



# BEYOND the SILENCING of the Guns

Edited by Chandra K. Roy, Victoria Tauli-Corpuz,  
Amanda Romero-Medina

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Amanda Romero-Medina



**Tebtebba**

Indigenous Peoples' International Centre for  
Policy Research and Education

*Beyond the Silencing of the Guns*  
Tebtebba Foundation

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Published by  
TEBTEBBA FOUNDATION  
No. 1 Roman Ayson Road  
2600 Baguio City  
Philippines  
Tel: 63 74 4447703 Tel/Fax: 63 74 4439459  
E-mail: [tebtebba@tebtebba.org](mailto:tebtebba@tebtebba.org)  
Website: [www.tebtebba.org](http://www.tebtebba.org)

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Book, cover design and lay-out by Raymond de Chavez

Photo Credits: UNDP : Cover photo and pp. 29, 63, 83, 119, 189

**ISBN 971-92846-5-X**

Printed in the Philippines  
by Valley Printing Specialist  
Baguio City  
E-mail: [vpspice@yahoo.com](mailto:vpspice@yahoo.com)

# **Beyond the Silencing of the Guns**

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## ACKNOWLEDGEMENTS



This collection of case studies would not have materialized without the full support and cooperation of a number of individuals and the UNDP Civil Society Organizations (CSO) Division. I gratefully acknowledge the following:

- Chandra K. Roy for coordinating this report and liaising with all the authors;
- Amanda Romero for identifying the contributors from South America and providing invaluable comments and advice;
- The UNDP CSO Division for their financial support and in particular Alejandra Pero, Caitlin Wiesen, Bharati Sadasivam and Ferran Cabrero for their guidance and substantive support throughout the project;
- Hans Petter Buvollen of UNDP Guatemala for his comments on the Guatemala case study;
- Ann Loreto Tamayo for copy editing and proofreading;
- Raymond de Chavez for lay-out and production;
- Glenn and Sanirose Comeda of Valley Printing Specialist for putting up with all our unreasonable requests.

*Dakkel ay iyaman ken dakayo am-in, am-amed isnan anos yo ay nangilepas isnan na-ay ay liblo. (Big thanks to you all, especially for your patience in collaborating with us to finish this book).*

*Victoria Tauli-Corpuz*  
Executive Director  
Tebtebba (Indigenous Peoples' International Centre for Policy  
Research and Education)

## PREFACE



Increasingly, today's conflicts affect the lives of indigenous peoples and their territories. Some of the main factors leading to conflict continue to be embedded in issues of social exclusion, control over resources and land, the violation of rights and inequality. Indigenous peoples' struggles for peace demand the recognition of their rights, world views, beliefs and traditions. In the words of Rigoberta Menchú Tum, Nobel Laureate and UNESCO Goodwill Ambassador for a Culture of Peace, peace building means weaving together the threads of equality, justice, participatory democracy and the recognition and respect for the rights of all peoples and cultures.<sup>1</sup> It means establishing intercultural relationships, which facilitate co-existence within a framework of plurality and cultural respect. This project seeks to explore the role indigenous peoples and their organizations play in preventing and resolving conflict.

The ten case studies in this report from Latin America, Asia and Southern Africa offer insights into understanding the root causes of conflict and formulating innovative mechanisms for building peace. The report responds to a growing demand from civil society organizations and indigenous peoples for a documentation of their efforts and successes and obstacles they face in order to sensitize the

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<sup>1</sup>Statement at the International Conference on Conflict Resolution, Peace building, Sustainable Development and Indigenous Peoples, organized by Tebtebba Foundation, December 2000.

greater public on issues related to ethnicity and the defense of human rights of indigenous peoples. It also shows the dynamics and tensions of partnership building between indigenous peoples and NGOs and between them and government institutions and multi-lateral organizations.

The studies document the experiences of indigenous peoples, academics, researchers and non-governmental organizations in addressing situations of conflict – findings that hold valuable lessons for conflict resolution and peace settlement of disputes in other parts of the world. In so doing it highlights the difficulties and drawbacks inherent in these processes, as well as the building blocks towards successful outcomes as guiding principles to facilitate other such initiatives.

Instead of approaches that see indigenous peoples' organizations and movements as a threat to political stability, democratic rule or national sovereignty and territorial integrity, the case studies illustrate the contributions indigenous peoples make to the nation states in enhancing cultural diversity, the protection of the environment, the construction of ethnic identities and the defense of human rights. They emphasize the importance of placing a rights-based approach at the centre of the debate on the current agendas of the countries. Furthermore, the case studies demonstrate how the demands of indigenous peoples can be positively addressed by the multilateral system, UNDP and other UN bodies, in particular the Permanent Forum on Indigenous Issues.

The complexity of factors involved in peace agreements in which Indigenous Peoples are involved in Latin America, Asia and Africa pose the question of more coordinated efforts between the UN human rights mechanisms and the reconstruction, disarmament and demobilisation tasks pursued through political decisions by the nations involved. The compliance with human rights instruments is usually sacrificed after the goal of cessation of hostilities is achieved. This is one reason for the growing frustration among indigenous peoples who are seeking not just for temporary peace but for a sustainable peace based on justice.

