Before imposing penalties, the *cabildo* and the Conciliation and Justice Council shall attempt to achieve reconciliation and work out commitments and conditions for compliance between the parties and their families. If the offense in question is punishable by incarceration, the perpetrator must remain in jail until the payment of the

agreed upon settlement has been made (generally by the family). In the event of a failure to comply with the settlement agreement, another type of penalty shall be imposed, which shall be binding upon the liable or guilty party. Conciliation is not an option in cases of murder, sexual violence, and cases of great bodily injury heard by the Conciliation and Justice Council.

When revenge takes place in response to a failure to comply with the terms of a settlement, the Council shall determine whether or not a new conciliation is possible. If conciliation is not possible, the following penalties, among others, may be applied:

- Public admonition at the General Assembly
- Fine
- Prohibition from holding office within the community
- Community service work
- Community service work with nights in the community jail
- Community Jail (in the local community or in other communities)
- Jail (official government jail). This penalty shall apply only as a last resort, after exhausting other avenues. It shall also be applied, however, if warranted by the criminal history of the culprit or the severity of the case (this penalty shall always apply in cases of homicide and rape). Sentences of up to three months shall be served at the Jardín jail. Longer sentences shall be served at the Andes jail, in accordance with the agreements signed with the wardens of those institutions.

When the penalty is applied, a finding shall also be made regarding damages incurred and the payment of expenses. The type of penalty to be applied shall take into consideration the evidence, the person's criminal history, the severity of the events, and the damages incurred, among other factors.

If agreements in said regard have been made by the *cabildos* with indigenous authorities of other communities, penalties may be paid outside of Cristianía. A project should be developed together with the Indigenous Organization of Antioquia (OIA – *Organización Indígena de Antioquia*) to replace the current community jail with one that offers dignified, safe conditions. At the same time, work should

be continued on proposals for rehabilitation centers.

The death penalty, torture, and slavery are prohibited.

Defense of the Accused and Fundamental Rights

The accused party shall have the right to a defense, which he may assume for himself or through the intervention of his family. Both favorable and unfavorable factors shall be investigated. Declarations shall be received from the defendant and from whomever he designates as witnesses.

Any member of the community of Cristianía may take recourse in filing a Petition for Protection of Rights before the judges of Jardín or Andes if he perceives that his fundamental rights or those of another have been violated. This especially applies if the person has been denied the right to a defense, if two months of pre-trial detention have passed without a resolution of the detainee's situation, if an offense has taken place and the *cabildo* or Council refuses without good cause to make the investigation or resolve the case, or if the *cabildo* and the Conciliation and Justice Council have unjustifiably delayed in making a decision.

Collaboration of the Community and its Families

The community has both the right to demand justice and the obligation to collaborate so that justice will be applied by:

- Reporting offenses of which they are aware;
- Providing any information requested of them;
- Attending the General Assemblies;
- Electing the members of the *cabildo* and the council members;
- Visiting and accompanying prisoners;
- Collaboration of store and establishment owners selling alcoholic beverages in applying the control measures adopted by the *cabildo* and their prosecution if they fail to do so;
- The administration of justice shall not be impeded with respect to one's relatives.

SOME CONCLUSIONS AND RECOMMENDATIONS TO STRENGTHEN INDIGENOUS PEOPLES AS PROTAGONISTS OF PEACE AND COEXISTENCE IN THEIR TERRITORIES

The opening of institutional avenues is an advance as compared to their almost total absence prior to the 1991 Constitution. Yet these institutions remain a weak shadow of the State institutions, which fundamentally continue to conserve their monoethnic essence.

Indigenous constitutional rights and principles have yet to be fully developed. The monocultural tradition of Colombia's institutions, economically powerful sectors, and politically influential classes places obstacles in the way of progressing towards a multiethnic, multicultural State. This aspiration, which is recent among indigenous peoples and ethnic minorities, is still a project under construction, a dream that has yet to become a reality. Moreover, it is not a dream that is necessarily shared by all strata of our society.

> *Latin America's indigenous movement has turned the demand for autonomy into the core of its social and political program. This is an important development, because in the Latin American context, the building of multiethnic States depends upon establishing autonomous regimes within the national framework. As a rule, Latin American countries are multiethnic societies. Yet the Nation-States are organized — or seek to be organized — politically, socially, and culturally in terms of monoethnic patterns. Recognition of multiethnicity beyond mere rhetoric, without breaking national unity, requires that a political voice be given to diversity; that is to say, a place must be made in the constitutions for autonomous entities. Autonomy then would be a cornerstone for the future multiethnic State.*[11]

As Diaz Polanco notes above, Latin American States have been built on monocultural patterns that ignore the multiethnicity of their social composition. As such, the dominant model imposed and clearly reflected in the National Constitutions up until 1991 in the construction of the Colombian State was one of a citizenry under a single religion, with a single language, a single culture, and a single legal system, without taking cultural differences into account.

In Colombia the demand for a multiethnic, multicultural State as a political objective is relatively new. Yet there is nothing novel about the indigenous peoples' historical defense of ancestral territories. Rights over those territories and their use, management, and control

are conditioned by cultural and economic patterns that have determined coexistence with appropriation of nature.

If social multiethnicity is to attain political status, a necessary precondition is the opening of the peace process in Colombia. There, participation must not be limited to armed groups but must also include civil society. Thus, there is a need to generate conditions under which the indigenous peoples will have a seat at the table, where they can represent themselves without intermediaries. Then, as they always have done, they must set forth their historical demands, rights, and aspirations of life based on their cultural differences.

On the institutional and legal level, an autonomous charter needs to be issued or at least an organic territorial zoning law to give legal life to the ethnic territories as political and administrative units. The following elements, among others, need to be included in one or the other of those alternatives:

Right to Life and to Cultural Integrity

This element is an outgrowth of the concept of indigenous peoples as a collective entity. The right to life and to cultural integrity is what guarantees the ability of ethnic groups to reproduce and move forward in time. In the absence of this guarantee, indigenous peoples are condemned to be victims of ethnocide and genocide, following in the footsteps of many peoples who have now disappeared.

Right to Territory

This is both a symbolic and material element of culture. It is a condition and guarantee for biological, social, and cultural reproduction. Reconstruction, recovery, and projection as peoples are unthinkable without this minimum vital space. The organic territorial zoning law must include rules for territorial demarcation and implementation of territorial rights. Cases already exist of territories shared not only between several indigenous peoples, but also between indigenous peoples and Blacks in the Colombian Pacific. In Panama, for example, there are *comarcas* (districts). In the early twentieth century the Chamí territory was recognized for a time as a special administrative unit based on the cultural conditions of its inhabitants. Yet the Chamí territory did not last very long due to a lack of funding from the Department. This is an experience that would be worth

studying, as little information on the history of this territory has been disseminated.[12]

What is required is a guarantee of territoriality in both its aspects, as the right to collective land titles and as a political and administrative unit. The concept of territory must include the soil, the subsoil, the air and the waters (fresh water and salt water). In this way, the indigenous peoples' cultural and historical sense of horizontal and vertical rights would be restored.

Right to Autonomy and to Participation in Decision-Making

This is an indispensable political condition, as it is what guarantees that subordinated societies will be empowered with decision-making ability regarding their development priorities. This does not fragment national unity as many politicians have claimed. Indeed, self-determination is not being spoken of in terms of sovereignty. Rather, what is sought is the right to make internal decisions autonomously and to participate with a voice and a vote in decisions affecting indigenous peoples. The full establishment of this right would put an end to the polemics over consultations with indigenous peoples when projects and decisions involve their territories, their rights and their culture.

The terms of International Labor Organization (ILO) Convention 169 regarding consultation, participation in decision-making, and respect for traditional law must be developed and implemented. The government must have the political will to earnestly implement and provide the necessary continuity for the consensus-building sessions mandated under Decrees 1396 and 1397 of August 8, 1996.

Decree 1320 of 1998 on consultation with indigenous communities for activities involving the exploitation of natural resources must be repealed. The Law on Culture (Law 97 of 1997), the Law on Urban Reform establishing the Municipal Territorial Zoning Plans (Law 380 of 1998), and the Law creating the National Environmental System (Law 99 of 1993) must be amended, since they assign the indigenous communities exactly the same functions as the municipalities. These laws set forth principles such as subsidiary application and hierarchy of law, leaving traditional law on the lowest rung in the hierarchy. In the same vein, the Mining Code, the Agrarian Reform Act, and regulations on planning, education, jurisdiction, resources, and budgets must be revised.

Right to Natural Resources

This needs to surpass the precarious recognition it is now given and take its place as a full right, not only in relation to resources of the soil, but also those of the subsoil. Cultural conceptions on the use and exploitation of a territory need to be consulted when deciding whether or not to exploit these resources. At the same time, the false contention that a contradiction exists between cultural diversity and national interest has to be rejected. Rights to resources must also extend to genetic resources and the traditional knowledge associated with them. Indeed, as things now stand, with the current intellectual property system and international pressure, no protections exist for collective rights. Policies on parks and protected areas also need to be reviewed, since these areas are being superimposed over indigenous territories, creating obstacles for native peoples in exercising rights over their natural resources.

Furthermore, with the regulations (of February 2000) the Ministry of the Environment has issued regarding research, there is no guarantee that the community can express its will. This includes the right to cultural objection, the right to say no. According to the language of these regulations, research permits may be granted without prior consent from the communities involved.

In order to guarantee the rights of indigenous and local communities, Conventions on human, economic, social, and cultural rights must be implemented, as must ILO Convention 169 with regard to territorial rights and Article 8(j) and related articles of the Convention on Biological Diversity. Follow-up and reforms are needed for botanical gardens, herbariums and *ex situ* germoplasm banks, for the Andrés Bello Convention, and for other conventions involving ethnobiological research. Finally, national biosecurity legislation (including the issues of food security and cultural security) needs to be adopted.

Right to Participate in Benefits and to Protection of the Market

This right is, in part, an outgrowth of the one discussed above. Guarantees over decision-making processes for natural resources and their use, management, and administration must be associated with the right to share in the benefits thereof, when they are used, managed, exploited, and/or transformed by domestic or foreign individuals and legal entities.

This necessitates a review of domestic and international policies

and programs, the protection of the local market for raw materials, manufactured products, services, consumer goods, production inputs, and labor. Roland Breton points out:

> *The ability to make use of this right (to the protection of the market) is an indispensable precondition for being able to integrate into broader economic spaces: customs or monetary unions, common markets, free trade zones.*[13]

Right to Traditional Legal Systems

This right is an expression both of autonomy and of cultural integrity, as it is on this level that internal rules of play and the bases for interethnic and interinstitutional relations are defined. Traditional legal systems must enjoy the same status as the law of the State. They must not be subjected to parameters and categories of western thought, which has been structured around positive law. It is recommended that Article 246 of the National Constitution and ILO Convention 169 be developed, which address special jurisdiction and the legal and political institutions of each people, with respect to how national legislation will apply and how traditional legal systems will coordinate with State institutions and official government jurisdiction.

Ma. Del Pilar Valencia is with the Centro de Debate y Accion Ambiental.

Endnotes:

[1] This document draws in part upon documentation written by the author regarding experiences with indigenous legal pluralism. It combines elements from her field notes and certain bibliographical sources. It should be noted that although these reflections are the product of the author's accompaniment of communities, the points of view and conclusions are strictly personal. The analysis is not only based upon empirical data, but also on subjective perceptions and a political commitment to support autonomy for the Indigenous Peoples. Other perspectives on the same experiences would contribute to enriching this discussion.

[2] The indigenous *resguardo* is a collective property under a land deed. Its origins date back to colonial times. Initially, this was an instrument of domination used by the Spanish crown. Yet over the course of more than

a century, it has gradually become a tool for the defense of indigenous territorial rights.

[3] Some indigenous organizations have rejected this term, as they consider it a prejudicial way of describing indigenous law, usually associated with backwardness or mere sources of law. Despite that, I have opted to use this term, attempting to employ it in its most generic sense as a reference to recognizing custom and practice as a true legal system, completely distinct from a positivist view of law.

[4] The treatment of culturally occupied, appropriated lands as idle lands denies the history of the community. It also violates ILO Convention 169 and Article 63 and related provisions of the National Constitution, which protect the rights of communities over lands that constitute their traditional areas and as a space in which they develop their cultural relationships.

[5] The work consists of seven core issues: 1. Territorial control. 2. Internal jurisdiction. 3. Self-Education. 4. Indigenous Health. 5. Consensus Building. 6. Indigenous Production. 7. Administration.

[6] Resolutions 2055/97, 2056/97, and 2057/98, each of which covered a period of one year, and the last of which expired in January 1999.

[7] "Agreements entered into by the authorities of the Ticunas, Cocamas, and Yaguas of Puerto Nariño with Corpoamazonía. May 12, 2000," San Martín de Amacayacu. The following officials signed the certificate as guarantors: the Departmental Secretary of State, representatives of the National Police, the Administrative Safety Department, the Unified Southern Command of the National Army, the mayor and the government attorney of Leticia, the Office of the Attorney General, and the representative of the Natural Park of Amacayacu.

[8] This information is set forth in an amended complaint submitted to the Attorney General's Office by the *cabildo* on July 4, 2000.

[9] "PROCLAMATION." This document was issued by Luis Edmundo Maya, General Manager of Corpoamazonía. It is undated, but was received by the *cabildo* in mid-June 2000.

[10] This process has continued, with support and accompaniment from the Indigenous Organization of Antioquia (OIA – *Organización Indígena de Antioquia*), to which the *cabildo* of Cristianía belongs. Other documents not analyzed in this paper report on subsequent events.

[11] H. Diaz Polanco, "Autonomía, territorialidad y comunidad indígena. Perspectivas del Estado multiétnico en México," **Democracia y Estado multiétnico en América Latina, La Jornada Ediciones** (Mexico City, 1996): 139.

[12] I found only one reference in a book on a shelf of an indigenous school in Risaralda, which briefly mentions this experience.

[13] R.J. Breton, "Las etnias," **Oikos - tau ediciones. Colección ¿Qué es?**, New series (Barcelona: 1983), 147.

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Indigenous Peoples and Conflict Resolution in Argentina: The Case of the Guaraní People in the Province of Misiones

Ariel Araujo

There are 15 indigenous groups in Argentina today distributed throughout the country with a population of over one million. Each indigenous group, to a greater or lesser degree, is currently engaged in an active struggle to attain increased autonomy and self-determination vis-à-vis the powers of the Argentine State, within the framework of the State itself. This presentation analyzes the progress and setbacks in that struggle within the legal framework, and focuses on the situation of the Guaraní indigenous peoples. A historical framework is given of the Guaraní peoples, and the analysis addresses the resolution of conflicts with the dominant society and provincial governments.

LEGAL FRAMEWORK OF THE ARGENTINE STATE

The Argentine Republic emerged as a State in 1810 upon proclaiming its independence from the reign of Spain. That proclamation was ratified through the Declaration of Independence in July 1816. Before 1810, various provinces proclaimed their autonomy vis-à-vis the central state headquartered in Buenos Aires. Each province imple-

mented its own independent policy, including its own foreign policy. During this era, the various province-states signed pacts and entered into political and military alliances within a framework of a generalized civil war among the provinces. Many provinces were also waging wars with foreign powers against colonial powers and against indigenous peoples.

In 1853, the National Constitution was enacted after forging numerous agreements and pacts among the province-states. This Constitution first created the Argentine Confederation. Then, with the incorporation of the State of Buenos Aires in 1862, the Argentine Republic was founded, which consolidated Argentina as a State. A representative, republican, federalist form of government was adopted.

Throughout this period, the relationship between the various province-states and the indigenous peoples, as well as between the Argentine State and the indigenous peoples, was egalitarian. A mutually agreed upon border existed. The various provincial governments and the national *juntas* recognized the sovereignty and autonomy of the various indigenous nations, just as the Spanish Crown had done previously. In fact, they had no choice but to do so, given that militarily, the correlation of forces between the indigenous militias and the provincial and national armies was one of equals. During this time the various provincial governments, as well as the nation, signed several treaties and constructive agreements with the indigenous peoples, under which the sovereign right of the indigenous nations to their territory and to maintain their political independence was recognized. Some of these treaties, for example, were ratified by the political institutions of the Argentine State —the National Congress— and by the political institutions of the indigenous peoples —the Council of Chiefs.

The National Constitution of 1853 also recognized that the sovereignty of the new Argentine State did not extend to the territories of the Indigenous Peoples. An example of this is found in Article 67 of the 1853 Constitution, which sets forth the functions of the National Congress. Among those functions is that of "promoting the security of our borders," and "maintaining a peaceful relationship with the Indians."

Following the consolidation of the Argentine State and the end of the wars among the province-states, the stage of military invasion of the indigenous nations began, principally during the presidential administrations of Sarmiento and Avellaneda. Major military interventions during this period were plotted culminating in the



1879 "Conquest of the Desert," with the Argentine State's occupation of the Patagonia and the genocide of the Mapuche people; the "Conquest of the Chaco," with the military occupation of the Chaco forest region; and with several cases of genocide committed against indigenous peoples coupled with the occupation of their territories. Such an invasion was possible during this period due to the Argentine State's military superiority over the militias of the indigenous peoples. The Argentine State unilaterally ignored and breached treaties and other agreements signed during the Spanish colonial era. By the start of the twentieth century, the Argentine State had consolidated its current borders.

After the occupation of the territories of indigenous peoples, the Argentine Republic implemented a policy of forcibly integrating and assimilating the surviving indigenous peoples into what was conceived of as the "national society." Until 1953, this policy also included the mass murder of indigenous persons who opposed forced integration. Between the 1960s and 1980s the Argentine State denied the existence of indigenous peoples in their territory with the argument that they had all been integrated into the "national society."

In 1983, when Argentina came under a democratic system, the

indigenous peoples embarked upon a new process in which they reevaluated their traditional political institutions. This gave those institutions new momentum, and also led to the founding of political organizations to defend indigenous rights. As a result, several provincial governments, within the framework of their constitutional autonomy, modified their policies towards the indigenous peoples. Provincial laws were enacted, recognizing the "indigenous communities" and granting certain administrative functions to those "communities."

In addition, institutions were created within the framework of the provincial governments, to which the indigenous peoples elect representatives. These institutions, generally known as the "Institutes of the Aborigines," are in charge of coordinating all the sectors of the State in the respective areas for purposes of implementing health, education, development, and housing programs, as well as planning in the indigenous territories. Though the "institutes" have been granted a certain degree of autonomy by law, said autonomy does not exist in practice. Currently, these institutes are subordinated to the plans defined by whatever administration is in office and execute the policies so determined. No real consultation is made with the indigenous peoples.

Today, laws on "indigenous communities" exist in the provinces of Formosa, Chaco, Salta, Tucumán and Río Negro. Laws contemplating indigenous issues also exist in the provinces of Chubut, Neuquén, Santa Fé and Jujuy. The province of Misiones is an exception to this pattern.

On the federal level, the Congress of the Nation in 1985 enacted Law 23,302, entitled the "Law on Indigenous Policy and Support to the Aboriginal Communities." Under this law, the Argentine State recognized the existence of the indigenous peoples in its territory. The term "Indigenous Community" was legally defined, and community property, which had been previously denied, was recognized. This law was partially applied by the Argentine government. Thereafter, in 1992, through Law 24,071, Argentina ratified Convention No. 169 of the International Labor Organization (ILO). More recently, in June 2000, the National Government made the respective accession deposit for said Convention in the city of Geneva. Thus, this international instrument has constitutional legal status in the country, pursuant to the recent 1994 reform of the National Constitution.

THE CASE OF THE GUARANÍ PEOPLE

As previously mentioned, the province of Misiones is an exception to the legal situation described above. Indeed, Misiones has enacted specific legislation for the Guaraní people inhabiting the province, under which they are granted semi-autonomy.

This legislation has its historical origins, given that the Guaraní people had never given up their independence either to the Spanish Crown or subsequently to the Argentine State.

Under the Spanish reign, in 1767, the Governor of Buenos Aires created the civil and military province of Misiones and recognized the autonomy of the Guaraní people. The province was later incorporated into the Viceroyalty of Río de la Plata. During that era, Misiones was governed under the "*Cabildos*," the traditional institution of the indigenous communities, combined with some administrative elements of the Spanish colonial system.

When Río de la Plata declared its independence from the Crown in 1810, the Guaraní people joined with them, becoming affiliated with the new State while retaining their autonomy.

The autonomy of the Guaraní people during this organizational stage of the new State reached its peak under the government of the indigenous leader Andrés Guaikurarí and during the years thereafter. Along these lines, the autonomous province of Misiones was invited to join in the General Constitutional Assembly of 1813. Likewise, Guaraní representatives participated in the signing of the Federative Treaty of the Coast of Avalos, in 1820, with Corrientes and Banda Oriental.

This treaty was defensive in nature and set forth federalist principles. Guaraní representatives also participated in deliberations that concluded with the signing of the Treaty of Cuadrilátero, which was strategic in the political organization of the Argentine State. That treaty ratified the autonomy of Misiones, governed by the Guaranís. In other acts of institutional organization of what today is Argentina, the Guaraní people later signed additional treaties with province-states of the coastal region. They participated in other significant institutional acts as well, including the National Congress of 1824 and the signing of the Argentine Constitution of 1826. They also sent delegates to the National Convention of Santa Fe in 1828. At all times, the Guaraní maintained their autonomy.

During this historical period, the neighboring States of Paraguay, Brazil and Corrientes attempted to occupy the territories of the Guaraní people through military invasion, with little success. It was

not until 1827 that the state of Corrientes, through a military campaign, invaded Misiones, bringing the indigenous territory under its dominion. Hundreds of Guaranís were massacred, entire families were forcibly relocated to other lands, and the autonomous government of Misiones was abolished.

As of that time the government of Corrientes administered the territories of the Guaraní people, even though the treaties of Curuzú Cuatiá of 1839 between Corrientes and Banda Oriental (Uruguay) and the Treaty of Villa Nueva of 1843 recognized the right of the indigenous people of Misiones to possess their territory and have an autonomous government.

Towards the mid-19th century, Corrientes began to economically exploit the jungles of Misiones and commenced colonization programs in indigenous territories. The National Argentine government continued these programs after 1883 following the creation of the National Territory of Misiones as a direct dependency of the Federal government. These colonization plans for the territories of the Guaraní people were aimed at attracting European immigrants (Poles, Germans, Swedes, Russians, Swiss, Italians, and immigrants of other nationalities). As a result, in our century, a multi-ethnic, multicultural, multinational population has been consolidated in the province of Misiones.

In 1958 the Parliament of Argentina recreated the province of Misiones, using the historical arguments based upon the autonomy of the Guaraní people. This time, however, the indigenous people did not head the political institutions of the province, given that the Guaranís now became an ethnic minority in their own territory.

Despite all the attempts to annihilate the Guaraní people and the campaigns to forcibly assimilate them into "national society," they still maintain their traditional political institutions and their economic, social and cultural systems. Likewise, they maintain their aspiration to have their political autonomy restored.

In 1986, the traditional indigenous authorities called upon the Government of Misiones to enact legislation that will guarantee certain autonomy to the Guaraní people within the framework of the Argentine State.

After almost one hundred meetings, indigenous leaders submitted a bill to the local Parliament, through the government of Misiones, under which various aspects of self-determination would be granted to the Guaraní people. In 1987 the Parliament of Misiones enacted Law 2435, which included legislation effectively granting semi-autonomy to the Guaraní people.

Law 2435 included a historical and institutional recognition of the Guaraní people, recognizing their political and traditional social forms of organization. At the same time, this law granted the Guaranís legal status and established a system of cogovernance for the indigenous territories, shared between the provincial government and an entity created for said purpose, named the Council of Indian Representatives. Law 2435 also granted recognition to Guaraní traditional law, making its norms applicable within the national legal system, and transferred the administration of numerous matters to the traditional indigenous authorities, such as health, housing, education, and development.

This provincial law also set forth that the Guaraní people should enact legislation outlining a minimum framework for their traditional political system. In response, in late 1987, the Guaraní people enacted their Organic Law, a sort of constitution defining the functions of the various Guaraní political institutions, aimed at promoting self-governance.

These political institutions are as follows:

- *Legislative Bodies:* The General Assembly of Guaraní Communities, the Communal Assembly;
- *Executive Bodies:* The General Council; Judicial Bodies: Council of the Elders; Representative Bodies: Council of Indian Representatives;
- *Community Bodies:* Communal Council, and Security Bodies: *Sondaro Kuera*. The community is the base of the Guaraní political system. Each community is autonomous in the administration of its internal and local affairs. The Guaraní community has two institutions: the Communal Council and the Communal Assembly. The Communal Assembly is the legislative body of the community. It is comprised by all Guaranís over the age of 18 inhabiting the community.
  The Communal Assembly appoints the members of the Communal Council (*Caciques* and Helpers), as well as the *Sondaro Kuera*, the internal security body. In addition, the Communal Assembly designates the community's delegates to the General Assembly of Guaraní Communities. The Communal Council is in charge of the administration of the community. It plans economic activities and executes the decisions of the Assembly.

The General Assembly of Guaraní Communities is the supreme political body of the Guaraní people and has parliamentary functions. Three delegates from each Guaraní Community comprise this body and convenes at least three times a year. It is in charge of determining the economic, social, cultural, and religious policies and activities of the Guaraní people. It is also in charge of administering all territories and community assets of the Guaraní people. In addition, it is in charge of ensuring proper use of natural resources and the preservation of the environment in Guaraní territories. This legislative body also appoints the members of the General Council, the Council of Elders, and the Council of Indian Representatives, while also appointing the authority that will supervise intervention in all internal conflicts and jurisdictional matters among communities.

The General Council is the Guaraní people's executive body comprised by a president and other officers. Its functions are: to apply the policies adopted by the General Assembly of Communities; to represent the Guaraní people before governmental, national, and international bodies; and to administer the Guaraní people's community assets and inter-community enterprises, among others.

The Council of Elders is the judicial body of the Guaraní people, comprised by a minimum of five and a maximum of ten members. It acts as a court for cases that Guaraní individuals and institutions bring to it for its consideration. This panel body is the highest authorized interpreter of traditional customs and of the morals and ethics that govern the daily life of the Guaraní. Finally, the Council of Indian Representatives is a representative body, comprised by five members. Its function is to represent the Guaraní people before governmental bodies of the province of Misiones. It is also in charge of approving or rejecting all plans or programs of the governmental authorities that affect the life of the Guaraní.

Unfortunately, a change in government administration in 1989 once again infringed upon this right to semi-autonomy and to self-governance. In December 1989, despite public demonstrations and hunger strikes organized by the Guaraní people, the Parliament of Misiones repealed Law 2435, replacing it with Law 2727, the "New Law on the Aborigines."

The new law creates an extreme situation, completely undoing the prior legislation. Law 2727 upholds and reaffirms the racist, segregationist policy that the government of Misiones had been implementing as of 1988. Indeed, Law 2727 upholds an apartheid policy in Argentina. It creates a system of indigenous communities under

the direct control of the State, turning each of them into a ghetto. The Guaraní people hope this law will be repealed, and that the legislation under which the Guaranís were granted semi-autonomy will be reinstituted, thus laying a firm foundation for full autonomy and self-governance.

Finally, it should be noted that many indigenous peoples in Argentina are hopeful that they will achieve some degree of special autonomy within the federal regime of the Argentine State. In order to achieve that, the amended National Constitution must include a special chapter on indigenous peoples, defining how autonomy and self-governance will apply to indigenous peoples, while regulating the underlying legal framework for relations between the indigenous peoples, the federal State, and the provincial governments.

INTENSIFICATION OF CONFLICT IN MISIONES

As mentioned above, the authorities of the Government of Misiones, starting in 1988, began to continually infringe upon indigenous rights. Indeed, this province in northeastern Argentina has the worst record of violations and repression against the Guaraní people's indigenous communities. In 1989, then Governor Julio Humada repealed Law 2435, which had granted semi-autonomy to the Guaraní People. Under this law, the Guaraní people were also to have received the return of their ancestral territories (estimated at more than 350,000 hectares). The Law granted the Guaraní people representation in the provincial Government and in implementing special plans in matters of development, health, education, housing, and justice. Law 2435 was replaced by Law 2727. In contrast to the previous legislation, Law 2727 established an apartheid regime under State supervision and control through the Provincial Bureau of Guaraní Matters. It made it compulsory for all Guaraní communities in the province to have legal status. It also provided for provincial control over all Guaraní activities, and even permitted the forced relocation of communities without the communities' consent.

In May 1990 the government ordered the burning and forced eviction of the community of Iriapú in Puerto Iguazú. Implementing the eviction were provincial police officers and agents from the Bureau of Lands and the Ministry of Ecology. This action was aimed at opening up the community's lands (600 hectares) for lumber exploitation and for constructing a tourism complex. The indigenous families have returned to the site and have been demanding title to those lands ever since.

Nonetheless, the government, through the Ministry of Economy and the Department of Tourism, intends to continue with its plans for a hotel complex at the site. Later, in January 1992, in the community of Fortín Mbororé, also in Puerto Iguazú, *cacique* Nicanor Dos Santos was murdered by another Guaraní. The investigation of that crime revealed that officials from the Bureau of Guaraní Matters of Misiones had instigated the murder. To date, despite formal complaints filed in 1992 with the criminal justice system against the governmental official involved (Carmen Pérez Brusquetti), the crime remains unsolved and no one is being prosecuted.

In March and April of 1993 a tuberculosis epidemic was declared, whose epicenter was located in the communities of Pocito and Tacuapí. This epidemic, which took the lives of more than 20 children under the age of three, was associated with high rates of infantile malnutrition. The situation was aggravated by the fact that, despite several pleas from the *caciques*, neither the Ministry of Health of Misiones nor the Bureau of Guaraní Matters provided medical assistance to the affected communities, since, in the opinion of a Health official, "It doesn't matter; the ones dying are Indians." The Guaraní people with the assistance of non-governmental sectors succeeded in controlling the situation and temporarily preventing additional deaths.

As of 1997 the government of Misiones had not proceeded to demarcate (survey) the lands that were returned to the Guaraní people under Laws 2627, 2704, and 2900, which had been approved as of 1989. Several conflicts arose with respect to the more than 18,000 hectares returned, due to land invasions by settlers, lumber company deforestation plans, and jurisdictional conflicts over those lands. Definitive property deeds provided for under the law have yet to be delivered.

On October 10, 1995, at midday, four uniformed men and two in plain clothes arrived in a Unimog truck in the *tekoá* (community) of Ñamandú-Arroyo Azul, located in the heart of the Misiones jungle, within the boundaries of the recently created Kuñá Pirú Provincial Park. Their purpose was to evict the Guaraní families who live in that community and destroy their homes and crops. The uniformed men were armed Park Rangers from the Ministry of Ecology and Renewable Natural Resources of the Government of Misiones in Northeast Argentina.

The men of the community were away from home, as they were in the jungle gathering honey and wild fruits and engaging in subsistence hunting. At the *tekoá* were children, elders, and four women.

The uniformed men, when they arrived, stated that they were from the government, and that in the name of the government, the Indians had to immediately leave the Provincial Park. The women clamored in their *Mby'á* Guaraní language to be allowed to await the return of their husbands from the jungle.

The park rangers would not wait, and demanded that the women get all their belongings together, because they had to accompany them right away in the vehicle and leave the Provincial Park. The women refused to comply with that order. The park rangers of Salto Encantado then broke into their homes, throwing out all their belongings (clothing, food, pots, crafts, and other items). As the women watched in astonishment, the park rangers took their machetes and started cutting the *ishipó* (lianas) that hold the roofs together, and other cords, and started knocking down the walls, supports, and *pindó* (Queen) palm roofs of all the homes in the *tekoá*. They did the same thing to the *Opy* (house of prayer), totally destroying it. Seeing the violent actions of the uniformed men and frightened by the government officials' insults, the women, with infants in their arms, ran with the children towards the hills.

In the flight a small child, in the midst of the crying, was lost and not found for hours. Some of the park rangers went after the women and children, but did not succeed in catching them and continued destroying the *tekoá* instead. Then, using their machetes once more, the park rangers proceeded to destroy the crops that were sprouting in the community garden (corn, cassava, and beans). They also cut down the fruit trees that were starting to bear fruit (bananas, genip, and tangerines) and frightened away the chickens and other poultry being raised by the families for their subsistence. Everything was strewn about: stools, clothing, gourds, food and other items. The uniformed men waited a long time, but left late in the afternoon. When the men returned from the jungle with some food, they found their *tekoá* totally destroyed and sought refuge in neighboring communities (Tamandua-í and Ñamandú), at a distance of several kilometers.

On October 12, with help from other *caciques*, the members of the community wrote a letter personally delivered to Lorenzo Ramos, Second *Cacique* General and leader of the Council of *Caciques* of the Guaraní people who live in the community of Marangatú, approximately forty kilometers from Ñamandú-Arroyo Azul, in the same valley of Kuñá Pirú.

The letter described what happened and the situation that the community was facing. It stated that they were:

> *...writing this to describe a problem that isn't easy for us... We are aboriginal Guaranís, who have been living for a long time in these hills. We are made up of 13 families, of which eight families were evicted, that is, forty persons including adults and children... On Tuesday October tenth, the army of the police (referring to the park rangers) arrived and ran everybody off... the police kicked down our homes by order of the provincial government...*
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> *Today we are homeless, evicted. We are sleeping in the hills without anything to eat. The children are sick. We poor mothers and fathers don't know what to do, because we left our homes and everything else behind. We also left behind our cassava and corn fields.*
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> *Poor us, we are suffering. Some families are sleeping in the capuera (bushes), others along the road and the rest in the tacuapizal (open fields). We don't know what's going to happen. We aren't thieves who steal wood. We don't know why we're being evicted. We, the indigenous people, have the right to live in the hills, because they are ours. We were also living in these hills when Garuaphé Company came into Cerro Moreno more than 30 years ago. Today we are going through very difficult, extremely difficult times, because we are homeless and suffering, with our children exposed to the rain, storms, and hail. We're hungry, and we have nothing to cover ourselves with when it rains, not even a blanket. There is a pregnant woman who's afraid, because she doesn't want to end up dying...*

The area of Ñamandú is located in the east of the Kuñá Pirú valley, in the center of the province of Misiones. It is covered with virgin jungle belonging to one of the last remains of what is known as the "Parananense-Misionero Forest." The entire area is also a sacred place for the Mby'á Guaraní, with eleven *tekoá* (communities) inhabiting the entire territory. The three communities of the Ñamandú (Arroyo Azul, Ñamandú and Tamandua-í) area consider themselves to be guardians of the sacred area where thousands of years ago the goddess Yvy Maraëí walked, who remains eternally in Salto Encantado, fifteen kilometers from the community that was evicted. In total, thirty-seven families live in the area. This is also the place where the remains are located of several generations of Guaraní, including that of the Great *Cacique* Patricio Ramírez, who commanded a group at the turn of the century and fought tenaciously to defend this indigenous territory and keep it free of intruders and white settlers. Even the Garuaphé Lumber Company, established

around 1930, respected the indigenous peoples as having the "legal ownership" of those territories up until 1993, and never bothered them.

With support from the Council of *Caciques* of the Guaraní people, on October 24 the *cacique* of Ñamandú-Arroyo Azul appeared at the Misiones police station of the town of Ruiz de Montoya (25 kilometers away), and filed a formal complaint regarding the destruction of the community. Based on that complaint, Case 1005/95 was opened with Criminal Trial Court No. 1 for the province in the city of Puerto Rico, the administrative capital of the Department of Libertador General San Martín, where the community is located. That complaint was later supplemented by *cacique* Antonio González and by the women who were present at the time of the community's eviction and destruction.

The uniformed men were identified in the case as park rangers for the Ministry of Ecology of the Province of Misiones acting under direct orders from the Minister of the Ecology of Misiones, Victoriano Loik León. Despite the evidence presented, Judge Héctor Acosta, who heard the case, stated that he had "insufficient evidence to prosecute the governmental officials of Misiones." He also refused to provide the Guaraní women with interpreters for Mby'á Guaraní to Spanish so that they could testify in the case. Given all these legal defects and ruses on the part of the court, the indigenous peoples are afraid that the process will not be a fair one, above all if it is borne in mind that the Judiciary in Misiones often yields to pressure from political power groups and the governors in office.

This violent eviction of the community of Ñamandú marked the height of human rights violations against the indigenous peoples by the Government of Misiones. Moreover, Argentina is governed under the rule of law. Thus, non-indigenous society and the entire political and social spectrum of Misiones and of Argentina responded to this incident with intensified pressure, demanding an end to the oppression of the Guaraní people.

Once the public became aware of the government's violation of indigenous rights, several intermediary organizations, political parties, churches, and legislators from various parties displayed their solidarity with the indigenous peoples of Ñamandú-Arroyo Azul. Along these lines, at the House of Representatives of Misiones (the Local Parliament) several bills were presented to condemn the incident. In addition, the Radical Civic Union (*Unión Cívica Radical* - UCR) block filed a request to summon Minister of Ecology Loik León for questioning by the Parliament, given that the eviction of the vil-

lage of Ñamandú could be considered an act of State terrorism.

The request stated that these were "...the same practices used by para-police and paramilitary forces under the military dictatorship to kidnap and intimidate thousands of Argentines. Making arbitrary use of the force of the State, a brutal assault was committed against completely defenseless persons, in this case, against a peaceful Guaraní community..." In addition, eight Provincial Representatives of the UCR filed a criminal complaint with the Prosecutor's Office handling Case 1005/95 in the Criminal Court of Puerto Rico, for prosecution of crimes in violation of civil and constitutional rights under the Argentine Penal Code.

INDIGENOUS STRATEGIES TO DEAL WITH THE CONFLICT

The eviction of the community of Ñamandú had significant public repercussions and national and international impact. Coupled with the constant violations of Guaraní rights starting in 1988, the traditional authorities of the Guaraní people saw this as an opportunity to place national and international pressure on the government of Misiones and resolve conflictive problems.

As such, on November 11 and 12, in the community of Marangatú, an Assembly of the Council of *Caciques* of the Guaraní people (*Consejo de Caciques del Pueblo Guaraní* - CCPG) was held. An analysis was made of the critical situation of the Guaraní communities. They decided that direct action be taken to protect the rights of the indigenous communities inhabiting the Kuñá Pirú Park, above all to respect the right to community land ownership. The decision, set forth in the minutes of that assembly, states that: "the *Caciques* of the Guaraní people condemn and repudiate the recent eviction of the Community of Ñamandú, in the Kuñá Pirú, carried out by officials from the Ministry of Ecology and Natural Resources of the Government of Misiones."

The Guaraní consider Minister Victoriano Loik León's recent public apologies to be empty words, which fail to redress the spiritual, psychological, and material damage inflicted upon the indigenous residents of Ñamandú. Indeed, the actions of the Government of Misiones date back to 1990, when the current Minister, Loik León, together with then Minister of State Hugo Caballero, ordered the eviction and burning of the community of Iriapú in Puerto Iguazú in the name of development and economic progress. At that time the officials involved enjoyed immunity and were not punished under the justice system. Furthermore, the Guaraní of Iriapú were not

granted possession and ownership of the 600 hectares of land where they live.

Given the situation, the CCPG decided to take the following actions:

a. To support and continue pursuing the criminal complaint made against Minister Loik León and other officials of the Ministry of Ecology for the crimes committed against the Guaraní of the community of Ñamandú, in which Mr. Loik León's crimes amount to recidivism (the prior case was that of Iguazú in 1990). The various *Caciques* will collaborate to the full extent necessary with the Criminal Justice System of the province so that this case can be fully resolved;
b. To support the request of the communities of Ñamandú, Tamandua-í and other communities of the zone to reserve an area in favor of the Guaraní people measuring approximately five thousand hectares, of what is known as Lot B, Subdivision R-25, purchased by the government of Misiones in 1993 under Law 3065 with the purpose of granting the Guaraní people definitive ownership of those lands;
c. To make a formal denunciation and presentation before the International Labor Organization, headquartered in Geneva, Switzerland, based on the government's violation of Conventions No. 107 and 169 regarding indigenous peoples, in effect in Argentina, as well as before the United Nations Commission on Human Rights and the Inter-American Commission on Human Rights of the Organization of American States (OAS), with respect to violations of international human rights standards in effect in Argentina; and
d. To engage in a joint "Urgent Action Campaign," with the Mocoví Ialek Lav'a Center in the framework of the Alliance of Indigenous Peoples of the Southern Cone, which will contact supportive NGOs throughout the world, to make this regrettable occurrence known; and to engage in protest actions and issue statements of repudiation to the government of Argentina and the government of Misiones; in addition to such other actions as may be necessary.

In the framework of the Urgent Action campaign jointly carried out with the Mocoví Center, information on the situation of the Guaraní people was disseminated to more than two hundred international organizations, NGOs, indigenous organizations, and governments of the G-7 countries. All of them were requested to express their support regarding the following points, through communications to the governments of Argentina and of the province of Misiones:

- To express their repudiation of the eviction of the Guaraní community of Ñamandú-Arroyo Azul, and their solidarity with that community. In addition, to request that the Government proceed to redress the material, spiritual, and emotional damage inflicted, and that the Government also provide real guarantees to all the Guaraní communities in the province who face the threat of new and additional acts of forced evictions against their communities;
- The actions carried out by the officials of the Ministry of Ecology and by the Government of Misiones are illegal, and those responsible for such acts should be brought before the Courts in accordance with the terms of the Constitution of Argentina. In this regard, judicial guarantees should be requested that indigenous rights will be respected by the judges in all cases heard before the courts of Misiones where indigenous peoples are involved. This is necessary, given the extreme lack of legal certainty in the country, owing to the great influence exercised by the respective administrations in the Argentine justice system, where public officials who have committed crimes enjoy immunity;
- To support the request of the Guaraní communities of the valley of Kuñá Pirú for the demarcation of a continuous area of approximately 12,000 hectares of lands and for issuance of deeds of community ownership on those lands in favor of the Guaraní people. Along these lines, support is requested for the two bills submitted by the CCPG and the Mocoví Center to the House of Representatives of Misiones, under which the Kuñá Pirú Provincial Park would be disencumbered and more than 5,000 hectares of what is known as Lot B, Subdivision R-25 would be transferred in ownership

to the Guaraní people; along with the bill to proceed with the expropriation of a lot measuring 6.079 hectares belonging to the National University of La Plata, for the same purpose, in order to establish therein a Natural Cultural Reserve under the control of the indigenous peoples.
Likewise, a request should be made to the Government of Misiones to proceed with demarcating and surveying the approximately 18,000 hectares transferred to the Guaraní people under Laws 2627, 2704, and 2900 of 1989, and to deliver in community ownership the 600,000 hectares claimed by the Community of Iriapú in Puerto Iguazú, from which they were evicted in 1990;

- That the Government of Misiones once again put Law 2435 fully into effect. That law, enacted in 1987, recognizes the Guaraní people and their political, social, economic, and cultural systems, granting them autonomy; that Law 2727, the "New Law on the Aborigines," be repealed, inasmuch as it violates human rights and runs counter to the interests of the Guaraní people. Provincial legislation needs to be made consistent with the text of the new Constitution of Argentina, enacted in 1994, whose Article 75, Subdivision 17 sets forth the rights of the indigenous peoples.

INTERNATIONALIZATION OF THE CONFLICT IN MISIONES

In keeping with the indigenous strategy decided upon by the Council of *Caciques* of the Guaraní people, in late 1995 a "Denunciation and Formal Presentation" was made to the International Labor Organization, regarding the violation of ILO Conventions 107 and 169 regarding indigenous peoples. That presentation, addressed to Dr. Héctor G. Bartolomé de la Cruz, ILO Director of the Department of International Labor Standards, stated:

> We hereby wish to present to the International Labor Organization for your consideration the situation that has recently taken shape in the Province of Misiones in Argentina, due to the deliberate destruction and subsequent eviction of the Indigenous Community of Ñamandú-Arroyo Azul, which forms part of the Guaraní People, by security forces of the Government of Misiones, Ministry of

Ecology and Renewable Natural Resources. This governmental action violated the terms of ILO Convention No. 107, concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries, 1957, ratified by Argentina through National Law No. 14,392; as well as the terms of Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Argentina pursuant to National Law No. 24,071.

This presentation by the Mocoví Center is being made at the request of the Council of *Caciques* of the Guaraní People, pursuant to Resolution No. 4 of the Minutes of the General Assembly of Indigenous Communities of the Guaraní People, dated November 11 and 12, 1995 and held in the Community of Marangatú, Province of Misiones. Point c of that Resolution states, "To make a formal denunciation and presentation before the ILO, headquartered in Geneva, Switzerland, based on the government's violation of Conventions No. 107 and 169 regarding Indigenous Peoples, in effect in Argentina..."

Likewise, point d of Resolution No. 4 states: "Together with the Mocoví Center, in the framework of the Alliance of Indigenous Peoples of the Southern Cone, to take all such actions as may be necessary to make this regrettable occurrence known..." This cooperation between indigenous organizations increases the hope that within the framework of the "International Decade of Indigenous Peoples," proclaimed by the General Assembly of the United Nations, the rights of Indigenous Peoples will be respected and applied under international law, given the limitations of international legislation in effect in said regard.

On November 16, the House of Representatives of Misiones approved Declaration No. C.R./D.514-95/96, whose Article 1 expresses its "Repudiation of the events, which come under public domain to which the Ñamandú Aboriginal Community was subjected." The declaration also requested an investigation, noting, "The compelling need for the Government of the Province to proceed with an investigation of the events and to collaborate without delay in the specific area, by redressing and/or making reparations for the material or emotional damages that were

incurred by the members of the Ñamandú Aboriginal Community."

That same week the National Senate approved Declaration No. 1508/95, which states its "deep concern and strong repudiation of the forced eviction carried out by officials of the Ministry of Ecology and Renewable Natural Resources of the Province of Misiones against the inhabitants of the indigenous settlement in the Village of Ñamandú of the Kuñá Pirú Provincial Park, in the Province of Misiones."

The National Senate, by virtue of the powers granted to the Congress of the Nation under Article 75, Subdivision 17 of the National Constitution, also filed a request with the National Ombudsman in Buenos Aires for his intervention in defense of the collective interests of the Guaraní People. On November thirtieth, Jorge Maiorano, the National Ombudsman, made presentations and requested reports from the National Institute on Indigenous Matters and the Government of Misiones (Ministry of State and Ministry of Ecology).

Parallel to all these actions, throughout the month of November the Guaraní Communities belonging to the Council of *Caciques* of the Guaraní People continued in a state of Permanent Assembly. This responded to the threat of the government of Misiones to continue with the eviction of other Guaraní communities (Tamandua-í, Ka'aguy Poty, Yvy Pytá, and others), in the area of the Kuñá Pirú Provincial Park. It was also aimed at building momentum for actions in defense of the Guaraní People's ancestral territories and their natural resources.

With the support of the Mocoví Center, two bills were submitted in late November to the House of Representatives of Misiones. These bills were aimed at legally obtaining an area measuring more than five hectares under community ownership, in the name of the Guaraní People, in the Kuñá Pirú Provincial Park, where the Communities of the Ñamandú area have settled. Under these bills, a contiguous lot measuring six thousand seventy-nine hectares would also be expropriated. The lot in question belongs to the National University of La Plata, and the communities of Yvy Pytá and Ka'aguy Poty are located there. The lot would be used to form an Indigenous Community terri-

tory of more than eleven thousand hectares. In turn, the lands returned to the indigenous people would form a Natural Cultural Reserve, which would be complementary to the Kuñá Pirú Provincial Park. It should be noted that the Kuñá Pirú Provincial Park now covers approximately seven thousand hectares, as compared to its original area of twelve thousand five hundred hectares, when it was created under Law 3065 of October 1993.

Within the framework of Convention No. 107 and of the analysis made by the Mocoví Center, we have reached the conclusion that the actions of the Government of Misiones violate Article 2, Subdivisions 2-c) and 4; Article 3 in its totality; Article 4, Subdivisions a) and b); Article 5, Subdivisions a), b) and c); Article 7, Subdivisions 1, 2 and 3; Article 8, Subdivision b); Article 10, Subdivision 1; Article 11; Article 12 in its totality; Article 13, Subdivision 1; and Article 27; of the above referenced Convention No. 107, which remains in effect in Argentina and was ratified under National Law No. 14,392. In the specific case of Ñamandú, the violation of Article 12 of the Convention is of the greatest severity, given that it involved a governmental action.

Likewise, within the framework of Convention No. 169, at first sight it is seen that the government of Argentina, through the destruction and subsequent eviction of the Community of Ñamandú-Arroyo Azul, has violated and failed to comply with the terms of Article 2 in its totality; Article 3; Article 5; Article 6; Article 7; Article 8, subdivision 1; Article 12; Article 13, Subdivision 1; Article 14; Article 15; Article 16 in its totality; Article 17; Article 18; and Article 33. In particular, it has violated Article 16, Subdivisions 1, 2, 3, 4 and 5.

We also wish to inform the ILO that the National Constitutional Convention in August 1994 approved a new text for the National Constitution of Argentina, and that in relation to Indigenous Peoples, it approved Article 75, Subdivision 17, which, in defining the mandate of the National Congress, sets forth:

> *To recognize the ethnic and cultural preexistence of the Argentine indigenous peoples; to guarantee respect for their identity and the right to bilingual, intercultural education;*

> *to recognize the legal status of their communities, and the possession and community ownership of the lands that they traditionally occupy; and to regulate the delivery of other lands suitable and sufficient for human development; none of those lands may be alienated, transferred, nor susceptible to liens or encumbrances; to ensure their participation in the management of their natural resources and with regard to other interests affecting them. The provinces may concurrently exercise this mandate;*
> *This also reaffirms the position of the Indigenous Peoples that the government's action is totally inconsistent with the new text of the constitution.*
> *The violations on the part of the Argentine governmental authorities against the rights of the Guaraní People in the province of Misiones have brought us to request that the ILO, 'Proceed to apply the means at its disposal, including the possibility of sending an Observation Mission to the province of Misiones, in virtue of the clear violation of Conventions 107 and 169 by Argentina. Furthermore, we respectfully request that the government of Argentina be obligated to fulfill the terms of those Conventions; and that the Guaraní People be deemed to have appeared through this letter as the affected party.'*

In response to this presentation, in 1996 the ILO contacted the Argentine government, requesting information about the situation in question and stating that it was determined to intervene in the conflict unless a solution was reached.

Along the same lines, several international entities officially expressed their concern to the Government of Argentina over the situation of the Guaraní people, among them the World Bank, the European Union, the Inter-American Development Bank, and the United Nations.