The UNDP Civil Society Organizations Division commissioned the case studies over a two-year period (2000-2002). As members of the CSO Advisory Committee to the Administrator of UNDP, we identified representatives of indigenous organizations and NGOs with experience in indigenous peoples' communities to write the case studies (seven in Latin America, two in Asia and one in Southern Africa). The report contributes to the guidelines set out in the

UNDP policy of engagement with indigenous peoples (2001), which sees a clear role for UNDP in acknowledging and strengthening the presence and role of indigenous peoples and their organizations in preventing conflict and promoting peace.

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## OVERVIEW



Indigenous peoples the world over have struggled for generations to preserve their ancestral lands, culture and traditional means of livelihood. Historically, development has been imposed upon them in ways that have damaged their ancestral lands, water and natural resources, and impoverished them monetarily and culturally. Territorial claims have led to clashes with other ethnic populations, militarization and in some instances to movements for secession.

To these age-old sources of conflict have been added new threats with the spread of globalization and the growing exploitation of indigenous lands for scarce natural resources. Today, indigenous peoples' territories are under constant pressure from extractive industries and government-backed large-scale public or private industrial interests. Most conflicts that beset indigenous peoples in countries from Bangladesh to Bolivia are rooted in the denial of their aspirations to preserve their distinct cultural values and identity. The relentless exploitation of natural resources in ancestral lands of indigenous peoples, the use of indigenous knowledge without their free prior informed consent, the lack of political participation and widespread poverty have set indigenous peoples on a course of conflict with governments and, increasingly, with multinational corporations.

Despite their conditions of marginalization, indigenous peoples

in conflict situations have in recent years emerged as persistent and skilful interlocutors with powerful entities to safeguard their interests and rights. While recognition of the need to address legitimate claims of indigenous peoples is by no means universal, governments and corporations are gradually according a place at the table to indigenous peoples in negotiations to end conflict, build peace and preserve indigenous territories. This collection of case studies examines the experiences of indigenous peoples in conflict situations in ten countries and offers lessons and recommendations.

### **Main Elements of the Case Studies**

Four of the case studies focus on peace accords agreed between governments and indigenous movements mobilized to gain recognition of their right to self-determination: Bangladesh, Guatemala, Mexico and the Philippines. They highlight the strengths and weaknesses of negotiated settlements, and the critical and common problem of non-implementation of salient features of these agreements for which government and international commitment and support are pre-requisites.

In Bangladesh, the indigenous peoples' movement for autonomy in the Chittagong Hill Tracts (CHT) has its origins in a historical process of assimilation and oppression which began with colonisation in 1860. This case study focuses on the 1997 Peace Accord, agreed between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti - PCJSS (the United Peoples Party of CHT), which spearheaded the indigenous Jummas movement for self-determination, to end more than 25 years of violent conflict.

The case study identifies the struggle for land rights and greater recognition of the distinct identity of the indigenous peoples, known as the Jummas, as the underlying causes for the conflict. Policies of assimilation and economic development in the CHT included a population transfer programme, internal displacement, large-scale afforestation and infrastructure projects, accompanied by militarization as a counter-insurgency strategy. This has resulted in heightening the ethnic tensions with reports of arbitrary arrest, abductions, rape and torture of the indigenous peoples being reported. With the signing of the Accord in 1997, the situation improved but other problems have surfaced due to the slow pace of implementation of the Accord and the unresolved land situation. This has created a volatile environment where peace and development remain illusory.



The CHT peace accord is testimony to the rigours of negotiated settlements and the influence of ethnic/cultural differences. The case study describes it as a compromise arrangement, a product of many years of intense dialogue and negotiation; not a win-win solution, but one that has opened windows to a more durable solution to the CHT issue. Two urgent concerns are demilitarization and land, within the framework of the right to self-determination. To achieve these objectives, the study makes a number of specific recommendations directed at (a) the Bangladesh Government, (b) the indigenous Jummas, and (c) the international community including UNDP, other United Nations bodies and donors, emphasizing the need for participatory and sustainable development which is culturally appropriate and responds to the needs and concerns of the CHT peoples today.

In a similar situation, the Guatemalan case study focuses on the process leading to the 1996 Peace Agreements. It examines the escalation of ethnic conflicts and resurgence of militant indigenous movements in a nation-state engaged in nation building. The case study provides an overview of the Agreements, including the agreement on the identity and rights of indigenous peoples from the perspective of the Mayan movement. It describes how poverty and repression caused by unequal development, low wages, export-oriented agro-industry have placed the indigenous peoples in a doubly vulnerable position – in the forefront of opposition groups as well as in the cross-fire. Drawing lessons from this experience, the case study highlights the need to create ample and participative political spaces for indigenous peoples in any nation-building exercise.