IN SEARCH OF A PRINCIPLE FOR RESOLVING THE CONFLICT: DIALOGUE AS A DETERMINANT FACTOR

In addition to international pressure, multilateral credit agencies made "observations" regarding the projects in which they were involved with the Government of Misiones. These observations focused on the fact that indigenous rights were not being respected in that province, and consequently public investment in that province would be reduced. Such pressure forced the Government of Misiones,

under the leadership of Mr. Ramón Puerta of the Peronist Party (*Partido Justicialista*), to reconsider its relationship with the Guaraní people, and to give positive signs that the conflict could be resolved, at least in part.

As a first step, given that the eviction of the community of Ñamandú had triggered the conflict resulting in this pressure, in late 1995 the officials of the Ministry of Ecology who were the material perpetrators of the incident were fired, including Minister Loik Leon.

Subsequently, throughout 1996, the Governor of Misiones entrusted to the Minister of State the task of initiating a dialogue with the traditional authorities of the Guaraní people, listening to their aspirations so as to be able to develop a solution to the problem. The talks were conducted almost in secret, so as to prevent political speculations, and so that sectors with an interest in indigenous affairs (NGOs, the Catholic Church, technicians and indigenist groups) could not interfere in the negotiations.

In early 1997 the Provincial Bureau on Guaraní Matters, a provincial government agency in charge of implementing Law 2727 on the Aborigines, was restructured. A party politician was appointed as its new Director, replacing the previous Director, who formed a part of a conservative sector of the local Catholic Church (the Bishop of Posadas). All the hierarchical personnel of the Bureau were also changed, and an informal consultative body was established with the Council of *Caciques* of the Guaraní people. This was one of the first points brought up by the indigenous peoples in the negotiations.

Between 1998 and 1999, with the informal incorporation of traditional indigenous leaders in the decision-making process of the Bureau of Guaraní Matters, some of the minor demands of the indigenous peoples started to be resolved, such as:

- Land survey and provision of deeds of ownership for the lands returned to the Guaraní people under Laws 2627, 2704, and 2900, enacted in 1989, totaling 18,000 hectares. Likewise, the purchase and expropriation, with federal funds, of several hundred hectares for certain indigenous communities whose situation was critical;
- The joint administration of Community Development Projects and Programs;

- The extension of the Federal Government Social Plans and Programs to the Guaraní communities;
- Appraisal and marketing of indigenous crafts (the principal source of economic income for the communities) through the State;
- The holding of activities to revive traditional culture;
- Negotiations with the Ministry of Education of the Province, over a Program of Multicultural, Bilingual Education for the Guaraní people, to be incorporated into the Provincial Law on Education (this is still pending in the local Legislature and is under negotiation);
- Other matters of particular interest to the communities.

In late 1999 a new administration took office in the province of Misiones of the same political stripe as the former administration. During its first months in office, it continued with the dialogue that had commenced in 1996 between the provincial government and the traditional authorities of the Guaraní people, represented in the Council of *Caciques*, with a view towards continuing to resolve the problems of the indigenous communities.

CONCLUSIONS

The Guaraní people, between the seventeenth century up to the present, have expressed their self determination first to the Spanish Crown, and later to the Argentine State.

In modern history and recently, this aspiration has gained momentum, with the enactment of Provincial Law 2435 between 1986-87. That law recognized the Guaraní people's right to internal autonomy within the national legal framework. The passage of that legislation generated several institutional conflicts in the province of Misiones. As a result, in 1989 Law 2435 was repealed. A repressive policy of human rights violations was instituted against Guaraní individuals, with forced eviction of communities, prosecution of the principal indigenous leaders, the cut-off of all social and assistance programs, and other forms of oppression.

The forced eviction and destruction of the community of Ñamandú in 1995 generated actions encouraged by indigenous leaders. This process resulted in international pressure and claims, including those of intergovernmental entities, addressed to the gov-

ernment of Argentina. As a consequence, a dialogue and negotiations process commenced the following year between the government of Misiones and the traditional authorities of the Guaraní people, represented by the Council of *Caciques*.

The above mentioned direct dialogue and negotiations between an indigenous people and the government made it possible to achieve a partial resolution of the conflict in the province of Misiones. This demonstrates that such a process is one of the most effective ways to build peace and improve inter-ethnic relations.

Resolution of the conflict between the Guaraní people and the Government of Misiones is indeed partial. Nonetheless, the way has been opened for more extensive dialogue leading to future resolution of more intense political demands of the indigenous peoples, specifically:

1. Institutional recognition of the Guaraní people and the reaffirmation of the concept of "People" as a factor in their historical identity. Along these lines, the Government of Misiones would be called upon to fully place Law 2435 into effect, which was enacted in 1987, and which recognizes the Guaraní people and their political, social, economic and cultural systems, granting them autonomy. Furthermore, Law 2727, the "New Law on the Aborigines," must be repealed, given that said law violates human rights and goes against the interests of the Guaraní people. In addition, provincial legislation needs to become consistent with the text of the new Constitution of Argentina, enacted in 1994, whose Article 75, Subdivision 17, sets forth the rights of the indigenous peoples. Another alternative would be the enactment of new legislation in consultation with the Guaraní people, which recognizes these principles;
2. Return of traditional territories of the Guaraní people, consisting of more than 200,000 hectares of the current province of Misiones, which are "historically" claimed by the Guaraní people as theirs. Such return implicitly entails the right to use and manage existing natural resources on those lands;
3. The formalization of a system of co-governance between the provincial government and the Guaraní people to address matters affecting the indigenous communities;

4. Full control by the Guaraní people of social plans and educational and health programs implemented in their communities;
5. Financial support for the institutional strengthening of the Guaraní people's traditional system of government and of their representative organizations;
6. The setting of joint management plans by the Government and the Guaraní people for Protected Natural Areas, and joint determination of management plans for the native forest and related programs, including biodiversity management programs;
7. Other aspects of common interest.

In the coming years, these matters might well be resolved in a positive way. Thus, the Guaraní people would be strengthened in terms of defending their "historical vision" of society. That vision is based upon a profound conviction rooted in their traditional indigenous worldview. It is also the principal source of direction that could lead them to prevail and help future generations live in greater harmony with their surroundings.

Ariel Araujo is the Coordinator of the Mocovi Ialek Lav'a Center, Melincué (Argentina).

Other Regions

19

Land Rights: A Central Issue in Conflict Resolution and Management among the Ogiek of Kenya

Sang K. Joseph

This paper seeks to discuss the injustices committed on minority Ogiek people by their own government whose interests emanate either from minority forces with powerful interests such as logging, land acquisition etc. or from political struggles for supremacy and control over natural resources. The area in conflict is an ancestral land of the Ogiek but is being claimed by the state by virtue of the national laws and policies governing the indigenous community. The Ogiek people's claim to their forestland is as old as their history because they have occupied it since the time of their ancestors.

I wish to highlight the entire conflict, but I opted to focus on the central issue of the Ogiek people's minority struggle. Just like other indigenous peoples elsewhere in the world, the heart of the conflict among Kenya's Ogiek people is land, which, as they know it, is everything.

From the land springs the Ogiek culture that helps us maintain our sense of belonging to ourselves. We can achieve this only if we have a place that we say we belong to — a place we can call our home. Land, to us, is our life, our source of food and existence. Embedded in it is our social life, our status, security and dignity. In

short, the land is our world.

This is the reason why *taking our world is cutting away the very heart of our existence*. Part of it has already been taken from us, which we seek to regain in due time.

MAU FOREST

The Mau Forest complex is the largest remaining rainforest near contiguous blocks of indigenous forest in East Africa. Approximately 350,000 hectares, the Mau Forest is about 170 kilometers northwest of Nairobi and stretches west bordering Kericho District, Narok District to the south, Nakuru to the north and Bomet to the southwest. The forest is divided into seven blocks comprising Southwest Mau (Tinet), East Mau, Ol'donyo Purro, Transmara, Maasai Mau, Western Mau and Southern Mau.

These seven blocks merge to form the larger Mau Forest complex. Out of all the forest blocks, only the Maasai Mau is not gazetted. The last remaining forest dwellers, the Ogiek people are scattered all over the seven forest blocks.

Area in Conflict

The East Mau Forest, the area in conflict, is about 30 kilometers south of Nakuru, stretching westward covering eight forest stations of Sururu, Likia, Teret, Nessuit, Elburgon, Mariashoni, Kiptunga and Bararget. It borders Naivasha Division to the east, Narok District to the south and covers Division of Mauche, Mau-Narok, Njoro, Elburgon, and Kiringet to the west. About 900 square kilometers and one of the seven blocks, the East Mau Forest has the highest number of dwellers, numbering about 5,000 Ogiek community folk.

The forest lies between 1,200 to 2,600 meters above sea level with an annual rainfall of about 2,000 mm spread throughout the year. The forest regulates stream flow, thus helping control flood and maintaining water catchments that drain into Lakes Nakuru, Bogoria, Baringo and Victoria. The forest is also home to endangered mammals like the yellow-backed duicker (*Cephalophus sylvicultor*) and the Golden Cat (*Felis aureta*). It is also the habitat of various animals like the giant forest hog, gazelles, buffaloes, leopards, hyenas, antelopes, monkeys and small animals like the giant African genet, tree hyrax, honey badgers (*melivora capensis*), etc.

The vegetation cover varies from shrubs to thick impenetrable bamboo forest. The forest has big numbers of indigenous trees like



cedar (*Olea africana*), dombega and plantations of exotic trees like cypress (*Cuppressus lusitanica*), pine (*Pinus patula* and *Pinus radiata*), (*grevillea robusta)* and *Eucalyptus sp.*, which the Forest Department regularly plants mainly for revenue purposes.

The East Mau Forest leads in timber production in Kenya, particularly from the harvest of exotic trees. Adjacent to the forest are approximately 150 sawmills in addition to about 200 illegal tractor-mounted saw-benches all over the area. The forest was declared Crown land in the 1930s and made a Natural Reserve in the 1940s. It was officially gazetted in 1954 as a Forest Reserve under Forest Act Cap. 385. Previous employees of the Forest Department were all allowed inside and provided housing and social services. But on retirement, the employees were sent back to their original homeland except Ogiek employees. Ironically and tragically, the employment the Forest Department offered to the Ogiek is paving the way for their own extinction. Every hectare of plantation trees they plant is a hectare of their birthright lost forever.

The original intention of the colonial government for declaring East Mau as forest was to create a buffer zone between the Nature Reserves and the residence areas of the "white highlands."

BRIEF HISTORY

The Ogiek people are the last remaining forest dwellers and the most marginalized of all indigenous peoples and minorities in Kenya. They are traditionally honey gatherers who are also traditional bee-keepers. They survive mainly on wild fruits and roots, and hunting wild game. They are therefore friendly to their environment on which they depend and today, the Ogiek peoples are still dependent on forest resources, either as hunters, gatherers and/or subsistence agriculturists. They were nicknamed "Dorobo," a derogatory term given to them by their neighbors, the Maasai. They call themselves "Ogiek," which literally means "the caretaker of all plants and wild animals." They are a uniquely specialized people intimately related to a particular ecosystem.

In the beginning of the last century, the Ogiek's ancestral lands were taken away from them in much the same way that lands and hunting grounds were seized from the Native Americans in the US. The only difference — no Ogiek Reserves were retained. This is the greatest injustice done to the Ogiek. This does not include the adverse effects of forest policy that has progressively and intensively replaced indigenous natural forests with conifer forests, which are, to the Ogiek, totally sterile and unproductive, useless for either bees or wild animals.

The Ogiek have a unique way of life well adapted to the forest. Their adaptations and their traditions have enabled them to succeed as foresters and as great environmentalists, compared to any other community in Kenya. The survival of the indigenous Mau Forest, with which the community's survival is inextricably linked, can be credited to them.

The Ogiek have been living within the Mau Forest since time immemorial in communally held pieces of land, which were administered through a Council of Elders chosen according to clans and family units. Customary land tenure during the colonial administration was partially destroyed when exotic tree plantations were introduced, which weakened the Ogiek's direct control of the forest. The Council of Elders or "Poisionik" administers and controls the Ogiek destiny and helps in solving, among other things, disputes over community-held land.

The Ogiek today in East Mau number close to 5,883 (1998 figures). Nationwide, they number about 20,000. They have been slowly transformed to cattle keepers and, to some extent, peasants. Their linguistic facility as well as state policy led them to adopt their neigh-

bors' language and thus get "absorbed" easily and become victims of assimilation by their neighbors.

The Ogiek are happy in a situation of isolation in the forest where birds, trees and wild animals provide them with "good neighborhood" that one may seek in becoming a member of larger communities. They are self-sufficient in forest products except for iron needed to make arrowheads, spears and knives. Their skills and expertise lie in:

- Marksmanship with their powerful bows and arrows;
- Skills in management and training of hunting dogs;
- Ability to recognize and identify both flora and fauna very quickly;
- Acute eyesight with good tracking skills; and
- Good mapping skills and thorough knowledge of the forest.

The Ogiek continue to live closely with various species in the forests where trees, birds and wild animals provide them with the psychological comfort, which other people attain by being members of larger communities. For this reason they have always dwelled in areas with forests adjacent to plains. During the dry season they would live in the forests, moving out to the plains during the rainy periods.

Dispersals

The Ogiek are believed to be the first people to have settled in Eastern Africa and were found inhabiting all Kenyan forests before 1800 AD. They are also believed to have occupied the coastal regions of East Africa as early as 1000 AD. They moved from these areas following attacks by slave traders and other migrating communities. This was the first Ogiek dispersal. It saw one group moving to Tanzania where they settled among the Hadzabe and Maasai tribes. This first group has been assimilated by the Maasai and now speaks a dialect that is very close to Maasai. A second group moved to the plains of Laikipia bordering Mount Kenya forest from where they dispersed to various locations in northern, central and western Kenya.

By the turn of the century, the Ogiek were to be found in Mount Elgon, Cherangany, Koibatek and Nandi, as well as in the Mau

Forest region, which straddles Nakuru, Narok, Kericho and Bomet districts in the Rift Valley province of Kenya. One group moved from Laikipia and settled in Samburu, Northern Kenya.

The wide dispersal of the Ogiek placed them into small defenseless groups prone to attack by other stronger, closely knit tribes. In 1856, conflict between the Maasai and the Ogiek over land rights in Laikipia and Mau led to serious loss of life on both sides, further depleting the Ogiek population. The Ogiek population was reduced further in 1876 when a cholera outbreak wiped out sections of the population.

Dispersed and reduced to a small number, the Ogiek have become an easy target of those seeking land on which to farm or graze. Moreover, they have not been given the opportunity to speak for themselves and be heard to defend their ancestral lands. Everyone has ignored the fact that the Ogiek also have a right to their lands. When the British carved areas of Kenya into tribal reserves for the various tribes, the Ogiek were excluded. This was because they lived in small, scattered groups over large areas and did not appear to have any property.

Serious encroachment of Ogiek rights to their land began in 1856 when the Maasai attempted and succeeded in annexing Ogiek lands in Mau and Laikipia in Northern Kenya.The groups of Ogiek, who occupied Mau and Laikipia, dispersed as a result. The forced dispersal of the Ogiek led them to go to war against the Maasai. The Ogiek lost the areas around Lake Naivasha but continued to retain the lands around Nakuru.

In 1903 the colonial administration started negotiations with the Maasai over the transfer of lands, which were not rightfully the Maasai's. This culminated in an agreement, signed in 1911 between the Maasai and the colonialists, during which the Maasai handed over rights to land in Nakuru, Naivasha and Laikipia for the settlement of white farmers. Ironically, the lands lost to colonial authorities belonged to the Ogiek people. This effectively dispossessed the Ogiek of their ancestral lands and was a victory for the Maasai, who had failed to forcibly take over these lands in the war of 1856. In 1932 another agreement between the Maasai and the colonial authorities gave out the Mau areas to the colonial settlers.

Evictions

The first time the Ogiek were forcibly ejected from their lands happened between 1911 and 1914 after the first pact between the colo-

nial authorities and the Maasai was signed. Colonial soldiers evicted the Ogiek and their animals from Mau to Narok. The Maasai accepted the Ogiek in Narok on condition that they surrender their animals and language and adopt the Maasai culture. The Colonial District Commissioners in Narok and Nakuru agreed to this condition without consulting the Ogiek.

Once in Narok, most of the Ogiek refused to surrender their animals and to adopt Maasai lifestyles. But most Ogiek, who had been evicted from the areas around Lake Naivasha, opted to remain, and having surrendered their animals, were assimilated and lived as slaves. To date, these are the poorest of the Ogieks.

A second eviction took place in 1918. Once again colonial authorities used African soldiers to forcibly evict the Ogiek from the Eastern Mau to Olpusi-Moru in Narok. Once again the Ogiek refused to surrender their animals and found their way back into the Mau Forest.

British colonial administrators evicted more Ogiek from their ancestral lands in 1926 and 1927. They forced them into the forests despite their will to remain on their ancestral lands, which had been alienated and converted to settler farms. But the British declared the forests as Crown Lands. The Forestry Department banned the Ogiek from the forests, thus evicting more of them who had nowhere to go.

The Ogiek fiercely resisted the evictions and rose up in arms against the white settlers. This led to a ceasefire agreement between the Ogiek, the colonial administration and the white settlers. The September 23, 1932 ceasefire agreement stipulated that the government stop harassing the Ogiek, while the Ogiek cease invading the white settlers' farms. The Ogiek understood this to mean ceding their claims to the settled areas in return for being left in peace in the forests. Four colonial representatives and 12 elders representing the Ogiek forged the agreement.

After the September 1932 agreement, the Ogiek were invited to testify before the Carter Land Commission. This was a white-led commission formed to hear the Ogiek case. Ogiek elders appeared before Honorable Harris Carter on October 17, 1932. They presented the Ogiek's stand — they would not move out of the forests.

The Carter Commission recommended that the Ogiek should be moved to reserves of the bigger tribes with whom they had an affinity and, according to the Commission, these were the Maasai and the Kalenjin. This recommendation was among those presented by a committee made up of white settlers and colonial administrators who feared that should the Ogiek be left in the forests, their popula-

tion would increase and soon reclaim their land, which was now under the white settlers.

The colonial administrators and white settlers made the recommendation with a hidden agenda. Once they were dispersed to various locations and assimilated by bigger tribes, the Ogiek would no longer reclaim their ancestral lands. The Commission in 1933 decided that "…whenever possible the Dorobos should become members of and absorbed into the tribes with which they have most affinity…."

After the Carter Commission recommendations, more Ogiek continued to be harassed and dispossessed of their lands. When identity cards were issued to Africans for the second time in 1958, fellow Africans began encroaching on Ogiek lands. Some members of the Kalenjin tribe registered themselves as Ogiek in order to have a stake in the Ogiek claims to their ancestral lands.

In the first 15 years of its independence, the government of Kenya did not interfere with the Ogieks. The first harassment of the Ogiek started in 1977 when government forces, led by the Rift Valley Provincial Commissioner, invaded Mau West Forest.They torched houses of the Ogiek, confiscated property and arrested members of the community who were then arraigned before the court on charges of being illegal squatters in the forest. This rendered many families destitute after they lost animals and properties. Parents, who had children in school, were unable to pay school fees, forcing the children to drop out.

Ten years later in 1987, the Government banned people from keeping livestock and farming in forests. This ban was applied selectively and targeted only the Ogiek and other non-Kalenjin communities. Following this ban, all schools in Eastern Mau were closed in 1989. This affected 500 Ogiek school children who had no alternative schools to go to. Ironically, during the same period the government initiated a settlement scheme in Ndoinet, Mau West. Members of the Kipsigis community were settled alongside the Ogiek. The Ogiek refused to participate in this scheme.

Starting in 1993, the Kenya Government has systematically carved out huge parts of the Mau Forest for settling people from other communities. This caused constant conflict between the Ogiek and the settlers. As more settlers were allowed into the forests, the Ogiek were not only alienated from their lands. This also threatened their very existence and survival as a people who have long considered the forests as part of their home.

From the accounts we cited earlier, the colonial government clearly

coopted the Maasai and the Kalenjins to counteract the land-based Mau insurgency. On the legal front, the Ogieks, through their elders, exerted strenuous efforts to defend their rights. In 1996, the Ogiek engaged an advocate to assist them in pursuing their rights through legal channels. As a first step, a memorandum was prepared and circulated to all Members of Parliament. The issue of Ogiek land was raised during question time in November 1996. The Government then made a statement to the effect that "The Ogiek have been settled in Mau East Forest and they have 26 primary schools and 400 teachers. The Ogiek are being treated like any other landless Kenyans." Dissatisfied with the Government statement, which, they said was totally a lie, the Ogiek filed a constitutional land suit in June 1997. This case is still pending in the High Court. The community continues to seek justice through other legal suits as well as by lobbying.

GENESIS AND TYPES OF CONFLICTS

Land Ownership

The land conflict in Kenya is directly linked to its history of colonization. During the colonial administration in 1932, the Kenya Land Commission denied the Ogiek rights over land ownership on political and selfish reasons and declared Ogiek land as forest. On the other hand, the Ogiek, unaware of the loss of their land, continued staying peacefully in the forest despite several failed attempts of the colonial government and later the independent government to evict the forest dwellers.

In 1991 the Kenyan government initiated a settlement scheme, which originally the Ogiek understood to finally solve their constitutional land problem. But later it turned to be political and unsustainable. This further gave rise to the ownership question after the Ogiek were not satisfied with the government's plans. During the clamor for political change in the country, the government decided to initiate a scheme, which was to benefit the Ogiek, but was not the case. The beneficiaries, numbering close to 30,000, were mainly from neighboring districts with good political connections. Ironically, the Ogiek were being evicted to pave the way for more new settlers, as the government of Kenya opened up nearly 60,000 hectares for private use.[1] This now marked the beginning of the conflict over who really owns the forest.

The Government claims it owns the forest by virtue of the Forest

Gazettement and Declaration of 1942 under the Forest Act Cap 385. On the other hand, the Ogiek people lay claim to the same land because they have occupied and lived in it as their aboriginal homeland since their early history. This has led to serious conflict. Luckily, the government scheme had no legal basis, and this prompted the Ogiek to challenge it using constitutional means by taking the matter to the High Court in 1997.

Environmental Conflicts

The Mau (East) Forest is a haven of biodiversity. It is also an important water catchment area for major rivers and lakes supporting the lives of more than five million people. The government initiated the settlement scheme without conducting an Environmental Impact Assessment (EIA) to measure any possible environmental disasters it may cause. The new settlers, who are mainly farmers, tea planters, loggers and three powerful logging companies (Pan-African Paper Mills, Raiply Timber and Timsales Ltd.),[2] started degrading and destroying the environment as they cleared forests on which to settle and farm. As a result, several rivers have dried up permanently. This has further caused conflict with environmentalists who argue that the government scheme of inviting settlers into the forests is unsustainable.

For their part, the Ogiek, the last of the remaining hunter-gatherers who depend so much on honey from beehives, argue that the new settlers have destroyed thousands of beehives. The Ogiek technology is founded on beehives, which they make from hollow logs, placed in the high branches of forest trees.[3] Logging and tea plantations have also totally ruined the ecosystem that the Ogiek helped sustain for centuries. All these conflicts severed relations between the Ogiek and the migrants.

Socio-economic and Political Conflict

Some politicians and senior government officials have capitalized on the whole Ogiek issue by making promises to certain sections of the population in return for votes. But the Ogiek population is politically negligible when it comes to voting. They also have no leader in a Western sense. Thus politicians and government officials do not really care so much about the Ogiek, and this has marginalized them more.

After their lands were taken away, the Ogiek were regarded and

treated as squatters in the very land they have occupied and sustained since time immemorial. The majority of the people who have settled in Ogiek lands are supporters of the ruling party, and they view the land as a political reward to them for voting their party to power. They further believe that it is now their last chance to enjoy the fruits of independence to the maximum as the country heads towards political uncertainty. The favored population thus thinks it should utilize any available chance.

On the other hand, the Ogiek as the minority, fear that they will lose their land if the new settlers are allowed to stay permanently. With their small population, they will be dominated by the settlers from all sectors and finally will be assimilated. Once fully assimilated into the dominant population, the Ogiek fear they will finally become extinct.

The Ogiek have the same fear on the socio-political and economic front. Their small number cannot guarantee them to elect their own leader. Marginalized for a long time, they are weak in all spheres of life and cannot compete socially and economically with better equipped settlers.

All these reasons combined are part of the bone of conflict, which the Ogiek are now experiencing with the coming of settlers the government encouraged.

Interests of Main Actors in Various Conflicts

Various actors with varied interests come into play amidst the land-based conflict, which is hurting the Ogiek most.

Government Interests

Controlled by the political class, the government has prioritized partisan political interests over what can really address the problems of the Ogiek. It has always ensured its settler-supporters get the maximum benefit of the available resources so as to get more votes and remain in power in the next general elections.

In a patron-client setting, the politicians in the government evidently aim to fulfill pledges made during elections. This includes efforts to see that the settlers are never evicted. The politicians have gone as far as obtaining title deeds for them while the land is degazetted. This despite a court injunction the Ogiek won restraining the government from further alienating the land. The government itself is thus undermining the rule of law.

New Settlers

The settlers came in mainly to reap maximum benefits of the available natural resources and to stay permanently in the forestlands. They now sell at throwaway prices exotic trees to sawmillers in the allocated lands. They also fell indigenous trees for charcoal and other uses so as to transform the forest into a place "suitable" for settlement.

The sawmillers are another section of the settler population in Ogiek lands that can not just be ignored. They seek to take advantage of the confusion in the whole system and get more benefits from harvesting trees. They often collude with corrupt Forest Officers. The government since 1991 has lost billions of money in revenues from the timber industry because of the confusion. The confusion arose because the settlement was not planned and did not follow the normal constitutional channels.

Environmentalists

Coming into the picture are environmentalists who simply seek to help conserve the forest for the good of the country and the public at large. The conservationists are not actively involved because of the volatile political situation. But I believe they can soon be engaged in aspects that need the expertise of environmentalists.

Ogiek Interests

The Ogiek's interests are very basic and simple. They simply want to survive as a people whose culture revolves around what is most precious to them – their land. The fear of becoming extinct and landless is very painful to the hearts of many Ogiek. The desire to have a place to call home like all other communities in Kenya is the main interest of the Ogiek. They also desire a place where they will live cohesively and peacefully as a community. In this dream community, they desire to have access to clean water and clean environment for bee keeping, have wider choices for their own leaders and to meet their desired economic needs.

MEASURES AND ATTEMPTS TO RESOLVE CONFLICTS

Community leaders during the colonial times tried to use the colonial administration in trying to resolve conflicts, which the colonizers brought about in the first place. But most often community leaders were taken for a ride by colonizers who spoke in forked tongues. But despite the odds, the Ogiek resorted to various ways to help

resolve the dispute that colonizers brought about.

Existing Administration Channels

To air their problems, Ogiek elders since the colonial era usually paid visits to former Provision and District Commissioners. Ogiek elders did the same during the time of the independent government. But always they brought home nothing but empty promises from the colonial administration and later from the independent government.

But other various reasons may also explain why Ogiek elders failed to get a better bargain from the colonizers. For one, the Ogiek leaders were and are still illiterate and unaware of the nitty-gritty of colonial laws and government policies. Up to now, the government also does not recognize the Ogiek.

Moreover, other communities have taken advantage of the above two reasons and have benefited from the few privileges entitled to marginalized and minority groups such as the quota system. The quota system was introduced for the marginalized sectors to have equal opportunities in employment, training, scholarships and other support from the government. And the Ogiek people have no representatives in government, both in the civil service and in the political arena.

The Ogiek also made another attempt through various appeals to the President of Kenya. Unfortunately, despite numerous appeals, their efforts did not prove fruitful as the people they approached were right-hand power barons and "untouchables" very close to the President. They thwarted all efforts aimed at unearthing the real truth because they knew the repurcussions.

Then on January 31, 1997, Ogiek elders made a historic and surprise visit to the Head of State and were promised that their land was "intact and they should be protected at all cost." The Head of State added that the Ogiek were free to allocate their land to whoever they deemed fit, and should drive out anybody whom they did not want. But two months later, things turned sour when the government allocated land to unknown people who drove expensive vehicles.

Demonstrations, Lobbying and Campaigns

After trying all means and failing, the Ogiek have also learned that the Government of Kenya understands only the language of mass action. Tired with the empty promises of government, the Ogiek in

November 1995 demonstrated peacefully along the streets of Nakuru (Rift Valley Headquarter). Approximately 400 Ogiek started the demonstration from the forest 30 km southwest of Nakuru at 12:00 midnight so they could arrive at the town center at dawn.

Dressed in their traditional attire, the Ogiek arrived at Nakuru town shortly before 6:00 in the morning. They had planned to meet the state head, who was set to officiate some ceremonies at the state house in Nakuru. But state authorities came to know that the Ogiek were within the town and 10 lorries of anti-riot police (G.S.U.) were deployed to block the march that was two kilometers from the state house. The Ogiek were beaten indiscriminately, and their leaders arrested. Many were injured and hospitalized in that incident, which the media widely covered.

Fortunately, the public began to be aware of the Ogiek issue through the media, which has since covered their concerns, even if those who dared to issue press statements at that time were arrested.

Successes and Failures

The print media eventually helped highlight the Ogiek's land problems, which quickly emerged as a national concern. Two years later other international media agencies picked up the Ogiek people's issues and problems, which helped bring international reproach on the government.

But there was a problem. The 193 people who had been arrested as part of the government harassment conducted since 1995 vowed never to be involved in protest marches and other activities asserting Ogiek aboriginal rights. Those who joined the demonstration that failed also shared the same view. A major reason why the demonstration failed was because most of the state security machinery such as the police, DOs, DCs, etc. are of Kalenjin origin who did everything possible not to allow the Ogiek to air their views.

Parliament

When the Ogiek were convinced that the government was not ready to assist them in any way, they opted to seek justice through the Parliament. The Ogiek prepared a detailed memorandum addressed to all Members of Parliament entitled, "Help us live in our ancestral land and retain our human and cultural identities as Kenyans of Ogiek origin." The 18-page memorandum was signed by 48 community leaders and presented to the Parliament in 1996. The Parlia-

ment discussed it only briefly with only 33 members showing support for the Ogiek. Since then, the Parliament has not mentioned the Ogiek issue again.

The Ogiek realized a major factor for the setback in their parliamentary struggle – they did not have representatives of their own in the Kenyan parliament. The Kenya African National Union (KANU), which had majority votes in Parliament, could fight any attempt to help the Ogiek since they are mostly beneficiaries of the Ogiek aboriginal land that government gave out to settlers.

The Ogiek also exhausted other avenues like testifying through various commissions. They first tried this during the Carter Commission but failed because the Ogiek had no representative of their own in the so-called "Dorobo Committee," which made recommendations that the Carter Commission adopted. During the independent government, Ogiek representatives had the chance to testify before the 1992 Kiliku Parliamentary Select Committee. One mandate of this Committee was to collate views from Kenyans on the causes of ethnic clashes. The Ogiek presented their issues such as their insecurity primarily because of their lack of permanent homes in their own aboriginal land. But again, the impact was nil and not visible. They failed again because they lacked spokespersons that could argue their case exhaustively.

In 1998, the government set up another presidential commission to inquire into the causes of clashes and to recommend measures on how to avert such crises in the future. This commission, dubbed the Akiwumi, was in Nakuru in 1999 during which the Ogiek again testified that their land had been turned into a battlefield. The East Mau Forest and its adjacent areas now harbor two other warring communities. They further testified that the government was to be blamed for allowing the Kalenjin to settle in the disputed forest that they had acquired illegally. All this failed because they were up against a very big force, which, because of its own vested interests, simply ignored the issues and complaints of the Ogiek.

The Courts

After exhausting all possible avenues of redress and failing, the Ogiek saw one window of hope in the High Court. In 1997, when the parliamentary option failed, the Ogiek filed a case against the government over the ownership of East Mau Forest of which the court granted leave in June 1997. The issue at hand is whether the posses-

sion and enjoyment of the land by the Ogieks is valid, and whether the allocation of their land by the government to non-Ogieks is legal.

First Round Win

The Ogiek started well by winning the first round against the government. They received an injunction preventing the government from further subdividing and alienating the Ogiek ancestral homeland until the matter was fully determined by the court. The Ogiek argued that the exercise had no legal backing and therefore was illegal. In reality, nobody could define the legality of the government settlement scheme. The Ogiek thus wanted the settlement revoked and the beneficiaries to be taken back to their home districts.

But as a result of the injunction issued on October 15, 1997, the government seriously undermined the court order by allocating more land to other people and issuing title deeds, which were backdated to1997. Since the exercise was stopped, the population had doubled because the government had secretly allocated land to individuals and issued title deeds. In response, the Ogiek filed a fresh suit of court contempt. The move so angered the government that it wanted to settle the matter outside of court. The hearing of the case had not been fixed because one of the respondents, former state house comptroller Wilson Chepkwony, died. Chepkwony, President Moi's confidante, was also a beneficiary of the settlement scheme. The court could not hear the case until the family of Chepkwony presented a person to act as an administrator of the deceased's estate as provided by law. As the Ogiek waited for this, the court contempt proceedings were filed.

Some 5,000 Ogiek resisting eviction employed a similar approach but in a very different way in Tinet. But having no strong arguments, they failed and succumbed to the state's bigger influence and power.

In February 2002, the Ogiek again sued the government for contempt but the state council simply failed to show up and the case was adjourned. The hearing of the case was postponed twice in April 2002. The case was finally heard on April 23, 2002, but the State Attorney General's office sought that the Ogiek case be consolidated with a separate case filed in western Kenya by an environmental lawyer. The lawyer challenged the degazettement of 10 percent of Kenya forest, thus removing this from state protection.[3] Another excuse for the continued delay was that the government had not filed an affidavit.[4] On July 26, 2002, the Nairobi courts again rescheduled the hearing to October 1, 2002 for the reason that the

"judge was not available."

POSSIBLE SOLUTIONS AND RECOMMENDATIONS

Taking off from the various channels discussed above, the provincial administration, which has direct access to the Ogieks, should stop running the Ogiek affairs politically. As civil servants, provincial officials are supposed to be politically neutral as provided for in Section 82 (2) of the Kenyan Constitution. But they had always been biased against the Ogiek, favoring non-Ogiek settlers.

Efforts to review the Constitution should consider the Ogiek plight. And the Kenyan public should be informed about the Ogiek's true situation and feelings. The public must also be informed about the national issues, which affect the Ogiek. This public awareness-raising campaign can be done through the following:

- Include in media training programs the concerns and issues of the Ogiek so journalists and opinion makers can have solid bases for informed judgment when they report and comment about the Ogiek plight. By understanding the Ogiek more closely, they can also come to appreciate the distinct culture of the Ogiek, which actually helps enrich the diversity of cultures in Kenya;
- Help facilitate and process a media code of conduct, which seeks to ensure fair treatment of minority issues;
- Help ensure how to protect journalists who cover issues affecting minority communities;
- Establish a community media program through which minority communities such as the Ogiek can express themselves freely and can interact with other communities;
- Draft bills, which, when passed into law, will see the reorganization of minorities like the Ogiek and the possibility of creating a minority affairs department.

From the experiences of the Ogieks, laws have never helped improve the survival of minority communities. These laws should be repealed immediately, if not abolished altogether.

It is also time the government involve minority communities in national planning. The government most often allocates and expro-

priates resources of minority communities without involving and consulting them. If minority communities are involved and consulted in planning national projects, they can be informed well about the extent and impact of projects or development schemes. This can enable them to make a stand or demand just compensation for whatever damage is incurred by a national government project or program.

The Ogiek have identified the land in the Mau escapement as their ancestral homeland. To straighten out a long historical injustice done to the Ogiek, the state should return all lands belonging to them and restore these to their original metes and bounds.

Clearly, legal systems that can appropriately respond and enhance the proven sustainable land and resource management systems of the Ogiek must be established. Enabling laws and policies are needed to help rehabilitate Ogiek lands, which migrants and loggers degraded. Laws and policies are also needed to pave the way for the compensation, if not reclamation, of already lost land of the Ogiek and other aggrieved indigenous communities.

It is also imperative to establish a good system of incorporating and preserving indigenous knowledge on conservation, protection and management of biodiversity alongside modern knowledge. It is high time to appreciate a multifaceted view of conservation because some conservationists in the past had projected Ogiek practices as unsustainable, which is not true.

Likewise, the State should put in place laws that will protect the Ogiek from exploitation by corrupt people especially from outside the community. In the same breath, the Constitution and other legislation must enshrine the distinctive rights of hunter-gatherers.

Lastly, the Kenyan government should fully involve hunter-gatherers and pastoralist communities in rewriting the Kenyan Constitution to ensure that any clauses on individual and collective land title reflect the values and needs of indigenous minority peoples.

REFORM PROCESS

To pave the way for change, the government can take the following initial steps:

- Identify minority communities as equal members in the reform process and give them equal opportunity to express their needs;
- Visit minority communities where they live so as to

fully understand their development needs;
- Ensure that minority communities are included in the appointment and recruitment of those who take up jobs in any sector of society.

In addition, we submit the following recommendations:

- Indigenous minorities, like the Ogiek, have the same rights as other world communities to live in peace. It is thus the responsibility of governments to take care of their citizens by helping pave an end to wars, conflicts and violence. Governments must explore all avenues to end these conflicts and wars by tapping and promoting traditional methods of resolving conflicts and forging lasting and effective peace treaties.
- Indigenous minorities have the same rights as other world communities to live according to their cultures and freely determine their future and development.
- Indigenous peoples' rights to land, environment and natural resources as well as their human and cultural rights should be restored.
- Indigenous peoples should have control of all their sacred sites and the graves of their ancestors.

Joseph Kiprotich Sang is the Coordinator of the Ogiek Welfare Council (Ketuyechin Potan Kellog).

Endnotes:

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[2] Ibid.

[3] J. Kamau, "Court sets October date for Ogiek," **Rights Feature Service. Digital Freedom Network** (26 July 2002).

[4] Ibid.

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20

Greenland Home Rule: Self-Determination of the Inuit in Greenland

Henriette Rasmussen

Greenland is the biggest island on earth. It is a vast Arctic isle in the North American continent with a land area of 2.1 million square kilometers where only the Inuit (Eskimos to some) ever managed to skilfully adapt to the cold. It is situated 83'40''N and 59'47''S and spans 2,670 km from the northern to the southern tip. The Inuit in Greenland were the lone occupants of the area until the invasion of European missionaries, merchants and whalers in the 17th century.

GREENLAND SELF-GOVERNMENT

Greenland's population consists of 55,000 people, of which the Inuit are the majority (approximately 85 percent). They were under Danish colonial rule until 1953 after which a change in the Danish Constitution made Greenland a province of Denmark, starting an unforeseen industrial development. In 1972 Greenland became a member of the European Union (EU), despite a 71 percent "no vote" in the local referendum. Greenland eventually withdrew its EU membership after the introduction of the Greenland Home Rule.

In 1979, Greenland gained a measure of self-government from

Denmark and, in some ways, sovereignty. The Greenland Home Rule Act passed by the Danish Parliament provided for various levels of decision-making. Accordingly, vital issues like foreign affairs, police and court matters and currency issues remained under the jurisdiction of Denmark. A permanent joint commission composed of politicians representing Denmark and Greenland was created for policies regarding the exploitation and use of mineral and other natural resources. Greenlanders through their Home Rule Parliament and the Inuit Circumpolar Conference (ICC) articulate their views on many matters that directly concern them, but are sometimes considered "foreign" by the Danish state. Issues like the National Missile Defense (NMD), the US radar expansion plan, is one such issue.

As a representative democracy, the Home Rule consists of an elected 31-member Parliament, the *Landsting,* which exercises complete legislative power over most internal affairs. A seven-member Cabinet headed by the Premier is responsible for the administration.

Under the *Landsting* is a Committee on Foreign Affairs and Security. Information and other matters concerning foreign policy are coursed from the Danish State authorities to the *Landsting*. Denmark law allows the Danish Parliament's Board for Foreign Affairs to share information with the *Landsting's* Committee of Foreign Affairs and Security.

The Greenland Home Rule gives significant recognition to the Inuit as indigenous peoples being the first settlers of the country who have collective ownership to their land and resources.

Our model for self-government has been an inspiration for other indigenous peoples around the world. It may not be suitable for all other situations, but it demonstrates the principle that the establishment of self-government does not necessarily entail secession or armed conflict. Indeed it is possible to reach an agreement through negotiations and respect for each other and can eventually lead to self-determination through self-government. This was a workable solution for the Inuit.

The Canadian Inuit also managed successfully to negotiate self-government in the Inuit homeland now known as Nunavut which was inaugurated in 1999.

Home Rule has given us the privilege to set our own priorities concerning our daily lives as well as plan the development of our society. In addition to the material results, self-determination has led to a noticeable change also in the psychological climate in Greenland. It has brought a greater sense of empowerment and of



being in charge of many vital decisions.

INHERITED ADMINISTRATION

Greenland Home Rule, however, is commonly criticized for being "guarded" from Nuuk, the capital, and that the situation is comparable to the postcolonial one where all planning and policies were guided from Copenhagen. That, however, could be more of an emotional reaction than a fact. But if we retrace the introduction of the Home Rule, there is no doubt that the uncritical transfer of the Danish legislative and administrative tradition may not have been the best for the very scarcely populated big island, as Greenland is.

The more serious impact of adopting this administrative practice is the major influence of Danish academics. There are lawyers and economists in the Home Rule administration, but there are also engineers, architects and construction workers who are truly experts, given their familiarity with the European construction system. But on the other hand they are in a culture totally foreign to them and seldom learn to speak the language. This prevents them

from becoming truly involved in community life other than playing the roles that their expertise requires of them. This creates some uneasiness between the imported academic and vocational labor and the local Greenlandic population.

One other aspect of the problem is that the local population is largely unemployed, being aboriginal hunters. The unemployment rates remain high in the bigger towns. Inspite of a good social security system, unemployment fosters human indignity and misery. Some of the poverty problems stem from the ban on aboriginal hunt-products in other countries, especially the European Community (EC) and the US.

In the nascent years of the Home Rule, some slogans became popular with the Greenlandic public. Some of these included "Self-government to the Roots," "Self-government to the Villages," and "Respect for the Inuit Culture and Language." These illustrate that there were and perhaps there still are problems concerning the implementation of the Home Rule.

In 1999, there was an attempt to conduct an assessment of the present Home Rule with a view of expanding Greenland's autonomy within the Danish Realm (Commonwealth). This move commenced in 1999 and was projected to take two years, evaluating proposals for economic self-sufficiency.

Some of the first areas transferred to Greenland's control were culture and education. Legislation in the Greenland Parliament stipulates that the Greenland language be used in the administration, in education and in the court system.

GREENLANDIC ENTERPRISES

We are a partly industrialized society, with modern infrastructure and modern processing factories for fish and shrimp caught in the big "deep-freezer" — the Arctic seas. The Royal Greenland A/S, owned by the Home Rule, is the "flagship" for Greenlandic economy.

Tele Greenland A/S is a modern telecommunications system connecting the big island radio and television chain, telephone, telex and data network, coastal radio and meteorological services, satellite communications for the benefit of sea and air traffic.

The trading company KNI A/S and its sister company for shipping, Royal Arctic Line A/S, are partly owned by the Home Rule. In the last few years, attempts for privatization in this field came under political consideration, creating a shift in the political power.

Thus there is a modern industrialized Greenland set against a

backdrop of small hunting villages and settlements living very traditional ways of life. The lack of development in the villages drives people to migrate to towns with hopes of improving their lives. Not only do they not find employment there, they also find themselves in overcrowded towns, driving them to greater misery and deeper alienation. In my experience as a social minister during a four-year period (1991-95), I have found that the economic life and social practices are not yet adapted to the Inuit people. This only adds to the frustration and number of unsolved social problems such as increased number of single parents, the neglect of children and violence, unemployment and lack of education. We had a social policy that sought to address the social problems with greater care and involvement. We see that things go in the right direction, although the rapid development by the Danish State carried out between 1950-1970 has taken its toll on the people.

When the Greenlandic Home Rule becomes recognized like other indigenous peoples around the world, it should be considered carefully that the "mother country" does not impose its own system. Instead, we start off from the people, their situation, their demography, their traditions and culture and take time to introduce the changes and the new rules so there will be less turbulence.

Through the Danish delegation, Greenland Home Rule attended the Rio Summit in 1992, the Vienna Conference on Human Rights in 1993, and the Social Summit in 1995. The Greenland Home Rule Parliament has adopted the Declaration on the Rights of the Child, and adjusted its legislation accordingly. An ombudsman system was established and the first ombudsman assumed the chair in the spring of 1995.

The Danish Government ratified the International Labor Organization Convention 169. The Greenland Home Rule attends all UN conventions ratified by the Danish Government.

GREENLAND'S MILITARY SIGNIFICANCE

Due to its geographical location, Greenland became very significant for security policy during and after World War II. In 1941 Denmark granted permission to the US to establish bases and other military installations in Greenland in accordance with the Base Treaty signed in April 1941 by the Danish envoy and the American government in Washington. The envoy was an independent representative of the Danish Government. The Danish Government in connection with the first parliamentary session ratified the Base Treaty after libera-

tion from Germany in May 1945. Six years later the Base Treaty was replaced by an agreement passed in accordance with the North Atlantic Treaty regarding the defense of Greenland (Treaty on the Protection of Greenland), which to this day remains in force.

This treaty gave the US extensive control of its bases in Narsarsuaq, South Greenland, Kangerlussuaq (Sdr. Strømfjord) in midwestern Greenland and Thule in northwest Greenland. The Thule Base is the only remaining military installation after the other two became civil airports.

The American bases served various functions during the years when security questions and technological development were vital issues of the times. Since the 1960s the main installation at the Thule Base was a warning system against missile attacks. Today it serves the function of sattelite tracking and sattelite communications.

In March 1991 the US and Denmark/Greenland Home Rule signed another agreement establishing a committee that would discuss the conditions for the presence of the American military in Greenland. In 1995 a permanent group of Danish and Greenlandic officials convened to discuss the Treaty on the Protection of Greenland and various foreign policy and security issues affecting Greenland.

There are two other military groups in Greenland, namely, the Danish "Grønlands Kommando" in Kangillinguit southwest Greenland and the Sirius Patrulje in northeastern Greenland. The "Grønlands Kommando" is tasked with routine defense activities and sovereignity surveillance. The Sirius Patrulje attends to ice reconnaissance, fishery inspection and sea rescue service and patrols the entire north and northeastern regions of Greenland on dog sledges.

The Greenlandic peoples have no compulsory military service.

NATIONAL MISSILE DEFENSE AND GREENLANDIC POLITICS

Mr. Uusaqqak Qujaukitsoq is a hunter from Qaanaaq, the Thule region, and Inuit Circumpolar Conference-Vice President. He is a representative of the Inughuit, Thule people, the northernmost people of the earth, whom the Danish and American governments displaced in 1953 during the construction of Thule Base. They sued the Danish government and are demanding compensation for the displacement and lost hunting areas including their old village, in which the Thule Air Base is built. The Danish High Court was set to decide on the claim in August 2001.

The Danish Government first informed the *Landsstyre* about the US National Missile Defense plans during the summer of 1999. As we now know, these plans have a direct impact on Greenland because they depend on the use of the Thule Air Base. In its first phase, NMD calls for upgrading of the Thule radar. In its second phase, a new radar will be built. Residents of nearby Qaanaaq are expectedly concerned over the possible consequences in the event of conflict. Indeed all Greenlanders are concerned, as seen or heard on Greenlandic news radio, newspapers, and television news.

In any case, the only official statement made by the Greenland Government on the NMD followed a joint statement made by the coalition parties,[1] Siumut and Inuit Ataqatigiit (IA), on November 19, 1999. Briefly, the position notes that if the NMD contravenes the existing Anti-Ballistic Missile (ABM) treaty or is implemented unilaterally by the Americans, then the Greenland Government will not support plans for upgrading the Thule radar. The *Landsstyre* demanded a guarantee that any change in the installation of the Thule radar should have no adverse impact on world peace.

Furthermore, the *Landsstyre* has made it very clear that it expects to be centrally involved in any negotiations that may take place between Denmark, USA or any other party. Bearing this in mind, Danish politicians – both government and opposition – debated this issue in February 2000 and clearly expressed their will that Greenlanders must take part in the decision regarding the use of the Thule radar. They also conveyed that the radar is not to be used in the implementation of NMD against Greenlandic wishes.

Since most observers find that the NMD conflicts with the 1972 ABM Non-Proliferation Treaty (and in all likelihood the US foresaw this obstacle), US officials have been busy trying to negotiate an amendment to the treaty with Russia to make the NMD more acceptable. These negotiations continue to this day and based on the outcome, it is expected the new US President will decide whether to continue the NMD or not. At that point, a first formal request for additional work at Thule shall be forwarded to Denmark and/or Greenland.

Obviously the US is not being straightforward regarding the possible implications of the NMD on Greenland. Not only do Greenlanders have to concern themselves with the technical and logistical aspects of the NMD, but must remain vigilant in the negotiations and political decisions made by other parties that may have potentially destructive consequences on Greenland and its people.

WASHINGTON, NUUK AND COPENHAGEN: DEVELOPMENTS

An article in Weekend Avisen in Denmark, quoting a **Los Angeles Times** report in July 2000, accuses the Danish government of secretly having consultations with the US about upgrading and using the Thule radar and for planning some in-kind or economic offers, like return of the rights to use the old village in Uummannaq at the Thule Base, and/or support for the building of a planned airstrip in the new village of Qaanaaq. The article stated that there are plans of giving economic compensation in order to get the Greenlanders' approval. This is linked to the visit of the Deputy Secretary of State John Holum to Nuuk in August 2000 to meet Greenlandic and Danish politicians. Danish and Greenlandic administrative personnel earlier visited Pentagon and the US Space Command in Colorado Springs in February 2000.

The Danish Minister for Foreign Affairs, Niels Helweg Petersen, and his administration is supposedly holding discussions on their plans with the American Security Adviser Sandy Berger, Deputy Secretary of State Stobe Talbott, and Secretary of State Madeleine Albright. However, Minister Petersen claims there are no official requests from the American Government and still refuses to say anything to the public on the official Danish opinion on the American plans.

These views were presented to some academics in universities in Denmark; and independent experts in DUPI, Danish Institute for Foreign Affairs, and another institute for Peace and Peace Studies regret that while the NMD is discussed openly both in US and many countries in Europe, it is totally kept under wraps in Denmark.

Home Rule Premier Jonathan Motzfeldt expressed ambiguously in a letter to the Danish Prime Minister that he has huge problems of building a costly, civil airport in Qaanaaq. He has officially denied in the Greenlandic newspapers that he is selling off some rights in a deal.

Like members of the media, I have similarly noticed a tendency for a sellout since I returned home to Greenland in April 2000. It must be made clear that the US radar expansion is a major decision that the people must be a part of because of its serious implications and that the NMD should not be intertwined with politicians' internal affairs.

WHAT THE FUTURE WILL BRING

Environmental concerns are major issues stemming from transfrontier pollution. It is a serious threat to both animals and peoples in the entire Arctic region. Emanating from industrialized countries in Europe and North America, this pollution often ends up in the Arctic regions, e.g. ozone-depletion substances, environmental poisons and radioactivity. These are major threats that require the attention of the entire world community.

Another threat to our human rights is the environmental movement's view of us as being "killers" of animals. We have made enormous efforts to attend international environmental discussions on sustainable use of natural resources. Some countries and animal rights movements have banned our products, jeopardizing our livelihood and culture as hunting peoples.

We feel we are wrongly accused. No animal species have been hunted to extinction by our livelihood thus far and none have been extinct because we eat them. As the living beings in the Arctic it is we who are suffering from the problems created by industrial pollution not of our own doing. The increasing number of hermaphrodite polar bears and hairless seals and the meltdown of the ice in the Pole and Ice cap of Greenland speak for themselves. The environmentalist movement has obvious advantages over us especially in terms of access to information and media. And we want the rest of the world to understand the damage done to our culture and economy. We believe they violate the Rio Declaration's principles on sustainable development and we think they violate our human rights.

Many of us in Greenland believe the effort and money used on the arms race will be put to better use in the area of environment restoration as it an urgent matter for all humanity. In my opinion it is important to stress the right of indigenous peoples to economic development and improved standards of living. A better economy and sustainable development can be attained with due consideration to traditional practices and indigenous knowledge.

The UN declared a Decade for the Indigenous Peoples in 1994. A long important goal that we strongly wish to see fulfilled within the decade is the creation of a Permanent Forum for Indigenous Peoples. The Forum was brought up at the Vienna Conference on Human Rights and it was from the beginning a joint Denmark-Greenland effort.

To us, as Greenlanders, the decade presents an opportunity to draw the attention of the international community to the conditions of the indigenous peoples. To us, foremost is the right to economic development. In Greenland we have been able to survive on our resources for hundreds of years. Today our survival is dependent on our capability to continue the traditional use of our resources. But our survival as indigenous peoples and as a Home Rule nation hinges on the development of our production and the trade of our products.

Our environment is often described as "the wilderness" from the view of the industrialized community and the environmentalists. But to us, the people, it is the "pinngortitaq," meaning "creation," of which we are a part.

ICC, A PAN-ARCTIC INUIT NGO

Representing all Inuit from Russia, Alaska, Canada and Greenland, the Inuit Circumpolar Conference serves as a conduit of information to us. The organization, which represents 152,000 Inuit in the world, was established in Utqiarvik (Point Barrow), Alaska in 1977 in a historical first Inuit gathering.

The principal goals of the ICC are:

- To strengthen unity among the Inuit of the Circumpolar region;
- To promote Inuit rights and interests on the international level;
- To ensure and further develop Inuit culture and society for both the present and future generations.To seek full and active participation in the political, economic, and social development in our homelands;
- To develop and encourage long-term policies which safeguard the Arctic environment;
- To work for international recognition of the human rights of all indigenous peoples.

Henriette Rasmussen was the former Technical Adviser for the Project to Promote ILO Policy on Indigenous Peoples of the International Labor Organization and is the Minister of Culture of Greenland.

Endnote:

[1] In February 1999, Siumut, a social democratic party (11 members), and Inuit Ataqatigiit, a socialist party (7 members), formed a coalition government.

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21

The Gitxsan People: Reconciling Pre-Existence with Crown Title

Chief Elmer Derrick

The Gitxsan people are a thriving and active First Nations people who occupy about 30,000 square kilometers of traditional territory in northwest British Columbia in Canada. At present, there are approximately 10,000 members of the Gitxsan nation worldwide, with about 70 percent living in the traditional territories in Canada. The population is young compared to provincial and Canadian statistics with over 70 percent under age 30. Most of them live in five Gitxsan villages (Gitwangak, Gitsegukla, Gitanmaax, Glen Vowell, Kispiox) and two provincial municipalities (Hazelton and New Hazelton). The Gitxsan people make up about 80 percent of the total population living on the territories. The remaining population is mostly of European descent.

The Gitxsan people have lived on the territory since creation. Western archaeological evidence has so far supported more than 10,000 years of occupation by the Gitxsan. Non-Gitxsan people began to settle in the area only around the turn of the century.

The Gitxsan nation actively practices the traditional hereditary system. This is a matrilineal system with the members of a Wilp or House tracing their lineage through their mothers. Every Gitxsan

belongs to a Wilp, which is the basic unit for social, economic and political purposes. The Wilp is a collection of closely related people and consists of one to several families numbering from 20 to more than 200 people per Wilp. Each Wilp has a hereditary Chief and may have several wing chiefs, who perform particular functions for House members such as planning and administering forestry work, tourism initiatives or commercial fishery activities.

There are more than 50 House or Wilp groups at present, each with their own territory in the Gitxsan nation. The House groups belong to one of four Gitxsan clans: Lax Gibuu (Wolf), Lax Seel or Lax Ganeda (Frog), Gisgaast (Fireweed), and Lax Skiik (Eagle). They have a feast hall called the potlatch by some coastal First Nations, which is the forum where business, social and political decisions are legitimized in the traditional system. The Gitxsan traditional society has a series of laws dealing with conservation and activities on the House territories.

Traditional history and laws are passed on orally. Each House has an adaawk, or oral history, which describes important events in the Houses' existence. The carvings on a totem pole record parts of a House's adaawk. The adaawk is tied to the territory and events depicted by the crests on totem poles signify jurisdiction over a territory by a Wilp and its hereditary chief.

RECONCILING PRE-EXISTENCE WITH CROWN TITLE

The important moments in history for the Gitxsan are yet to come. How the Gitxsan and other indigenous peoples are regarded and dealt with in the past and in the present is known. Some encounters that have been recorded are best forgotten or at least left to collect dust. That Canadian history books rarely acknowledge our existence as aboriginal people has challenged us to secure a place in the political, social, and economic fabric of Canada. The fight to become legitimate in Canada is not only a challenge for us but also a current major challenge for the Crown.

It is best to only acknowledge views about noble savages, comments about the vast uninhabited expanse of Canada, and the diligent work on the theories about the Asian origins of the aboriginal people of North America. These perspectives are developed to substantiate certain beliefs. But it is best to forget about trying to teach people about things that they will never understand.

This paper addresses how the Gitxsan can approach the challenge that the Supreme Court of Canada made to the Gitxsan in



December 1997. The Supreme Court of Canada came up with a decision then, ending the longest running First Nation land claim court case in Canadian history. More than 20 years ago, the roughly 8,000 Gitxsan and We'tsuet'en declared their intention to negotiate recognition of their ownership of, and jurisdiction and self-government over 58,000 square kilometers of their traditional territory in northwestern British Columbia (BC). Years of talks and negotiations went nowhere, so they opted for legal action.

The Gitxsan and their neighbors, the Wet'suwet'en, decided to jointly pursue the matter in the courts. They filed a statement of claim in the Supreme Court of British Columbia on October 24, 1984 against the province seeking a declaration that they had ownership of, and jurisdiction over their House territories. Thirty-five Gitxsan and 13 Wet'suwet'en hereditary chiefs appeared as the plaintiffs with Gitxsan Hereditary Chief Delgamuukw as the main plaintiff so the action was named after him. In its decision handed down on December 11, 1997, the Supreme Court of Canada instructed the Gitxsan to go back to trial to get a ruling on aboriginal title but it also gave direct instructions to reconcile the pre-existence of Gitxsan society with Crown title. The Court did not acknowledge that the

process of reconciliation has been taking place since the early 1800s when new people and new authorities came to the Gitxsan territories.

The message of the Court for the Gitxsan to reconcile with the Crown seems to have fallen on deaf ears. The Gitxsan will continue to try and make progress as they are sometimes left to their own devices when the government, on its own, cannot find the path to reconcile with Gitxsan title or their pre-existence.

The intransigence of the Crown to deal with indigenous people in Canada has led to many court actions. The Canadian courts have advanced the cause of aboriginal rights since these rights were protected in the Charter of Rights and Freedoms, which became a part of the Canadian Constitution in 1982.

The Gitxsan and Wet'suwet'en ownership and jurisdiction trial began in May 1987 in the Supreme Court of British Columbia. They presented a huge body of evidence about their culture, their history, and their relationship to their lands and each other. This evidence was unique because the First Nations people themselves presented the evidence in their own languages. The first decision came down from this Court on March 8, 1991 where Chief Justice McEachern ruled that any aboriginal rights, which the Gitxsan and Wet'suwet'en may have held, had been extinguished by the colonial government of British Columbia. According to the judge, aboriginal rights exist at the pleasure of the Crown if it chooses to do so. Opponents of aboriginal rights and the governments of Canada and British Columbia loudly cheered the Court's judgment but other sectors derided it.

The decision, which could have been written 100 years ago, had a racist tone to it. Judge McEachern wrote that while the First Nations were "eking out an aboriginal life" which "was, at best, nasty, brutish and short, Europeans were engaged in discovery, exploration, settlement and development." The economic imperatives of European colonization had given rise to legal imperatives in which the rights of First Nations could be extinguished without their knowledge or consent, and without compensation. McEachern also wrote that the chiefs and elders had presented mere "beliefs" and "matters of faith," rather than "real" evidence. He even volunteered the opinion that First Nations are to blame for their oppression because they have "failed to adapt" to the modern world. The racist tone of the judgement stunned both the Gitxsan and Wet'suwet'en and many non-aboriginals.

The judgement was clearly built on some assumptions with

which the Gitxsan have had to live. In an article that was included in the book, entitled **Aboriginal Title in British Columbia: Delgamuukw v. the Queen**, University of British Columbia anthropologist Robin Riddington offers an insight to the judgement by stating the assumptions on which the judgement was based. Thus:

- Societies can be ranked on a "scale of progress" from "primitive" to "civilized." Civilized societies are inherently superior to primitive ones and have a natural evolutionary right to dominate and replace them. They are more complex overall and more "developed" in every way;
- Primitive societies were tiny, weak, and unorganized in their relation to the land in which they lived. They were all but lost in otherwise pristine wilderness. Primitive people were more like animals in relation to land than like civilized people. Primitive societies are becoming a thing of the past;
- Written documents carry far more weight than oral traditions of the Gitxsan and Wet'suwet'en. The cultural values and judgements about aboriginal people expressed by early European observers are accepted uncritically;
- Primitive societies did not use or even fully occupy the lands surrounding the places where they "eked out a living." More advanced societies measure their occupation of territory by transforming and altering it. They "make something out of it."Primitive societies are slaves to natural forces. Civilized ones are masters of nature;
- Aboriginal peoples of North America are all primitive relative to Europeans, although some are more primitive than others. Civilized peoples appropriated unoccupied lands to more advanced purposes (like clear cut logging and other exports of non-renewable resources). Aboriginal people are "Indians" the name mistakenly given them by Columbus five hundred years ago;
- Europeans attempted to help the primitive Indians along the road to civilization. Their only error was in the coercive techniques like the potlatch law, rather

than an error in the first principles on which they predicated their actions;

- Indians must ultimately become civilized. Their problems have to do with their lack of progress toward this end, not with their loss of lands and resources. Indians who use machines and otherwise participate in contemporary society are by definition no longer primitive and therefore can no longer claim aboriginal rights. These rights only exist as a right to continue lives that are "nasty, brutish and short."

The above assumptions brought about the ruling at the British Columbia Supreme Court level. The judgement was based on a set of values that is defensible from the judge's point of view. Canadian society for the most part continues to hold the view that indigenous peoples are inferior to other people. How could the judge have come up with another ruling? In his conclusions on jurisdiction and ownership, he offers the following opinion, "I fully understand the plaintiffs' wishful belief that their distinctive history entitles them to demand some form of constitutional independence from British Columbia. But neither this nor any Court has the jurisdiction to undo the establishment of the Colony, Confederation, or the constitutional arrangements, which are now in place. Separate sovereignty or legislative authority, as a matter of law, is beyond the scope of any court to award."

The judge acknowledged that the Gitxsan and their co-plaintiffs, the Wet'suwet'en, had recognized the underlying Crown title to the soil in their territories. The political position on accepting underlying Crown title is part of the process of reconciliation from the Gitxsan perspective. The Crown did not acquire their title through war or any peaceful means. The Gitxsan accept that the assertion of this title cannot be undone. However, there has to be reciprocal recognition of Gitxsan title.

The judge also acknowledged that the Gitxsan and Wet'suwet'en sought to get a declaration that their aboriginal title is a burden on the title of the Crown. The Gitxsan expect a measure of reciprocity as a part of the reconciliation process.

While the judge acknowledged the scope of the court action that was taken before his bench, his education, upbringing, and mindset did not allow him to take a look at viable ways to respond to the Gitxsan statement of claim. He could not see that steps had been taken to accommodate the Crown and the people that came to do

business and eventually settle in the territories.

The following accounts sketch out some significant events that took place.

THE EARLY DAYS IN GITXSAN TERRITORIES

European visitors set foot in Gitxsan territory in 1823. Excerpts from journals kept by these early traders clearly showed they recognized the Gitxsan as owners of the territory. The first white man that came into Gitxsan territory was a trader by the name of William Brown. This major historic event happened on February 24, 1823. This encounter took place several years after the Northwest Company established trading posts in New Caledonia.

The Northwest Company established Fort Connolly on Bear Lake on Tsabux' traditional territory in 1826. Fort Connolly became the home base of five Gitxsan House groups and a significant trade center for the Gitxsan for several decades. About seventy years later the Department of Indian Affairs formed what was known as the Fort Connolly Band and set aside reserves for the people living near the trading post. Other Gitxsan Bands were established many decades later.

In the 1950s the Indian Agent who was posted to look after the Indians decided that the Fort Connolly Band was too far away from anywhere so he dissolved the Band and assigned the Band members to seven other Bands in the area. He sent a large number of Fort Connolly Band members down the valley to Takla Lake where a new Indian Band was formed. The Department of Indian Affairs transferred the Fort Connolly reserves to the Takla Lake Indian Band in the 1960s. The Takla Lake Band was created out of a mix of aboriginal groups that traditionally did not get along with each other. The Gitxsan within the new band were and are in the minority. We assume that the Fort Connolly Band was dissolved probably to make way for the railway to Dease Lake as a northern development program, which had been a part of the political platform in those days. The railroad project was finally abandoned in the 1970s when the government of British Columbia realized that there would be no return on the investment.

The decision to dissolve the Band has not stopped the Gitxsan from using the fishing sites that they have enjoyed at Wil'dalth'ax for centuries. About fifty people return to Bear Lake every summer to stock up on their winter salmon where they join three families that reside there permanently. The salmon run that returns to Bear Lake

does not get interrupted by commercial fishing at the mouth of the Skeena because this salmon stock runs early.

Canada was built very much on trading of furs that was demanded in Europe. The fur trade was lucrative for the Gitxsan who participated in the activity. The Chiefs and house members who dealt in the trade used the ancient land and resource access laws that were in place to regulate this new commercial activity. The traditional territorial boundaries did not have to be changed in order to accommodate this new economic activity. The fur-bearing animals were a sustainable resource with regulation from within the management practices of the House groups. The approach to harvesting fur-bearing animals did not alter the traditional approach to the consumption and use of resources even with the high demand of furs. The access laws and traditional boundaries continued to bring the necessary law and order framework that was needed for the new economy to thrive. Some of the traders acknowledged this fact. Others did not give it any thought.

Bear Lake was located in the vicinity of the ancestral home of a number of Gitxsan House groups. In his account of the Totem Poles of the Gitxsan, Marius Barbeau notes that the origin of a number of the House groups was an ancient community known as Gitangasx. This ancient community was located northwest of Bear Lake. Barbeau refers to these House groups as the Wild Rice clan. Gasx is the term that the Gitxsan use for wild rice.

Barbeau correctly states that Gamlakyeltuque and Luukhon of Kitwancool (Gitanyow), Gyetgemgaldo and Sanoos of Hazelton, Wagalo and Dupesuque of Gitsegukla, and Milulaak of Gisgegas all originated from Gitangasx near Bear Lake. When any of these House groups have a feast and recall their histories, they speak of their origins at Gitangasx. These House groups continue using their alliances among their kin at the feasts. I knew of the common bonds from my paternal grandmother, who was a member of the House of Gamlakyeltuque, which I often visited when I was growing up. The process of formally visiting with relatives was known as chelaihux. Reading Barbeau's book enabled me to understand why the visits that I made with my four grandparents meant more than getting a free meal or playing with strange kids.

The Collins Overland Telegraph line pushed its way through the British Columbia interior in 1866. This development was to link America with Europe by way of a route through British Columbia, Alaska, and Russia. This project was stopped when the competing Atlantic Cable was put successfully in place. The work on the tele-

graph project was abandoned on Gitxsan territories. This project left three significant legacies. The Bulkley River was named after the American engineer of the project, Colonel Charles Bulkley, who never even saw the river. The Wet'suwet'en and the Gitxsan used the tons of wire left behind to fortify the Grease Trail (trade route) bridge at Hagwilget canyon. The mileposts that the telegraph people used along the grease trail were adopted into the lexicon of travelers as they moved through Gitxsan territory. The campsites along the trail were not only identified by their Gitxsan name but also became known, for instance, as An juk at pipty (fifty) mile.

One year after Canada was created in 1867 the Canadian Parliament enacted an "Act for the Gradual Civilization of Indian Peoples." The Indian Act became a key tool for the government to further its assimilation policy. Three major functions were laid out in the Act:

1. The creation of reserves, which vastly reduced the amount of lands and resources that the aboriginal people could use to look after themselves;
2. The creation of Band Councils, which got delegated authority from an authority that was not home-based;
3. The Act defined who an Indian could be.

The Gitxsan strenuously resisted the creation of reserves. Five people from Kitwancool were tried in Court and convicted for obstruction of justice. They had simply forced the surveyors off their traditional community. My paternal grandfather spent six months in jail where he learned how to farm. But that experience was not wasted. He began to farm after he retired from the commercial fishing industry at the age of 78.

Band Councils were not common in Gitxsan territory until 1951. The first Council members were made up of the hereditary chiefs in the villages. Band Councils continue to exist, with hotly contested elections, as a part of the overall Gitxsan governance structure. They are principally responsible for municipal-type services.

Indian agents based in Hazelton arbitrarily made up Band lists. The lists were generally meaningless until after some community services were available from public funding in the 1960s. Most of the people did not know their Band numbers until they applied for specific funding.

THE GITXSAN FISHING INDUSTRY

In 1877, the first commercial fishing activity took place at the mouth of the Skeena. The Gitxsan, along with other tribes, became very active in this industry. Canneries were developed and provided major employment opportunities for the local aboriginal people. The initial negative situation the aboriginal people faced were restrictions over who would have fishing licenses.

The industry changed and canneries closed down over the decades. The owners in the industry also changed over the years and the families that had good relationships with aboriginal communities were soon replaced with faceless corporations. The last of the "Indian canneries" was closed down in 1983. With the closure of Cassiar Packing Company, the jobs that enabled aboriginal youth to earn their first paycheck disappeared.

The canneries provided a great deal of seasonal work for industrious aboriginal people. Villages along the Skeena, the Nass, and the North Coast were abandoned in the summer months when the commercial fishing industry was in full operation. The canneries provided opportunities for families from different communities to reunite as people tended to find housing close to relatives from other villages. My family, for example, lived in a cluster of houses where we were close to our Nisga'a relatives.

The Federal Fisheries Act was passed in 1889. This legislation prohibited Indians from selling fish or owning fishing licenses. But economic activity, including trade and sale of salmon, continued because the law could not be enforced.

Recent Court cases that forced the federal Department of Fisheries and Oceans to review their policies have enabled the aboriginal people to regain better access to salmon and products from the sea. While the access to fish has not been the same prior to the advent of the commercial activity, the access in recent years has improved and the aboriginal nations have a major role at the tables where fishing plans are developed. Unfortunately this cooperative approach only takes place in certain parts of Canada. To protect their lobster traps, the Micmaq people on the Atlantic coast have had to contend with the vicious enforcement of federal regulations by Department of Fisheries officers.

ASSIMILATION EFFORTS AND BEGINNING OF EDUCATION

In the same year in 1884 Canada passed another piece of legislation to further its goals of assimilation. The law prohibited Feasts, but Gitxsan chiefs continued to feast. The police arrested Gyetemgaldo of Gitanmaax for having a feast. Other Chiefs in the communities away from the trading center in Hazelton carried on with their feasts. Every one was welcome to these feasts and seats were reserved for all guests. White people participated in these feasts until Indian agents threatened them. It did not matter to the Indian agents that all people that lived in the territories were accorded equal rights. It did not matter that people were Gitxsan as a matter of fact. People like Williin Gitsegukla who attended the feasts recalled the presence of white people. Beynon was prudent in not recording their names so the people who broke the law would not be charged.

People are Gitxsan as a function of where they live. Some who are not brown or red do come to the feasts as they are always welcome. They harvest the same food that other Gitxsan harvest. They generally participate in all of the same economic and social activities.

Gitxsan are also Gitxsan as a matter of birth. House members are Gitxsan as a function of Gitxsan laws. One's mother determines his or her House membership. Women who marry into the community are readily adopted into one of the Gitxsan houses. The general pattern is for the bride to be adopted into the groom's father's House and for the groom to be adopted into the bride's father's House.

In 1893 the first residential schools were established. The education and social policy of the Indian Superintendent was to "civilize" the Indians.

In the 1920s Gitxsan Chiefs held several meetings in Gitsegukla when the Indian agent talked to them about sending kids away to school. After several meetings, the Chiefs selected several young men to send away to school so they could learn about the Crown and its policies. It was hoped that these young people would then come home and fight for justice. The practice of sending Gitxsan kids away continued until the residential schools in Edmonton, Port Aberni, and Lytton were closed. People like me would not have graduated from high school if I did not have the opportunity to go to residential school. But like my grandfathers before me, I have never been civilized.

ENTER THE WHITE MEN

In the first decade of the century, the Grand Trunk Pacific railway made its way through Gitxsan territory. The rail access to the coast made it easier for the families to travel to the canneries and for Europeans to travel in and out of Gitxsan territory. Gitxsan entrepreneurs worked to provide supplies to the railway company. A Chief from my House group provided smoked salmon to the workers and passengers on the train in exchange for passage. He took trips along the rail line to sell his smoked salmon to people along the rail corridor. This practice continued for a number of years until other economic activities took over.

In 1884 Gitwangak Chiefs told the provincial government that the influx of miners to Lorne Creek within their territory was wrong and had to be stopped. Youmans, a freight operator for miners, failed to notify a family in Gitsegukla about a young man who drowned while in his employ. Youmans failed to compensate the family as required by Gitxsan law. The young man's father killed Youmans and was convicted in Court and sentenced to ten years imprisonment. He died in jail.

The incursion by European traders, miners, missionaries and settlers increased during the next five decades. But the main impact upon the Gitxsan from the newcomers was in the form of new diseases. In the early part of the century, a large number of Gitxsan died from influenza, small pox, and other diseases that they had not heard of. The toll of new diseases was huge. A smallpox epidemic, for example, that began in British Columbia in 1862 wiped out 30 percent of the Gitxsan. New illnesses continue to affect the Gitxsan. Very little attention is given to the impact of diabetes, coronary disease, and renal or kidney failure on the Gitxsan and other indigenous people.

In 1908 a Gitxsan delegation met with Canadian Prime Minister Wilfred Laurier in Ottawa to talk about white incursions into their territories. Their voices were heard but not heeded. No other Canadian Prime Minister has even bothered to sit down to discuss any matters with the Gitxsan.

In 1912, the Gitxsan Chiefs again spoke against the establishment of reserves when they met with the McKenna-McBride Commission. Their objections were not heeded. Gitxsan Indian reserves are made up of village sites, which are now too small to support a population that is young in age.

Cedar pole operation began in Gitxsan territory in the 1920s.

Chiefs were able to harvest logs from their traditional territories and sell the wood for use by the trains and the canneries. Chiefs eventually established small sawmill operations and secured cutting quotas on their own territories. The people in the villages soon adapted to individual housing. The new technology that arrived made it easier for the Gitxsan to use the wood upon which they depended. Not only were houses built but a touch of style was also used to decorate some of the houses that the Chiefs erected. The Gitxsan also built new community buildings such as churches and community halls using local labor and resources.

The small sawmills, which I knew as "moulin," were in operation until a new forest management regime prevailed in the 1950s. At this point in the development of the forest industry, the government was looking for more revenue so it awarded larger quotas to large companies, which soon eliminated smaller family sawmills in Gitxsan territories. In the 1960s and 70s natural resource exploitation on Gitxsan territory increased. The long-term impact of this change in the forest industry on the Gitxsan has been negative. Owners who were accountable to shareholders from far away places has hurt the local economy as they displaced small Gitxsan entrepreneurs. The new license regime enabled absentee business owners to take down the low-cost wood and leave the high-cost wood for others that may want to be involved later on. The forest industry across northwestern British Columbia is now in operation only because the major company that is in operation is government-owned and largely subsidized.

The framework for doing business did not take into account the needs of future generations. The Crown in the rights of British Columbia and the people in business did not take into account the interest of the Gitxsan, both House group members and others.

The Gitxsan continue to take the position that economic activity has to be done on a sustainable basis. The Chiefs were pleased to see Canada take steps to sustainable development in 1995. The Canadian Parliament passed a legislation to establish an office of the Commissioner of Sustainable Development. This Commissioner works out of the Auditor General's Department. The main responsibility of the Auditor General is to ensure that all operations of the Government of Canada comply with the mandate established to get the whole country working within a sustainable development framework. The Gitxsan have been preaching the gospel of sustainable development to every audience possible. And we give credit where credit is due. The Canadian government has adopted sustainable

development goals as a result of its participation in the Rio Conference in 1992. The Gitxsan are making an effort to ensure that these goals are met in Gitxsan territories.

The arrival of the missionaries was a mixed blessing. The people knew of a power greater than they. Giving thanks to the higher power and creator was part of regular Gitxsan rituals. The missionaries, however, introduced a character for God, which was not a part of Gitxsan beliefs. God was now punitive and hell was a new concept. My paternal grandfather raised many arguments against the Christian view of the Almighty. We note that the political parties with fundamentalist religious views all campaign against the rights of indigenous people. Their god is white.

DEVELOPMENTS IN GITXSAN SOCIETY

In 1947 the Province of British Columbia allowed aboriginal people to vote in provincial elections. But the Gitxsan people were not granted the right to the federal vote until 1960. Aboriginal people up to now rarely participate in Canadian elections.

In 1969 Jean Chretien as Minister of Indian Affairs introduced a White Paper that set out the new federal Indian policy. This policy was widely rejected across Canada as it focused on fast-tracking the assimilation of aboriginal people into Canadian society. As the Prime Minister of Canada, Jean Chretien continues to support the view that indigenous people are far better off not being themselves.

In 1973 a Supreme Court of Canada decision known as the Calder case prompted the Government of Canada to develop a new land claims policy. Progress in changing government Indian policies using the Canadian Court system had started.

The Delgamuukw decision that came thirteen years later set a new precedent for proving aboriginal title and elevated oral historical testimony (adaawk) to the same level as written testimony. In addition, the decision defined consultation and outlined that compensation may be required if aboriginal rights were infringed by activities sanctioned by the federal or provincial governments.

In the meantime, treaty negotiations under the British Columbia Treaty Process sputtered along with a main impediment — the lack of a mandate for provincial negotiators sitting at the table. The Gitxsan joined the trilateral process (with BC and the Canadian governments) in 1994 only to see BC walk away from the table in 1996 to pursue legal action with the Delgamuukw case. The province came back to the negotiating table in 2001 and the Gitxsan

agreed to continue trilateral treaty negotiations.

One of the continuing frustrations for the Gitxsan chiefs is that resource extraction and development continue unabated in the Gitxsan territories while the aboriginal title court action and treaty negotiations are underway. The Gitxsan people are largely shut out of these mainstream economic sectors and, while millions of dollars of natural resources leave the territories, unemployment rates on reserve are between 60-90 percent.

CONCLUSIONS AND RECOMMENDATIONS

The Gitxsan fully realize that Canada can accommodate them within its constitutional framework. What the Gitxsan are looking for is to be accepted as Gitxsan and not as Indians. They also want greater access to the life-sustaining resources on their territories. Access to resources will enable them to be more independent and to look after themselves.

A great deal of progress has been made to forge new relationships with the Crown in the past three decades. Agreements have been developed in education, health, child and family services, justice, fisheries management, and other areas of public administration. For all intents and purposes the public services received by the Gitxsan are like those that are offered to other Canadians. The goal for the Gitxsan leadership is to reach parity in all measures. The social and economic indicators today are not as startling as they were twenty years ago.

More progress can be made and neither partner will be a burden on each other if the legislative framework of the country recognizes aboriginal title.

Many Court cases have had to be launched even though the Crown states that it prefers to negotiate new relationships rather than face confrontation or litigation. Even with strong and easily understandable instructions from the Courts, the Crown has not been able to develop policies that can reconcile the pre-existence of aboriginal peoples with its laws.

The challenge for the Gitxsan, as it is for other aboriginal peoples, is to drag the Crown along by every means possible.

The path that the Gitxsan have chosen to take is to negotiate small interim agreements that may someday be rolled into a Treaty. The British Columbia government sees the advantage of working on bilateral issues. It is clear to both the Gitxsan and British Columbia that interim agreements can be reached on some major resources

planning and land use issues. Working on small agreements can benefit both parties as those that are viable can be put in place for longer terms. Those that do not work can be renegotiated or scrapped.

Canada's position for a treaty-or-nothing approach has lost its momentum. Its offer of a take-it-or-leave-it package of land selection and fiscal arrangements are often seen as bad faith when the alternative of constitutionally protected aboriginal rights is held up in comparison.

The past cannot be ignored nor set aside. The ties to the traditional territories, the losses suffered when the resources were taken away, and the long and troubled relationship with Canada cannot be left off the negotiating table.

The Gitxsan acknowledge that we are all here to stay. It is not possible for us to go back in history and change the way that newcomers and new authorities were received. If our ancestors had taken up arms against the Crown it would be understandable for the Crown to treat us as badly as it has.

The Supreme Court justices, knowing the depth and breadth within which Canadian laws can operate, do see the same possibilities for reconciliation as the Gitxsan do. We will continue on with our journey to reconciliation.

Chief Elmer Derrick is Chief Negotiator of the Gitxsan Hereditary Chiefs' Office, British Columbia, Canada.

22

Land Rights: A Central Issue in Conflict Resolution

Russell Bellear, Tony Bond & John Leslie

The National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS) recalls the Report of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1995 entitled "Report to Government on Native Title Social Justice Measures – Recognition, Rights and Reform." In that report the ATSIC recommended to the Australian Federal Government that there should be entitlements to land and compensation for dispossession including the creation of co-extensive rights as well as sharing in mineral and other resources.[1]

In the recent decision of the Full Court in its appellate jurisdiction of the Federal Court of Australia, which had three judges, Justices Beaumont and Von Doussa held that an indigenous native title right to use and enjoy "resources" is limited to resources of a customary or traditional kind. These "resources" would encompass ochre in the case of Australian Aborigines but would exclude minerals mined by modern methods.

The Full Court majority further held that provincial State and Territory mining legislation within Australia wholly extinguishes indigenous native title rights to minerals and petroleum because the mining legislation establishes a regime, which is inconsistent with

the use of the land by any other person.[2]

Their Honors in the majority said in paragraph 530 of their joint judgement that there was a distinction or difference between the right to use or share in wild animals as a resource as against the right to use or share in valuable minerals as a resource. The Court relied on a comparison with cases such as Toomer v. Witsell 334 US 385 (1948) on page 402 per Vinson CJ, and Hughes v. Oklahoma 441 US 322 (1979) as cited in Yanner v. Eaton (1999), Commonwealth Law Reports (High Court of Australia).

Their Honors held that when looking at legislative or parliamentary laws, which purported to give full ownership of minerals to a provincial state or to a national government, indigenous peoples should show historical evidence when they claim a right to possess, use or enjoy minerals or resources such as petroleum. They also maintained that aside from historical evidence, indigenous peoples could also present other evidences such as Aboriginal laws, customs or traditional uses for such minerals or valuable resources.[3]

The Federal Court of Australia Full Court is the appellate court in Australia on Federal matters, which is one level below the High Court of Australia, the ultimate and final appeal court in the country. An appeal to the High Court of Australia has yet to test the distinction Their Honors sought to find in the Federal Court between the right to share in and use wild animals as against the exclusion of a right to share in and use minerals.

The appeal to the High Court nevertheless serves to highlight the problems and issues associated with the experiences of indigenous peoples and their communities. Indigenous peoples and their communities have often experienced dispossession, domination and exclusion whenever valuable minerals and resources are found within their lands. Many of these mineral locations are remote, are often geographically and biologically unique or significant in heritage terms, and are often locations in which only indigenous peoples have over thousands of years managed to become adapted to their survival and coexistence.

This effort by the Government to strenuously engage in legal cases to assert its own ownership of the lands and of the products of the lands taken under colonial policies of dispossession clearly demonstrates the extent of the Land Rights issue. Land is a central issue to resolving Government's relationship not only to its mainstream population, but more particularly its relationship to the indigenous peoples in the country.

The process of development no doubt also requires an examina-



Map of Australia

tion of who or what peoples ultimately will be in the best position to claim a legal interest in the outcomes or products of such development. Some colonial theories regarding the title or property interest in lands state that the ability to possess, to occupy, and to use land brings with it the ability to profit from the land. This applies also to the products of the land and to the natural resources found in, upon or under the land.

The actions of colonial powers were designed to acquire non-European land by force, if necessary, and to occupy this to the exclusion of competing colonial powers. It was no doubt thought that this would enable the burden upon overworked and dwindling resources of the home country within a colonial empire to be alleviated or reduced through the use of lands and resources from colonial territories.

To appease the concerns of home country citizens, colonizers justified their land conquest along the lines of religious obligations to save non-Christians, economic necessity, and preserving the power of the particular colonial power and nationalism. Whatever the justifications used and whether these were believed to be correct or not, the ultimate historical fact remains that the populations of

the acquired and annexed lands were almost never consulted as equals.

The colonizers often justified their conquests as empty lands on which only so-called untamed savages dwelled. The so-called savages had and still to this day have immense and rich cultures of ancestral folklore and ancient rules for survival in often remote and rugged environments.

Despite this very strong historical motivation for conflict, the experience of indigenous peoples in Australia has been one where conflict and the resolution of conflict has, in regard to the struggle for land rights, been a process focused upon political protest street marches and political lobbying. Conflict resolution process also focused upon the use of the colonial courts of law to turn carefully the colonial laws to the benefit of the indigenous peoples' interests.

No more is this different approach to conflict resolution better exemplified or demonstrated than in the court case about whether or not indigenous peoples even continued to enjoy a right to hunt or fish according to traditional customs and beliefs. The National Aboriginal and Torres Strait Islander Legal Services Secretariat Ltd. was involved for at least five years in arguing to obtain the successful acquittal of an indigenous person from a charge of hunting two crocodiles without a license, which was said to be required under the law.

The provincial State government, which has responsibility for hunting and fishing laws, was so astounded and concerned about the victory of the indigenous defendant that it used all of its legal resources to appeal the acquittal to the State Court of Appeal. The State Court ruled in favor of the government but the President of the Court dissented in favor of the indigenous legal position.

An appeal to the High Court of Australia not only upheld the acquittal and the right of indigenous peoples to hunt and fish without a requirement for a licence or permit. But the Court then went much further to utterly redefine the meaning of "property" for the law of Australia in terms of ownership of things like land and resources.

This was a resolution to a conflict where the alternative option for indigenous peoples may well have been the use of physical violence against government wildlife officers or police officials in the assertion of a right to hunt and fish according to traditional custom and beliefs. The power of indigenous peoples to resolve conflicts can take two paths according to the precedents of historical events:

1. The use of arms and violence, which ultimately turns moderate or possibly sympathetic non-indigenous peoples against the indigenous cause in the longer term through the imposition of a terrorist label on such actions; or
2. The clever long-term examination on behalf of indigenous peoples and communities of all aspects of the laws of the colonial powers and repeated efforts at litigation to seek extensions and alternatives to the previously generally assumed meanings of the laws.

In strategic political terms, governments have much difficulty in suppressing the interests of those whose position is supported by legal rulings of the government's own courts. In the situation of land rights, some nations go so far as to impose blatant restrictions on the ability to access the courts for rulings, which may prove adverse to the assumptions made by non-indigenous colonial interests over time.

Nevertheless, challenges even to the validity of such restrictions do much to demonstrate the unjust and false nature of the position of such governments to the general mainstream non-indigenous populations within such nations. Such strategic conflict resolution processes require, tragically, the willingness to embark on programs and plans of action, which may take years, even decades, to come to fruition or completion.

There is now more than ample legal acceptance by the courts of law in many nations of the fact that, for indigenous peoples, land rights provide a confirmation of the spiritual connection (if not physical connection) to traditional lands. That an indigenous person can even gain acknowledgement or recognition that he is indeed a traditional owner or customary law member of a community responsible for care of traditional lands can be a greater victory in strategic political terms than any short term military success.

It is tragic that the finding of valuable minerals and the ability to gain profit from exploitation of scarce natural resources has consistently been the basis on which Governments have moved rapidly and easily to deprive indigenous peoples of their land more often than non-indigenous peoples. As a result, indigenous peoples can hardly carry out traditional activities upon their lands or to have access to their lands for survival.

Land rights are clearly a central issue in the process of conflict resolution. This is specially so when Governments can easily say

that there is no place for an article or operative provision in the proposed United Nations Draft Declaration on the Rights of Indigenous Peoples. The Draft Declaration seeks to promote or aspire to promote in the future possible rights for indigenous peoples related to lands and natural resources, but domestic laws of a nation do not recognize such rights for indigenous peoples.

NAILSS notes the extent to which Governments such as the federal government in Australia have been forced to explain to their mainstream non-indigenous populations their reason or their claims as to why such Governments are required to enact special laws. These Governments try and overturn findings of their own Courts favoring the existence of land rights related to various aspects of land usage.

The hunting and fishing issue became a matter of enormous concern to all levels of Government. This was so when mainstream non-indigenous citizens were suddenly confronted with the televised spectacle of teams of government lawyers arguing against the right of indigenous peoples to hunt and fish such a dangerous animal as the crocodile for survival purposes.

That Governments had to acknowledge politically that they were seeking in fact to limit the legal rights of indigenous peoples in Australia on a much larger scale provided much needed sympathy and support for the cause of indigenous land rights in Australia. Some non-indigenous commentators even began promoting the idea of some form of treaty as a means of moving on from the embarrassment of the court defeats suffered by the Government.

Indigenous peoples survive more often because their knowledge and beliefs focused upon particular lands. Government efforts to dispossess indigenous peoples from the land failed because indigenous peoples continued to maintain their beliefs in and about the land, and their rights as well as their obligations regarding the land.

The efforts at assimilation through removal of spiritual beliefs and crushing of language failed from an overall perspective because the land itself continued to exist no matter who tried to physically occupy it against the will of the indigenous keepers. The resolution of conflicts and the development of lands today have of necessity focused upon the question of lands and land rights as a central issue from all other issues or concerns.

A case where the failure to consider long-term strategies for use of the colonial power's own systems and laws against itself has had traumatic and tragic consequences for the peoples involved has been perhaps the Palestinian-Israeli turmoil, especially the Gaza strip.

Perhaps the legal opportunities may have been limited. But the careful analysis of strategic options together with the development of long-term plans of action might have proved and perhaps may still prove to be a more productive strategic exercise in terms of outcomes to be gained as against lives lost.

There have been deaths in custody in Australia. But these have been recognized through legal processes as being an aspect of the loss of land rights for which calls for changes to Government attitudes and policies are increasing. Only in recent days has there been a more open commentary in Australia about the option of providing indigenous seats in the mainstream parliaments as a means of addressing the past injustices to indigenous peoples in Australia.

The role of the Aboriginal Legal Services as an organizational network also cannot be understated in terms of the role that such organizations have had in providing a mechanism for resolving conflict and developing opportunities through which indigenous peoples can participate in legal decisions on land development. Specialists, culturally aware teams of lawyers (many of them non-indigenous) and indigenous field officers work together within the Aboriginal Legal Services. They provide advice, legal representation and negotiation expertise to indigenous peoples and communities who, when confronted by the vast resources of mining companies and governments, may have (in the case of land rights) been otherwise tempted to consider the violent options seen elsewhere around the world.

For this reason, governments and corporate interests in Australia have been critical of Aboriginal Legal Services while at the same time careful to ensure that the Legal Services continue to operate as a mechanism for conflict resolution within Australian society.

The mechanisms Aboriginal peoples developed themselves, such as the Aboriginal Legal Service system, have proved largely and generally efficient (especially considering the lack of proper funding levels) and effective. This is especially so in driving conflict situations involving indigenous peoples along a path, which emphasizes non-violent legal and political strategic action across all levels of the executive, legislative and judicial arms of government.

The promotion of land rights through the turning of legal principles and laws back upon those who created them is such that anti-indigenous lobby groups and governments now complain to the media that it is unfair that Aborigines are getting the best lawyers who so often win cases for them. The lawyers are often young and eager to embrace indigenous cultural ideas and concerns when they

come to us and this tends to produce a team which, with experience of the games played by governments, becomes highly successful at achieving properly researched legal arguments against anti-indigenous decisions and policies.

For a culture that is over 40,000 years old on the Australian landscape, the use of the long-term strategy to achieve respect for land rights and to engage in conflict resolution that achieves positive outcomes through peaceful means is a more economic expenditure of lives and monies. In contrast, a strategy that involves the payment of dollars to arms dealers and blood on the battlefield as an option for the pursuit of land rights is costly and unnecessary.

Laying thousands of land mines is, in the view of NAILSS and its member Legal Service, a strange way indeed to show respect for Mother Earth and the traditional lands of one's ancestors. Spraying the land with the blood of youth and innocents is a strange way to win respect and admiration from the world for rights being sought or for the peoples seeking such rights.

Today, anti-indigenous would-be politicians such as Pauline Hanson show us that what we are doing is indeed a more powerful tool for conflict resolution and winning land rights when such anti-indigenous commentators complain loudly that indigenous peoples are getting far too much. Clearly, they really mean that it is unfair that indigenous peoples such as Australian Aborigines have learned not only what the white man's game of conflict is about. They have realized that indigenous peoples have learned how to play the game so well that the courts are throwing out daily anti-indigenous arguments and laws.

Today, the Aborigine (Mr. Murrandoo Yanner) who wanted to hunt crocodile for food without a licence following the traditions of his tribe and his ancestors has his name mentioned constantly (if not monthly) by the Highest Courts of Appeal in Australia. Students in law schools and lawyers in conferences and in legal case reports not just in Australia but around the world also often cite Mr.Yanner. Is this not a far more valuable victory in the longer term in the quest for land rights for that Aborigine and his descendants than any conflict with a gun or a knife could have ever produced?

NAILSS and its Legal Services today often receive contacts, telephone calls and letters from Prime Ministers and Premiers of provincial States, from Chief Ministers, from Chiefs of Police and from Heads of Government departments and, yes, even from Government security intelligence services. These outfits seek advice and provide information with a view to resolving conflicts or potential conflicts

through offers of negotiation or through requests for legal action using the skills and experience of the Legal Service system.

A good example of how skilled, culturally aware Legal Service teams of lawyers and indigenous peoples can achieve even grudging respect from potentially powerful sections of Australian society is where NAILSS even invites judges, politicians and media representatives to visit its national headquarters from time to time. Through these invitations, they get to see how Legal Services is effective because they have the heart and soul of indigenous peoples coupled with the strength and skills of lawyers willing to defend and respect indigenous culture.

We have our problems and sometimes we wonder about the struggle like all generations in the past have done. We know that mandatory sentencing, the high rates of imprisonment of Aboriginal peoples, the deliberate reduction of much needed government justice funding all signify that Aboriginal people are not being defeated. Rather, more and more clearly, Aboriginal people must be winning if Governments feel the need to go to such lengths.

It is this thought which prompts NAILSS to consider that all such issues like imprisonment rates, arrest rates, deaths in custody, changes to laws are signals that land rights is a conflict which is far from over in Australia like elsewhere in the world. Still, the land rights issue in Australia is distinct in some ways from elsewhere in the world. Governments and mining companies now regard indigenous peoples as being capable of winning the conflict. They are now desperate to find ways of going back to the past when Governments and mining companies could win because indigenous people didn't know how to beat them at their own game, to use an Australian expression.

It is easy to win at football or soccer or cricket when the opposing team doesn't know the rules or the techniques. The past champions turn up at the sports ground only to find that the opposing team has learned the game, has practiced hard and can now tell you when you have been cheating at the rules. Then the past champions realize the championship may not be a forgone conclusion from now on.

Always the conflicts in the world start over land or over the development of land. The skill is to use mechanisms, which will demonstrate that indigenous land rights are a valuable product of a well-designed peaceful conflict resolution process. Respect for land rights comes out of the generation of respect for how such land rights are being sought or gained. Victory over hearts and minds is

more valuable for indigenous interests than victory by bullets and blood.

NAILSS proposes that a careful examination or study might be made of the extent to which political and legal expertise and respect has been gained by indigenous peoples in regard to land rights through the use of different forms of conflict resolution around the world. It further proposes that this study can assist indigenous peoples and the societies with which they may be in conflict to select and adopt best practice mechanisms to achieve long term outcomes, which can benefit all participants through peaceful systems of conflict or dispute resolution.

Governments see value in land and natural resources in terms of the ability to feed, clothe, supply or obtain taxes from their populations. Mining companies see value in land and natural resources in terms of the profits, which can be generated from extracting and processing these resources and from marketing them to consumers. Individuals and groups within nations see value in land and natural resources for the beauty and heritage and scarcity that such natural resources represent or display.

Indigenous peoples see value in land and natural resources because they are just that – resources of nature found in or on lands of their ancestors and to which their beliefs can be sourced.

Russell Bellear, John Leslie and Tony Bond are Aborigines with the National Aboriginal and Torres Strait Islander Legal Services.

Endnotes:

[1] See Recommendation 11 of "Recognition, Rights and Reform: Report to Government on Native Title Social Justice Measures," ATSIC, Commonwealth of Australia, 1995.

[2] See "State of Western Australia v. Ward," (2000) **Australian Indigenous Law Reporter** 25 (AILR): 27.

[3] See Paragraph 541 of the "Judgement in Western Australia v. Ward."

The Role of the United Nations in Conflict Resolution

23

Outside Intervention

Augusto Willemsen Diaz

To start with I wish to say that I did not bring a formal document, just some preliminary notes dealing with outside intervention in the conflict resolution processes in Indigenous Communities. I have to say I had a negative reaction when I first read the title (Role of the UN in Conflict Resolution) of the subject matter I was being asked to address, as indicated in the agenda item expressed in the note I received inviting me to take part in this Conference.

I have always firmly believed that conflict resolution in Indigenous Communities must be left to the communities concerned and their legitimate authorities, and that no person or entity should have any intervention in such self-determination functions to be performed freely by such authorities as foreseen in their own juridical systems.

I therefore wondered whether perhaps I was not correctly understanding the title proposed for the agenda item. Afterwards I came to consider, on the contrary, that outside intervention was indeed possible in case those authorities, with full information on the matter, freely requested an outsider — in our case the United Nations — to assume certain specified functions. As difficult as this was for me

to entertain, it could conceivably occur, and this was to be considered legitimate, provided all happened within the bounds set by such communal authorities, acting in accordance with their own juridical systems mentioned above.

On another aspect, the title — as worded — seemed to apply to intra-community conflicts. It would, however, also apply to inter-community conflicts, when all communities involved and their own respective authorities would agree to the outsider´s intervention. That is to say that a similar solution would obtain in conflicts within Indigenous Communities as in conflicts between such communities, but then also, only upon communal request, and in the latter case, that of all communities involved in a conflict.

Here, again, all questions would relate, unavoidably, to the functions allocated to the outsider who would be requested to have an intervention in the process of solving the conflict — in the case of this agenda item, the United Nations — and to the powers the relevant authorities might have to exercise, in accordance with their own juridical systems.

Based on my firm beliefs and the research I made I decided to call this presentation at this Conference: "Could the United Nations play a role or function in the solution of conflicts arising in Communities of Indigenous Peoples and, if so, which, how and in what circumstances?"

INITIAL AND FUNDAMENTAL DATA

Before attempting to make any formulation of what I may come to conclude as a result of the present exercise, I must set down certain ideas that will serve as guiding criteria to organize my actions when making this presentation.

In 1956 I signed a contract with the UN as a lawyer engaged to work as Human Rights Officer in the then "Human Rights Division" of the United Nations General Secretariat in New York.

It must be pointed out that soon afterwards I undertook as one of my principal preoccupations and fundamental endeavors in my work as such, that of making all efforts to include an increasing regard for collective rights in our work relating to human rights, which until then had been decidedly approached mainly from an individualistic point of view in the United Nations.

In my mind — as a person coming from Guatemala, a country then having a society formed by close to 80 percent indigenous peoples — this included importantly the Collective Rights, Historic

and Specific Rights of Indigenous Peoples, centered on the recognition of, and respect for, their worldview (*cosmovisión*) and their rights to a differentiated identity and participation. These are rights they had firmly maintained and defended through several centuries of colonial domination marked by systematic attempts at assimilating them into the culture and ways of the invaders of their ancestral domain, territories and lands on which they had developed their own distinctive cultures and affirmed their own special civilizatory expression.

Among these is the right of self-determination, particularly since 1966 when it was formally recognized as the most fundamental of all human rights and attributed to all peoples around the world, without exception. This came about, as we all know, by its enshrinement in the text of the identical articles 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

As is also widely known, these Covenants, which are international legal instruments of the greatest importance in the matter of human rights, are both integral parts of the International Bill of Human Rights, the Universal Declaration on Human Rights and both Optional Protocols to the International Covenant on Civil and Political Rights.

Also particularly important in this endeavor were recognition of and respect for Indigenous Peoples' Juridical Systems and, prominently in them, the jurisdictional powers to solve conflicts and settle disputes in their own communities.

Questions regarding their spiritual beliefs, practices and ceremonies including their profound relationship to their ancestral lands and resources were fundamental. Also their communitarian forms of articulation, cohesion and organization and of collective tenure, development and management of land and resources, be they natural (animal, plant or mineral), cultural or intellectual.

Of particular importance was their high regard and great respect for mother earth combined with their own collective and individual close kinship with the environmental, ecological systems they had inhabited (lived in and with) for tens of thousands of years. Formal and informal ways of transmitting knowledge and information to the coming generations were also considered to be of great importance and relevance.

All these had to be considered an inseparable and intricate complex webbed into a worldview, a "way of being and lifestyle." Likewise, their ancestral land base composed of lands, resources, accu-

mulated knowledge on them and collective ways of tenure and management thereof, had to be conceived as their integral territories. These were all, beyond doubt, consubstantial elements, indispensable to their existence and subsistence.

Also of crucial importance in their differentiated reality — it has to be stressed — were the set of principles, values, criteria, ways and procedures which these communities have used to solve conflicts and settle disputes emerging in their midst. All these have been developed into a coherent and systematic set of standards of their own (whether originated by them or appropriated from others and reinterpreted into their systems). These have been maintained, further developed, defended and brought up to date by generation after generation throughout millennia, enduring several centuries of existence under colonial domination, resisting efforts to extinguish them or to have them set aside. These systems continue to be adhered to in deep consensus that they are a very important element of their own differentiated identity, differentiated existence in the societies in which they find themselves immersed and differentiated participation in them on the basis of their own worldview.

In the context of all the preceding, it is an inescapable conclusion, and it must be emphasized and repeated here, that, in principle, all conflicts emerging within Indigenous Peoples' Communities are to be solved by the traditional (or currently recognized) authorities in accordance with their own millenary juridical system (standards containing their own principles, values, criteria, procedures and approaches) as developed and brought up to date by each successive generation, with elements that may be of their own conception or appropriated from others and reinterpreted into their systems. Only as very qualified exceptions may outsiders be brought into the picture based on a free and considered decision by the Indigenous Peoples' own legitimate authorities or special circumstances foreseen by their own systems.

It follows, consequently, that outsiders might be brought into the picture and have a function in the conflict solution processes of Indigenous Communities, only as a very qualified exception, and this only when based on a free, fully informed and considered decision by the specifically concerned Indigenous Community's own legitimate authorities in very special circumstances, as originally foreseen by its own system.

POSING THE PROBLEM

It is then in this connection that the question arises: What would be the function the United Nations could possibly assume in conflict solution in Indigenous Communities without infringing upon the self-determination of Indigenous Peoples?

Two obvious and basic requirements would have to be present or fulfilled. The first one to be considered indispensable in these cases — bearing constantly in mind that the United Nations would clearly be an outsider — would be that whatever action it undertakes must be only in specific response to a free, fully informed and clear decision by the legitimate authorities of the Indigenous Community concerned requesting such action.

The second one would revolve around the kind of role to be played in such situations, which would have to stay firmly within the bounds set for that action by the communal authorities so as not to infringe upon the Community's own conflict solving powers.

It must also be borne in mind that this hypothesis would in all cases represent exceptional decisions by communal authorities entailing the surrender of powers traditionally reserved to the community itself and its own authorities. Such possibilities are entertained here so as to be able to examine the hypothesis suggested by the title of the agenda item although considering the feasibility of such action being undertaken to be very rare and exceptional since traditional authorities are usually very zealous in keeping their own powers or functions in conflict resolution intact in accordance with their own millenary juridical systems.

Some of the functions or roles that could be performed or played by outsiders may be conceived as not necessarily incompatible with the principles outlined above in given circumstances and provided that they are requested by the proper communal authorities. They could come to be considered as roles that an intergovernmental organization like the United Nations could possibly assume in connection with conflict resolution in Indigenous Peoples' Communities, while still being extremely unusual and exceptional. Others, on the contrary, seem — at least in an initial assessment — to be incongruent and even incompatible with said principles and criteria.

POSSIBLE ROLES OR FUNCTIONS

Among the functional roles that could exceptionally be played by outsiders in conflict resolution in Indigenous Communities, the following are possibilities in an abstract manner. Outsider intervention might be to perform actions of:

a. Facilitation
b. Moderation
c. Conciliation
d. Mediation
e. Arbitration
f. Judicial Adjudication in specific disputes or conflicts
g. Other arrangements

Functions mentioned in a, b, and c are easily understood as possibly not incompatible — in exceptional circumstances — with the exercise of jurisdictional powers by the competent communitarian authority.

Facilitiation

Facilitation would generally be understood as the act or process of facilitation, which means making easier, assisting in the progress of a function or event, making the action or performance easy, or without undue difficulty.

In connection with conflict resolution this would imply furnishing facilities, meaning the equipment or means to make the performance of the actions involved easier, by making the needed infrastructure available, such as premises, furniture, handling of services associated with particular aspects of the actions, performances or functions implied in the event.

Conceivably this would also include providing financial and technical assistance. This could come in the guise of needed funds or resources for the obtainment of the above, so as to make the necessary actions less difficult. It could also mean placing at the disposal of the parties and community authorities the services of the persons with ready skill or ease deriving from practice, familiarity or know-how.

Moderation

An outsider, in this case the United Nations Organization, would be invited to moderate the processes and proceedings, that is to say, to act as moderator and preside over the proceedings in the solution of a certain conflict within the Indigenous Peoples' Community or between Indigenous Peoples' Communities.

Usually the functions of moderators are performed in an attempt to lessen foreseeable intensity or extremeness in the presentations or to reduce the excessiveness of the debate in the case of a conflict to move in efforts to make the discussions less violent, severe, intense or harsh.

Normally moderation entails presiding the proceedings and managing the order of speakers. Less frequently it would also include the summarizing of discussions and underscoring the points of convergence or of divergence that have arisen at meetings, whenever appropriate or upon request.

Under this hypothesis, the United Nations would be invited to preside the meetings, trying to temper and soothe the expression by the parties of their respective positions and attempting to bring them into harmony in an agreed solution. It is also possible to summarize positions and convergence or divergence of the views expressed by the parties in the proceedings.

Conciliation

Conciliation means the intervention in a dispute by an outsider who enjoys the confidence of the parties to the dispute and is designated or agreed upon by them, with the purpose of making efforts to interpret the positions of the parties to the opposing sides and shorten the distance between them; and attempting to overcome or placate the hostility and distrust between disputing parties, make their positions compatible and hopefully to cause them to be in accord.

A conciliator is then an outsider, a third party, having no power to compel settlement of a dispute, but relying only on persuasion and suggestion. He (she) offers his (her) good offices but, in purity, should refrain from suggesting solutions, and merely stress points of convergence of views.

The United Nations would thus be invited to appoint a repre-

sentative to act as conciliator, that is, to intervene in the dispute and make efforts to achieve agreement between the disputing parties, in the sense just explained.

Mediation

Mediation is the interposition of a third party in a dispute, with the purpose of bringing the disputing parties into conference and suggesting solutions to them that would be acceptable to both or all.

It is the function of suggesting solutions which differentiates mediators from other forms of intercession, where the third party merely endeavors to bring the disputants together, leaving it to them to find solutions to the controversy. For mediation to be effective, the third party — the mediator — must have the full confidence of the disputants and have no interest of his/her own to advance in the matter.

At another level, because mediation has proven to be useful in the solution of international disputes, and in order to encourage disputants to resort to it more frequently, it should be mentioned here that more than a hundred years ago some provisions regarding mediation were written into the Hague Convention on the Peaceful Settlement of International Disputes in 1899. The signatories to the Convention gave approval to the procedure and agreed to treat any offer of mediation as a friendly act, reserving, however, full freedom to reject the offer.

Mediation, therefore, already shows some aspects that should be clearly understood, in order to have full knowledge of its functioning and be in a position to decide whether it might be congruent or incongruent with communal exercise of jurisdictional powers.

Arbitration

Arbitration consists of the intervention of a person having no interest in the matter, but enjoying the full confidence of the disputants, who has been chosen or agreed upon and empowered by the parties in a dispute to hear (examine the facts) and decide the matter at issue, settling the conflict.

What distinguishes the preceding forms of intercession from arbitration is that arbitrators have the authority to make binding decisions. They may have what are called "judicial functions," when the actions of the arbitrator involve disputes concerning interpreta-

tion of the meaning and the application of disputed provisions, agreements or arrangements present in a text. In this modality the arbitrator may not modify, add or exclude anything in the existing text. They may also exercise what are termed "legislative functions" concerning provisions, agreements or arrangements to be included in a text. These functions are very seldom found in purity, whether judicial or legislative.

Arbitration already poses more serious questions, as this form of intercession from the outside implies the cession of more important powers basically reserved to the Community's competent authority, in accordance with said traditional community's own principles and procedures. For these reasons it should — with an incisive mind — be thoroughly and seriously examined and scrutinized with much attention and depth.

Judicial Adjudication in Specific Disputes or Conflicts

Judicial adjudication in specific disputes or conflicts by a court of law forming part of the State or of an intergovernmental organization is more clearly questionable, since it would entail surrendering fully the deciding powers of the Community to those outside entities.

Other Arrangements

Other arrangements deserve a close and deep look, although Indigenous Peoples' Community actions may have accepted allocation to those outside entities of clearly designated categories of matters under specified circumstances.

This involves civil and commercial matters of considerable amounts of money and criminal matters of very serious nature. This approach may entail the risk of going to the other extreme and allocating to the communal authorities only civil and commercial disputes or conflicts of a minor importance (a category usually designated in Latin America as *asuntos de menor cuantía*) and only petty criminal offenses (exemplified in Latin America as actions like the theft of a chicken).

CONCLUSION

In conclusion, I wish to state the following:

All forms of benevolent intercession discussed in this presentation would be clearly characterized by the fact that it would — in all cases — have to be originated by free, formal and crystal clear action taken by the community itself (communities themselves) and its (their) own (respective) authorities requesting such intercession. This is, furthermore, to be considered as a very qualified and unusual occurrence, since communities and their authorities are very zealous in maintaining, exercising and protecting their own millenary jurisdictional powers and functions.

The concurrence of this endogenous and autonomous request is a *sine qua non* condition any outsider would have to intercede; in our case, the United Nations would without exception always require such request in accordance with its own principles and guidelines. Otherwise, in principle, any role played by the UN intervening in those conflicts would have to be considered unnecessary, undesirable and unacceptable interference with the community´s own jurisdictional powers and practices.

It would also be illegitimate and illegal unless, again, the intercession was verifiable if requested freely and on the basis of firm and full information and knowledge of the specific circumstances present in the case by the community itself and its legitimate authorities, in efforts to maintain, preserve or restore its rights and interests, particularly when its continued existence and subsistence with dignity and authenticity are concerned.

That is to say, we always have to uphold and defend their self-determination, self-government and autonomy, their organization and structures, their traditions and customs, in short, their own juridical systems.

This is particularly important in the face of transgression, distortion or attacks coming either from outside these communities by direct action of outsiders, or from actions of agents of outsiders acting within indigenous communities. The latter refers to persons or groups of persons, whether or not they may be members of the communities of indigenous peoples, who have been infiltrated into, imposed on, or controlled or guided by groups, forces or interests foreign to the community for acting inside said communities.

There is a great variety of those agents, spanning from those acting for or on behalf of government authorities or officials, military agents, commissioners of the armed forces, paramilitary and

paragovernmental agents like *patrullas de autodefensa* and military commissioners in Guatemala, to members of Congress using legislative enactments of penetration or destined to counteract autonomous actions by the communities, or else, executive actions intended to achieve the same results.

Other agents would include communal judges as distinct from the community authorities who may have been created by the State and imposed on the communities "to apply indigenous customary laws," thus alienating the inherent jurisdictional powers and functions of the legitimate traditional authorities, or even the diverse forms of "popular tribunals" that have emerged in different parts of the world, brought into existence to substitute or take the place and functions of the legitimate communal authorities, or else mere *de facto* actions undertaken with the aim of taking the life of persons or peoples, lynching of persons, as directly applied in enforcement of so called "popular justice."

This would also include, and importantly so, actions by agents of transnational or multinational corporations and other groups or persons, even those presenting themselves as NGOs and who are acting for or obeying the instructions of the above.

This is quite different from the forms of intercession discussed in this presentation, which are, I think, the only possible roles to be played by the UN or, for that matter, by any other well-intentioned and well-meaning outsider, in conflict resolution in indigenous peoples' communities.

I had engaged in an initial analysis from this point of view of different relevant provisions present in diverse international instruments concerning the rights of indigenous peoples. This included mainly four basic texts on the subject, namely:

1. *Draft for the United Nations Declaration on the Rights of Indigenous Peoples* formulated by the Working Group on Indigenous Populations with the active participation of indigenous peoples' representatives and submitted in a definitive draft version in 1993 to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and later formally adopted by said Sub-Commission in its Resolution 1994/45, without any substantive modification in its provisions.
   As we all know, this is the basic text in this matter, with backing and support by most Indigenous Peoples throughout the world "as minimum standards for the

survival, dignity and well-being of the Indigenous Peoples of the world." This text is now being discussed in a more stringent working group of the Commission on Human Rights;

2. *Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*, adopted by the International Labor Organization on 27 June 1989. This text has been ratified by numerous countries, in all of which it is now binding on the State. It is my opinion that this is a relatively good and useful text, in which serious shortcomings have to be overcome;

3. *The text of Principles and Guidelines on the Cultural and Intellectual Heritage of Indigenous Peoples*, prepared by Ms. Erica Irene Daes (Chairperson of the WGIP), with the active participation of Indigenous People's representatives, Governments and experts;

4. *The draft American Declaration on the Rights of Indigenous Populations* ("Peoples" has been proposed instead of "Populations"). This is a regional text now in incipient draft form which reproduces many of the defects and shortcomings of Convention 169 of the ILO.

Don Augusto Willemsen Diaz was the former Deputy Procurator for Human Rights, Guatemala and was a staff of the UN Human Rights Centre. He was also the secretary of Jose Martinez Cobo, the UN Special Rapporteur on the Problem of Discrimination Against Indigenous Peoples. He is a member of Tebtebba's International Advisory Council.

Chapter 3:
Manila Declaration on Conflict Resolution, Peace Building, Sustainable Development & Indigenous Peoples

"WE WILL KEEP THE PAST NOT BEHIND US BUT IN FRONT OF US!"

Manila Declaration of the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples[1]

We have gathered here in Manila from 6 to 8 December 2000 to share:

- Who we are and why we persist in asserting our identities and rights as indigenous peoples;
- Stories of the situations of conflict in our lands and the struggles we are waging;
- Stories of how we are building peace among ourselves and with others and the lessons we learned;
- Our definitions of conflict, peace, justice, and sustainable development;
- Our visions of a future where justice and lasting peace will reign in our territories and our tasks of building this future.

[1]Organized and convened by Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education) in Metro Manila, Philippines on December 6-8, 2000.

We are 90 indigenous persons coming from all corners of the world: from Greenland, Siberia, and Eastern Europe; from South America, Central America and North America; from Southern, Central, Western and Eastern Africa; from the Middle East, from South and Southeast Asia; Australia, Aotearoa, and the Pacific.

We looked at our past and saw that the roots of the conflicts in our lands are found:

- Firstly, in our common histories of external and internal colonization;
- Secondly, in the continuing process of dispossession from our territories and resources, our identities, languages, cultures, and knowledge;
- Thirdly, the historic and ongoing denial of the right of indigenous peoples to self-determination.

We have been told that the ways of the colonizer are better and superior; that we cannot govern ourselves and that we cannot be self-determining. We have been and are being forcibly integrated and constructed in systems which continue to be shaped by the same, if less overt, racism that underpinned colonization. The powers-that-be say that globalization is an inevitable reality which we should accept, even if it leads to the further appropriation and destruction of our territories and resources, privatization of our waters, the commodification of our human genetic materials, and legitimization of the patenting of life.

Our ancestors and we have resisted and continue to resist these moves which undermine our dignity and rights as indigenous peoples.

When we seek redress for the grave injustices that still confront us, we utilize agencies of international and domestic law but continue to reclaim and revalidate our indigenous ways of resolving dispute both internally and externally.

In doing so we accept that while the concept of justice may be universal, the processes by which it is achieved and the values which underpin its understanding are culturally defined. However, experience has taught us that colonization has also sought to uni-

versalize the western processes of achieving justice and resolving conflict so that we are constantly forced to turn away from our own institutions and operate within those of western legal paradigms.

This conference accepts the challenge to honor our ancestors by adapting those institutions which they have left us to restore justice to our lives today.

At the same time this conference seeks support from non-indigenous partners to work with us to ensure that state and international institutions are more willing to acknowledge the validity of indigenous processes and systems and to work to ensure their recognition and their growth. We have in this conference 25 representatives of NGOs, United Nations bodies, and the donor community whom we are enjoining to be part of our journey.

The conference also acknowledges that in revalidating the traditions and institutions of our ancestors it is also necessary that we, ourselves, honestly deal with those ancient practices which may have led to the oppression of indigenous women and children. However, the conference also stresses that the transformation of indigenous traditions and systems must be defined and controlled by indigenous peoples, simply because our right to deal with the legacy of our own cultures is part of the right to self-determination.

Indeed, the underlying focus of this conference was a reaffirmation of the sentiments expressed in Article 3 of the Draft Declaration on the Rights of Indigenous Peoples, namely:

> *Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

In pursuit of this right, peace building in each country means we must weave together the threads of equality, justice, participatory democracy and recognition and respect for the rights of all peoples and cultures; peace building implies establishing intercultural and other relationships which facilitate peaceful coexistence within a framework of plurality and mutual respect.

It means that when others speak of respect for political, economic,

social and cultural rights of indigenous and original peoples, they need to respect our forms of organizations and institutions, our spirituality and cosmovision; they need to respect our mechanisms and methods of conflict resolution.

It also means that sustainable development must be nurtured by historical, cultural and biological diversity because this is the basis of creating justice and equality among peoples. It must include as a fundamental premise the equality of rights and opportunities for both women and men. It must promote the unrestricted participation of all in democratic processes.

The conference affirms that the right to self-determination of indigenous peoples necessarily requires that indigenous peoples reclaim the space and secure the respect needed to resolve conflict, build peace and develop the treasures of Mother Earth in a sustainable way that both reflect ancient traditions and the right of indigenous peoples to develop in the ways that they feel are appropriate.

This includes the right to create new systems and institutions of peace-making that are sourced in indigenous values and that co-exist with existing bodies such as the International Court of Justice and similar regional bodies.

Such institutions could include independent indigenous peoples' tribunals, commissions of inquiry that are recognized as legitimate organs in any process of conflict resolution.

The conference has agreed that:

1. An "Independent International Commission of Indigenous Peoples for Mediation and Conflict Resolution" be organized not later than the year 2002. The mission of this body will be to promote and defend the rights of indigenous peoples and to expose and denounce aggression and abuses of the rights of indigenous peoples in different parts of the world;

2. An Indigenous Peoples Global Network for Research be created which will help support and strengthen the capacities of indigenous peoples to undertake research and documentation and disseminate information as widely as possible;

3. Indigenous global, regional, and local networks need to be

further strengthened and created for collaboration in education, campaign and policy advocacy;

4. Indigenous peoples' networks should build partnerships with media, academe, civil society organizations, NGOs and others to promote public understanding of the issues facing indigenous peoples and to further peace building and solidarity.

The conference recognizes the need for such independent indigenous institutions as a further recognition and re-affirmation of our right to self-determination. Indeed this conference declares its support for other statements by indigenous peoples that we continue to exist as self-determining peoples in spite of the centuries of denial of our rights and our human worth.

The conference further commits to support the following calls and recommendations and proposals arising from the regional and thematic workshop groups and resolutions adopted in the plenary sessions.

1. *Uphold the dignity of indigenous peoples and promote and defend their rights.*

The subordination of indigenous peoples under colonialism and economic globalization fuels the current ecological and social crises. The restoration of balanced relationships within nature and society requires valuing diversity and respect for indigenous peoples.

a. Indigenous peoples' organizations must continue and intensify education and training on the rights of indigenous peoples and their need to rediscover dignity in their own cultures, language, ways of living, worldviews and value systems. These efforts should be directed to indigenous peoples themselves, as well as non-indigenous entitities including states and NGOs;
b. States should respect and recognize indigenous peoples' practices, values and principles with regard to their land, resources, and culture, and recognize indigenous land and property systems;
c. States should repeal and/or amend discriminatory laws and constitutional provisions;

d. States should reform the educational system, such that it reflects the views and values of indigenous peoples, promotes respect, tolerance and acceptance of cultural differences. Education should become a conduit for cultural survival. Education should help strengthen the community by instilling pride and generating a shared commitment to improve their situation;
e. States should grant indigenous peoples control over social plans, education and health programs that are implemented in their communities;
f. Indigenous peoples should use the upcoming World Conference Against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance as a stepping stone for further dialogue with other survivors of racism and discrimination, with States, and society at large;
g. Indigenous peoples call on the World Conference Against Racism to ensure the participation of indigenous peoples and to support the regional and international parallel meetings organized by them to consolidate their recommendations for the World Conference.

2. *Respect and actualize the rights of indigenous peoples to self-determination.*

Self-determination is the inherent birthright of all peoples, from which other freedoms flow. This fundamental human right of all peoples, including indigenous peoples, is recognized in the basic International Human Rights Covenants. The continued denial and violation of indigenous peoples' right to self-determination is the root cause of many conflicts faced by indigenous peoples.

a. Call for the adoption of the UN Draft Declaration on the Rights of Indigenous Peoples by the UN Commission on Human Rights and the UN General Assembly before the end of the International Decade of World's Indigenous Peoples in the year 2004;
b. States and the international community should recognize and respect the various forms of self-determination which would include, among others, autonomy, secession or federalism, recognition of indigenous

socio-political and juridical systems, etc. as viable solutions for pluricultural and pluriethnic societies;

c. States should dismantle existing repressive bodies and institutions and those who have committed genocide and ethnocide against indigenous peoples should be brought to court;

d. States should ensure that indigenous peoples are fully consulted and involved in decision making regarding appropriate mechanisms, structures, and measures when refugees are hosted in their territories;

e. More widespread consultations and in-depth research on how the problem of refugees and settlers in indigenous peoples' territories can be resolved should be undertaken. Indigenous peoples, refugees, NGOs, the donor community and UN bodies should be involved in these consultations;

f. States should stop transmigration programs that encourage non-indigenous people to move into indigenous peoples' territories. The World Bank and the donor community should make social impact assessments of their support for such programs and should be central in developing solutions and providing redress for the victims of such programs;

g. States, the donor community, the UN bodies, should provide economic support to indigenous peoples' nations, communities and organizations, without conditionalities;

h. States, NGOs and international bodies are called to recognize traditional structures of governance and to provide technical, political, and financial support to strengthen these;

i. The United Nations should establish the Permanent Forum for Indigenous Issues before the end of the year 2001. It should provide support to indigenous peoples choosing their representatives to the Permanent Forum. It should ensure that the secretariat for this body will be composed mainly of indigenous peoples;

j. The United Nations and the donor community should uphold the right of indigenous peoples to development and their right to define the processes and forms of development appropriate for their circumstances. The international community and society at large should

recognize and support indigenous peoples' perspectives and practices on development especially those which are not consistent with the mainstream development paradigm of the globalized market economy.

3. *Defend and protect indigenous peoples' right to their territories and resources.*

Development aggression – the violation of basic human rights in the development process – continues to be a central problem for indigenous peoples. It is often the immediate manifestation of the underlying conflicts experienced by indigenous peoples and communities with states and in relationships with dominant economic, political, and social structures and institutions. The territories and resources of indigenous peoples are being exploited at an increasing rate – leading to the destruction of the environment, marginalization of indigenous peoples, and denial of their basic means for subsistence and sustenance as distinct peoples and cultures. In this light we present the following recommendations:

a. States, corporations, the banks, and the donor community should seek the full, free and prior informed consent of indigenous peoples on all projects affecting their territories, resources, and culture;
b. States should repeal or reform unjust mining policies and laws and build the capacity of indigenous peoples to regulate and monitor the production, processing, and sale of resources (e.g. diamonds in Sierra Leone) in respect of indigenous peoples' rights and to prevent conflict;
c. Indigenous peoples should make a data base of corporations which are involved in the exploitation of resources in indigenous peoples' territories and their environmental and social impacts and share this as widely as possible;
d. Call for a moratorium on new applications for large-scale extraction activities and land acquisition in indigenous peoples' territories;
e. Demand that existing permits of multinational corporations to exploit resources of indigenous peoples be cancelled or withdrawn, and an indemnification paid for damages that have occurred;

f. Indigenous peoples should sustain their initiatives to monitor the impact of globalization. International bodies which are the key players in globalization should be monitored. Some of these are:
    - The World Trade Organization, especially its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Agriculture (AOA), and Trade-Related Investment Measures,
    - The international financial institutions, like the World Bank, regional banks, and the International Monetary Fund,
    - Other intergovernmental bodies like the European Union, European Commission, Organization for Economic Cooperation and Development (OECD), the Organization of American States, and other similar bodies,
    - Regional trade agreements like Mercosur, APEC, etc.;
g. Indigenous peoples should strategize concrete ways to appropriately respond to the forces and processes of globalization;
h. Indigenous peoples should promote and strengthen the "No to Patenting of Life" campaign of indigenous peoples' organizations and NGOs and use the "Indigenous Peoples' Seattle Declaration" as a tool for raising awareness on globalization;
i. Indigenous peoples should recommend the inclusion of a clause against patenting of life forms in the Draft Declaration on the Rights of Indigenous Peoples;
j. Indigenous peoples and States should ensure that Article 8j of the Convention on Biological Diversity which deals with the protection of traditional knowledge of indigenous peoples in the conservation of biological diversity is implemented. Full and prior informed consent of indigenous peoples should be obtained before any bioprospecting takes place in their territories;
k. Monitoring bodies in the local, regional and national level which will consist of indigenous peoples' organizations, NGOs, and academia should be set up to monitor biopiracy, patenting of biological resources,

and the collection of indigenous peoples' genetic materials through the Human Genome Diversity Project and other similar endeavours;

l. States, indigenous peoples, broader society, and the international community must respect and nurture indigenous knowledge. They should understand what it is, how it evolves in response to changing living conditions and how it can be combined with appropriate modern knowledge particularly in biodiversity conservation, health promotion, agriculture, and cultural development.

4. *Work for a just and lasting peace in indigenous peoples' territories.*

In recent decades, open conflicts between "non-state" groups, such as the indigenous peoples versus states, has increased both in frequency and ferocity. According to one source, at least 80 times since WWII such conflicts have escalated into war, and over 200 such groups have organized themselves at one time or another to defend their collective interests versus governments, transnational/multinational corporations and other groups.

Only a quarter to a third of modern civil wars (including anti-colonial wars) have found their way to negotiation. About two-thirds of internal conflicts have ended in the surrender or elimination of one of the parties involved. Since the roots of these conflicts have not been addressed the possibilities of re-emergence remain. In the meantime, negotiated peace accords are not being implemented in favor of indigenous peoples and some ongoing peace negotiations have been stalled. Recommendations for the realization for just and lasting peace in indigenous peoples' territories are as follows:

a. States should respect and faithfully implement the peace accords with indigenous peoples and other armed groups, resume stalled peace talks and overcome the setbacks in some ongoing peace negotiations. We call on states to do the following:
    - Implement fully the Chittagong Hill Tracts Accord of 1997 between the Parbatya Chattagram Jana Samhati Samiti (PCJSS) and the Government of Bangladesh,
    - Implement fully the 1996 Guatemala Agreement on a Firm and Lasting Peace between

the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the Government of Guatemala, particularly the Agreement on the Identity and Rights of Indigenous Peoples.,

- Implement and reinvigorate the San Andres Accord between the EZLN (Zapatistas) and the Government of Mexico,
- Resume the stalled peace negotiations between the National Democratic Front-Communist Party of the Philippines-New Peoples' Army (NDF-CPP-NPA) and the Government of the Philippines,
- Resume the peace negotiations between the Moro Islamic Liberation Front (MILF) and the Government of the Philippines,
- Overcome the setbacks in the ongoing peace talks between the National Socialist Council of Nagaland and the Government of India;

b. Indigenous peoples should participate fully in peace processes and these processes should ensure the participation of chiefs, elders, women, community and religious leaders, and youth. The broad participation of all peoples and sectors of society should be ensured in the peace building process. The inclusion of the right people in the decision-making processes from the lowest to the highest political level can constitute a significant contribution to peace building;

c. Indigenous peoples'systems, methods and practices on peace building and conflict resolution should be further developed and used by indigenous peoples themselves. These should be supported by States, the donor community and international bodies. These indigenous capacities to prevent, resolve and transform conflicts should be developed from the local level upwards;

d. In order to strengthen peace building capacities of indigenous peoples, conflicts should be carefully analyzed to examine their root causes and the political economy of their prolongation;

e. Skills training on how to negotiate at the local, national, regional, and international levels should be sen-

sitive to indigenous practices and should be made available for indigenous peoples;

f. States should create conditions for peace negotiations to take place, i.e.:
    - Agreeable to all parties,
    - Based on genuine desire for peace, good faith, openness, flexibility, and mutual respect,
    - Consensus building, common platforms, and creating mechanisms for dialogue,
    - Not based on divide and rule tactics and not solely based on the agenda of states for the surrender of arms;

g. International bodies such as the UN should be enjoined to participate in peace building processes in indigenous peoples' territories through facilitation, moderation, conciliation, mediation and arbitration. This participation should be based on the free and informed decision by the indigenous peoples through their legitimate representatives and authorities;

h. Establish mechanisms that will ensure transparency and accountability of peace negotiators or representatives to their constituents. This should be ensured before and during peace negotiations and during the post-conflict reconstruction period. Indigenous persons and other negotiators who occupy government structures as a result of the peace accords should maintain a high sense of accountability to their constituents. Broad consultations and dialogue on how the peace accords are being implemented should be established.

5. *Recognize and respect the rights of indigenous women and enhance their roles in peace building and conflict resolution. Engender the conflict resolution and peace building processes.*

Indigenous women have played key roles in peacebuilding in their communities. Yet they have not been given due recognition in the conflict resolution processes. Indigenous women are not adequately represented in peace negotiations in all levels. At best, they are seen as auxiliaries in conflict, and are portrayed as passive victims and silent spectators of conflict. When conflicts lead to violent confron-

tations, women, lacking support mechanisms, face the brunt of repression and therefore become a vulnerable sector.

a. Create an awareness among indigenous peoples and the public at large on the importance of recognizing the role played by indigenous women in conflict resolution and peace building. Document the peace building efforts done by indigenous women in different parts of the world and share this as widely as possible;
b. Promote effective participation by women at all levels and stages of peace making processes, particularly at the planning, negotiation and decision-making stages. Negotiating parties should include a fair number of women in the negotiating panels;
c. Peace accords should emphasize the obligations set up by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and ensure reporting to the CEDAW Committee. The Beijing Platform for Action and the results of the Beijing Plus 5 Review should inform the participation of indigenous women in peace processes;
d. Encourage and support women to seek decision-making positions and build mechanisms which will enable women to have access to such positions whether in the traditional or modern governance systems. Post-conflict structures which are set up should ensure that there are women included not only on the lower levels but in the highest decision-making bodies;
e. Provide training, technical and financial assistance to women to build further their capacity to effectively participate in conflict resolution and peace building efforts in their own regions;
f. Encourage indigenous women to use the media to highlight their suffering during wars and violent conflicts and their perspectives and recommendations on how to bring about peace and development in their territories;
g. Encourage indigenous women to forge networks and linkages with other women's organizations and networks at all levels in their respective regions and internationally;

h. Organize women into committees of housekeepers, federation of women, women's unions, etc. and mobilize them to play key roles in peace and development processes;
i. Mobilize women in the struggles alongside men and even with children in pursuit of their demands as women and as indigenous peoples;
j. Work towards solving the double burden of women so they can have more time to participate in the public domain;
k. International agencies, NGOs, indigenous peoples, and the donor community should include gender in their analysis of conflict and peace building processes and in the assessments done on the economic, social, political and cultural situation pre- and post-conflict.

6. *Enhance the capacities of indigenous peoples to undertake research to allow for the broader articulation of indigenous perspectives and worldviews, and to strengthen indigenous peoples' systems and institutions for peace building and sustainable development.*

Indigenous peoples have been the objects of scrutiny—the researched, not the researchers. They have been represented more as the hapless victims or fierce warriors and less of pro-active agents of peace processes. Some academic studies used constructs and frameworks which are not relevant to the lives of indigenous peoples. Many of these were rarely translated into policy recommendations and used in advocacy campaigns. It is an imperative therefore that indigenous peoples define their own research agenda and undertake studies which they can use to strengthen their initiatives to bring about peace, resolve and transform conflicts, and bring about sustainable development.

a. Conduct more in-depth case and comparative studies on peace accords, with emphasis on the following subtopics:
    - Forms and range of indigenous peoples' struggles, what strategies have succeeded and failed,
    - Different kinds of frameworks and efforts forged between indigenous peoples and States, and what kinds of compromises were entered

into,

- Various parties involved in conflict resolution,
- Reasons, factors and conditions leading to the success or failure of peace accords,
- The role of multilateral organizations, donor community, international financial institutions, as causative, fuelling and/or resolving conflicts,
- Assessment on the impact of armed conflicts on indigenous peoples with particular emphasis on women and children;

b. Take stock of indigenous peoples' land and resources: their current status, how they are appropriated and protected. These problems were identified as major sources of conflict in indigenous peoples' territories. The following are some of the related topics/issues:

- The status of land rights in countries, i.e., map out the boundaries of indigenous territories (such as living space, communal agricultural and fallow lands for shifting cultivation, and burial, spirit and collection forest),
- The social and ecological impact of resource-exploitation by large-scale development projects on indigenous peoples,
- Data base of corporations which are involved in the exploitation of resources in indigenous peoples' territories and their environmental and social impacts,
- Inventory of indigenous peoples' struggles, campaign and advocacy resources, organizations and networks,
- Indigenous knowledge - what it is, how it evolves in response to changing living conditions and how it can be combined with appropriate modern knowledge particularly in biodiversity conservation,
- Successful methodologies employed by indigenous peoples in protecting their indigenous knowledge and cultural heritage;

c. Conduct specific studies on the role of indigenous

women in conflict resolution, peace building and sustainable development.

- Actual and potential roles of indigenous women in conflict resolution and peace building,
- Gender analysis of peace accords and other peace processes:
    i. Differences in the perspectives and methods of indigenous men and women,
    ii. Gender roles in conflict and conflict resolution.

7. *Strengthen networks and alliances between indigenous peoples, help strengthen their capacities to promote indigenous peoples' rights, and help create networks where there are none.*

There are many networks built by indigenous peoples among themselves from the local, regional, and international levels. These are borne out of the desire to strengthen the voice of indigenous peoples so that they will have a greater impact in making the world recognize and defend indigenous peoples' rights. The conference, however, recognizes that in relation to the issues of peace building, conflict resolution, and sustainable development, there are additional networks which could be established to complement the existing ones. Linkages with NGOs, international agencies, and the donor community should also be enhanced to create the broadest support for indigenous peoples.

a. Create an Indigenous Peoples' Global Network for Research. The main objective of this body will be to help build the capacities of indigenous peoples for research and policy advocacy. This network will promote indigenous peoples' methodologies and frameworks on research;
b. Create an Independent International Commission of Indigenous Peoples for Mediation and Conflict Resolution. The mission of this body will be the promotion and defense of indigenous peoples' rights. With the help of the Research Network mentioned above, it will document the aggression, conflicts and abuses committed against indigenous peoples and explore ways

in which redress of these injustices will take place;

c. Develop meaningful and equal partnerships with other NGOs, intergovernmental bodies, donor community and independent experts on the basis of mutual respect;
d. Develop a mechanism for information dissemination, coordination, and quick reaction to urgent alerts from indigenous peoples. Create a website which will be used for this purpose;
e. Endeavour to bring indigenous peoples' issues and concerns to the mainstream media at the local, regional, and international levels.

The dream and vision of indigenous peoples for a just and lasting peace and for sustainable development to reign in their territories can be realized. What is needed is for others to share this dream and work in partnership with indigenous peoples to make it a reality. Let this Manila Declaration be a guiding light for this journey.

Signed at The Heritage Hotel, Metro Manila, Philippines on December 8, 2000.

Name	**Nation/Tribe**	**Organization/ Country**
I. AFRICA		
Saoudata Aboubacrine	KEL TANACHEIK (Touareg)	Tin Hinan, Burkina Faso
Lucy Mulenkei	MAASAI	Indigenous Information Network, Kenya
Joseph Kiprotich Sang	OGIEK	Ogiek Welfare Council, Kenya
Mohammed Adow	SOMALI	Indigenous Information Network, Kenya

Name	Nation/Tribe	Organization/ Country
Kalimba Zephyrin	BATWA	Comunaute des Autochtones Rwandais, Rwanda
John Caulker		Forum of Conscience, Sierra Leone
Cecil Le Fleur	GRIQUA (KHOI-KHOI)	Griqua National Council/ IPACC, South Africa
II. ASIA and EUROPE		
Rupayan Dewan	CHAKMA	Chittagong Hill Tracts Regional Council/ PCJSS (Parbatya Chattagram Jana Samhati Samiti), Bangladesh
Liton Bom	CHIN	Chin Human Rights Organization, Burma
Lawrence Nee	KARENNI	Initiatives for International Dialogue, Burma
Tin Tin Nyo	KAREN-MON	Initiatives for International Dialogue, Burma
Saw Mietha	KAREN	Initiatives for International Dialogue, Burma
Tiann Monie	KHMER	Indigenous Women's Network, Cambodia
Maria Theresa Mangte	KOM	Indian Confederation of Indigenous and Tribal Peoples, India
B. Deben Sharma	MEITEI	United NGO Mission Manipur (UNMM), India
Darthangmawi Hmar	HMAR	Rural Women Upliftment Society (RWUS), India
Tennyson Kazingmei Shimrei	NAGA	Volunteers for Village Development, India

Name	Nation/Tribe	Organization
Gina Shangkam	NAGA	Naga Women's Union, Manipur, India
Phyobemo Ngully	NAGA	Naga Peoples Movement for Human Rights, India
Maya John Ingty	KARBI	North East India Christian Council Women Assembly, India
John Bamba	JALAI	Institut Dayakologi, Indonesia
Faisal Hadi	ACEHNESE	Koalisi NGO HAM ACEH
Chalid Muhammad		JATAM (Jaringan Advokasi Tambang), Indonesia
Otto Nur Abdullah	ACEHNESE	CORDOVA, Indonesia
Maimul Fidar	ACEHNESE	Koalisi NGO HAM ACEH, Indonesia
Aguswandi	ACEHNESE	Kontras of Aceh, Indonesia
Den Upa Rombeyaluk	TORAYA	AMAN (Aliansi Masyarakat Adat Nusantara) – TORAYA, Indonesia
Hubertus Samangun	TANIMBAR	ICTI-TANIMBAR, Indonesia
Arjun Limbu	KIRAT LIMBU	Kirat Yakthung Chumlung, Nepal
Megh Ranjani Rai	KIRAT RAI	Kirat Rai Yayokkha, Nepal
Joan Carling	KANKANAEY IGOROT	Cordillera Peoples Alliance, Philippines
Moner Bajunaid	MORO	Moro Islamic Liberation Front, Philippines
Lucita M. Exconde	IBALOY IGOROT	Department of Natural Resources-CAR, Philippines
Julie C. Cabato	IBALOY IGOROT	Foundation for Philippine Environment, Philippines

Name	Nation/Tribe	Organization
Amira Ali	MORO	MCPA (Moro-Christian Peoples Alliance), Philippines
Ric Guiao	AYTA	KAMP, Philippines
Leilene Carantes	IBALOY-KANKANAEY IGOROT	National Commission of Indigenous Peoples-CAR, Philippines
Myrthena Fianza	IBALOY IGOROT	Alternate Forum for Research in Mindanao, Inc., Philippines
Indira Simbolon	TOBA-BATAK	Asian Development Bank (ADB)-Manila, Philippines
Emerito Samarca	MANOBO	KASALO/SILDAP, Philippines
William Solina	MANGYAN	Samahan Pantribu ng mga Mangyan sa Mindoro, Philippines
Victoria Tauli-Corpuz	KANKANAEY IGOROT	Tebtebba Foundation, Philippines
Maurice Malanes	KANKANAEY IGOROT	Tebtebba Foundation, Philippines
Raymundo Rovillos		Tebtebba Foundation, Philippines
Ann Loreto Tamayo		Tebtebba Foundation, Philippines
Eleanor Dictaan Bang-oa	KANKANAEY IGOROT	Tebtebba Foundation, Philippines
Bernice Aquino See	KANKANAEY IGOROT	Tebtebba Foundation, Philippines
Catalino Corpuz		Tebtebba Foundation, Philippines
Marly Carino		Tebtebba Foundation, Philippines

Name	Nation/Tribe	Organization
Aurelia Cais Guindalos	KANKANEY IGOROT	Tebtebba Foundation, Philippines
Sofia Canggat	KANKANAEY IGOROT	Tebtebba Foundation, Philippines
Artemio Dumlao		Media Work Coordinator for the Conference, Philippines
Raymond De Chavez		Tebtebba Foundation, Philippines
Jack Medrana		Conference Medical Services Provider/ Documentation, Philippines
Karen Ohanjanyan	ARMENIAN	Nagorno Karabakh, Armenia
Henriette Rasmussen	INUIT	ICC (Inuit Circumpolar Conference), Greenland
Michael Todishev	SHOR	Russian Association of Indigenous Peoples in the North (RAIPON), Russia
Rodion Sulyandziga	UDEGE	Russian Association of Indigenous Peoples in the North, Russia
Joji Carino	IBALOY IGOROT	Tebtebba Foundation, Philippines, UK
Sanjay Bosu Mullick		Bindrai Institute for Research Study & Action, India
Sehr Hussain-Khaliq		LEAD-Pakistan, Pakistan
Saima Zaman		LEAD-Pakistan, Pakistan
Viktor Kaisepo	BIAK	Presidium Papua Council, West Papua, Indonesia

Name	Nation/Tribe	Organization
III. LATIN AND CENTRAL AMERICA		
Ariel Julio Araujo	MOCOVI	CENTRO MOCOVI IALEK LAV'A, Argentica
Moises Gutierrez	AYMARA	Movimiento Revolucionario Tupaj Katari, Bolivia
Carmen Isabel Luna Flores	AYMARA	Organizacion de Mujeres Aymaras del Kollasuyo, Bolivia
Reynaldo Paredes Alarcon	AYMARA	Taypi Ceqe, Bolivia
Leonor Zalabata	ARHUACO	Confederation Indigena Tayrona, Colombia
Roberto Perez	U'WA	Asociacion de Autoridades Tradicionales y del Cabildo Mayor U'wa, Colombia
Juan Leon	K'ICHE-MAYA	Defensoria Maya de Guatemala, Guatemala
Carlos Ochoa	K'ICHE-MAYA	Instituto Muni-K'at, Guatemala
Carlos Chocooj	KACHIQUEL-MAYA	Fundacion Rigoberta Menchu Tum, Guatemala
Nellys Palomo Sanchez	NEGRA-ZENU	K'inal Antzetik (Tierra de Mujeres), Mexico
Flaviano Martinez	KUNA	Funcionario de MINUGUA, Panama
Washington Bolivar	CASHIBO	Instituto Nativo Ecologico Cashibo, Peru
Arturo Delgado Baldeon	QUECHUA	Municipalidad Vilcashuaman, Ayacucho, Peru
Ma. Del Pilar Valencia		Centro de Debate y Accion Ambiental, Colombia

Name	Nation/Tribe	Organization
IV. MIDDLE EAST		
Hamed Qawasmeh	PALESTINIAN	Land Research Center, Palestine
V. NORTH AMERICA		
Chief Elmer Derrick	GITXSAN	Gitxsan Treaty Society, Canada
Chief Vernon Smith	GITXSAN	Gitxsan Treaty Society, Canada
VI. PACIFIC		
Adreanne Ormond	MAORI	International Research Institute for Maori, Aotearoa
Moana Jackson	MAORI	Maori Legal Services, Aotearoa
John Leslie	ABORIGINE	NAILSS, Australia
Russel Bellear	ABORIGINE	NAILSS , Australia
Tony Bond	ABORIGINE	NAILSS, Australia
Ian Aujare	HOGRANO	Zazao Peoples Environment Foundation, Solomon Islands

IN SOLIDARITY WITH INDIGENOUS PEOPLES:		
Don Augusto Willemsen Diaz International Advisory Council, Tebtebba Foundation, Guatemala	Gerardo Gobrin KAMP, Philippines	Merci Ferrer Initiatives for International Dialogue, Philippines
Christian Erni IWGIA, Denmark	Ma. Carolina Rodriguez Bello Isis Int'l-Manila, Philippines	Robert Paul S. Mamonong Office of the Presidential Adviser on the Peace Process, Philippines
Judith Reisenauer EZE (Evangelische Zentralstelle fur Entwicklungshilfe e.V.), Germany	Angela R. Mangco Office of the Presidential Adviser on the Peace Process, Philippines	Alexander S. Umpar Office of the Presidential Adviser on the Peace Process, Philippines

Shaukat Hassan International Development Research Centre, Canada	Leslie Wirpsa The U'wa Defense Project, USA	Madeleine Newman Rios Conference Interpreter for Spanish, USA
Pauline Fan Third World Network, Malaysia	Rebecca Knight Conference Interpreter for Spanish, USA	Danielle Mollet Conference Interpreter for French
Lilianne Fan Third World Network, Malaysia	Malsy L. Maniquis Conference Interpreter for French	Fritz Pangemanan Conference Interpreter for Bahasa Indonesia, Indonesia
Carlos Conde Cyberdyaryo, Philippines	Guardian Anthony Parlindunean Conference Interpreter for Bahasa Indonesia, Indonesia	Didit Radityo Conference Interpreter for Bahasa Indonesia, Indonesia
Arnold Azurin UGAT/Free Press, Philippines	Monique Mekenkamp European Centre for Conflict Prevention, The Netherlands	Trisha Riedy UN Institute for Training and Research, Switzerland
Robert Clarke Southeast Asia Quaker International Affairs, Cambodia	Alejandra M. Pero UNDP Indigenous Peoples' Portfolio, USA	Stephen James McGurk International Development Research Centre (IDRC)- Singapore
Rizal Buendia National University of Singapore, Singapore	Erik Nielsen FAO Community Forestry Unit, Italy	Thea Hilhorst Disaster Studies, Wageningen University, The Netherlands

About the Authors:

Moana Jackson, a Maori, was the Executive Director of the Maori Legal Services, Aotearoa (New Zealand) and is a member of the International Advisory Council of Tebtebba.

Victoria Tauli-Corpuz, a Kankanaey-Igorot, is the Executive Director of Tebtebba and is the Chairperson of the UN Voluntary Fund for Indigenous Populations. She is also the Convenor of the Asian Indigenous Women's Network (AIWN).

Joji Cariño, an Ibaloy-Igorot, is the Policy Adviser and Head of the European Desk of Tebtebba.

Dorothea Hilhorst is a professor of Disaster Studies at the Wageningen University in The Netherlands.

Raymundo Rovillos is the Research Coordinator of Tebtebba Foundation and an Assistant Professor of History at the University of the Philippines Baguio.

Jack G.L. Medrana is a Researcher of Tebtebba Foundation and a medical doctor.

Arjun Limbu, a Kirat Limbu, is the General Secretary of Kirat Yakhtung Chum-lung.

John Bamba, a Jalai, is the Executive Director of Institut Dayakologi based in Pontianak, Indonesia.

Samar Bosu Mullick, also known as Sanjay, was a political activist in the Jharkhand movement for autonomy. Currently he is involved in the indigenous peoples' struggle for regaining rights over forests. He is a guest lecturer at the Xavier Institute of Social Service, Ranchi. He is also a Research and Study Consultant with the William Carey Study and Research Centre in Calcutta.

Phyobemo Ngully, a Naga, is from the Naga Peoples' Movement for Human Rights.

Joan Carling, a Kankanaey-Igorot, is the Chairperson of the Cordillera Peoples Alliance.

Rolando Esteban is an instructor at the Mindanao State University - Marawi.

Liton Bom, a Chin, is with the Chin Human Rights Organization.

Chalid Muhammad is the Coordinator of Jaringan Advokasi Tambang (JATAM) or the Mining Advocacy Network in Indonesia.

Ravi Rebbapragada is with Samata and is the National Convenor of

the Mines, Minerals and PEOPLE .

Sehr Hussain and *Saima Zaman* are with LEAD-Pakistan.

Rajah Devasish Roy, a Chakma, is the Chief of the Chakma Circle in the Chittagong Hill Tracts and Chairperson of TAUNGYA. He is also a lawyer.

Carlos Ochoa García, a K'iche-Maya, is with the Instituto Muni-K'at.

Juan León, a K'iche-Maya, is the Executive Director of Defensoria Maya de Guatemala.

Nellys Palomo Sánchez, a Negra-Zenu, is with the K'nal Ansetik (Tierra de Mujeres).

Flaviano Martínez, a Kuna, is an indigenous lawyer belonging to the Funcionario de MINUGUA (Mision de las Naciones Unidas en Guatemala).

Reynaldo Paredes Alarcón, an Aymara, is with Taype Ceqe.

María del Pilar Valencia is with the Centro de Debate y Accion Ambiental.

Ariel Araujo, a Mocovi, is the Coordinator of the Mocovi Ialek Lav'a Center, Melincué (Argentina).

Joseph Kiprotich Sang, an Ogiek, is the Coordinator of the Ogiek Welfare Council (Ketuyechin Potan Kellog).

Henriette Rasmussen, an Inuit, was the former Technical Adviser for the Project to Promote ILO Policy on Indigenous Peoples of the International Labor Organization and is the Minister of Culture of Greenland.

Chief Elmer Derrick, a Gitxsan, is Chief Negotiator of the Gitxsan Hereditary Chief's Office, British Columbia, Canada.

Russell Bellear, John Leslie and *Tony Bond* are Aborigines with the National Aboriginal and Torres Strait Islander Legal Services.

Don Augusto Willemsen Diaz was the former Deputy Procurator for Human Rights, Guatemala and was a staff of the UN Human Rights Centre. He was also the secretary of Jose Martinez Cobo, the UN Special Rapporteur on the Problem of Discrimination Against Indigenous Peoples. He is a member of Tebtebba's International Advisory Council.