The Mexico case study focuses on the process of negotiations between the *Ejercito Zapatista de Liberación Nacional* – EZLN (Zapatista National Liberation Army) and the Government and the San Andrés Accords of February 1996. Analyzed within the context of the challenge of cultural plurality to the nation-state, the case study discusses how internal conflicts emerge in the process of government attempts to consolidate power and centralize the economy. It highlights two aspects: demands for autonomy from indigenous peoples who have been marginalized from national life and the participation of women in peace building.

This contribution describes the military offensives in Chiapas in 1998, and the new peace plan, which has been rejected by the Zapatistas. Also discussed are the aspirations of EZLN to continue negotiations regarding the implementation and their frustration at

the constitutional reform of April 2001, which does not grant full autonomy or unrestricted natural resource rights. It provides a gender perspective on indigenous peoples' struggles for self-determination. It analyses the situation of indigenous women in Mexico who suffer double discrimination – both from within and without their community – and how the Chiapas conflict provided an opportunity for social mobilization and greater recognition of their role in conflict prevention.

The case study emphasizes the importance of engaging in peace talks based on mutual respect and agreed ground rules. It underlines the critical need to involve indigenous peoples, particularly women, in the peace process to enable them to learn from and contribute to conflict resolution initiatives, both at the national and international level. Building on the experience in Chiapas, a number of recommendations are made as lessons learned in conflict prevention specific to: (i) the Government of Mexico such as providing urgent aid to Chiapas and other indigenous areas, (ii) to the UN and other international bodies: (a) recognition of collective rights of indigenous peoples and the potential of indigenous juridical systems to resolve conflict; (b) to facilitate peace processes including negotiation trainings (c) for international financial institutions to develop more transparent and indigenous-oriented policies and programmes; (d) to create environments conducive to peace negotiations; and (e) to recognize and respect the rights of indigenous women in peace building processes.

The fourth study on the process of negotiating a settlement to a conflict situation is that of the struggle of the Moro people for liberation. The study focuses on the results of inadequate state responses to their demands for greater recognition of their right to self-determination. It reflects on the influence of ethnicity in secessionism, reinforced by the global resurgence of Islam within the context of the current war on terrorism and the involvement of the Al-Qaeda forces in the 11 September 2001 attacks. The Moro people do not self-identify as indigenous peoples. The Lumad are the ones who self-identify and are recognized as the indigenous peoples in Mindanao.

However, this case study was included because the issues of the Moro people are similar to those of the Lumads, except that their struggle has strong Islamic underpinnings and they have a clear agenda for secession or independence. It is also an attempt to initially introduce the situation of the Lumad. The present conflict in Mindanao in Southern Philippines is so complicated as the Philippine government is simultaneously engaged in violent conflicts with

the Moro Islamic Liberation Front (MILF), the New Peoples' Army of the National Democratic Front and the Communist Party of the Philippines (NPA/NDF/ CPP), and the Abu Sayaf. The Lumads are found in territories contested by the Philippine government, the MILF and the NPA/NDF/ CPP. It is important therefore that a declaration of the Lumad which contains their recommendations on how their issues should be addressed is included in this paper.

The case study chronicles the Moro's struggle for self-determination through conflict and their peace negotiations with successive governments. It highlights the inherent weaknesses of the negotiated agreements, in particular, the failure to include other stakeholders such as the Lumad and civil society at large. Here, as in the other case studies focusing on peace accords, the importance of an inclusive and pro-active approach to conflict resolution which includes all segments of the concerned peoples including women and other political factions, is highlighted. The case study makes a number of recommendations, beginning with the recognition by the United Nations of indigenous peoples' right to self-determination. It also calls for the recognition of the right of indigenous peoples to own, manage and control their lands and resources, which is based on the 'land is life' principle,<sup>1</sup> and for a commitment by States to political, social and economic development and peace-building.

The Bolivian experience argues that poverty can be a catalyst for change. Overwhelming poverty, cultural discrimination and land dispossession has mobilized indigenous peoples in Bolivia to organize as an important pressure group in policymaking. Protest marches and other forms of advocacy forced the Government to engage with indigenous peoples in a process of dialogue to remedy years of isolation and 'misplaced State intervention.'

Providing a historical, legal and socio-political description of the different indigenous peoples in Bolivia, starting in 1675 when the Jesuit missions arrived in Bolivia, the case study argues that addressing land tenancy and land-based production is key to conflict prevention and resolution. It pays particular attention to confrontations with the state such as the 'water war' of April 2000, and how such mass demonstrations have influenced State policy on poverty reduction in Bolivia. It illustrates that conflict-driven ap-

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<sup>1</sup> Indigenous peoples have spiritual ties to their lands, and do not perceive it as a commodity, but as the basis for their spiritual, cultural and economic survival. Without their lands they cannot survive, and are faced with cultural extinction.

proaches can be used successfully to secure changes in national legislation and to open up spaces for dialogue. The case study highlights the positive contributions of NGOs, the Government and the international movement in strengthening the capacity of the indigenous peoples.

The case study on empowering indigenous communities in the Sierra Nevada and Perijá region of the Cesar Department in Colombia is based on the experience of the non-governmental organization *Association for Inter-Disciplinary Work* (ATI) with indigenous communities conducted over 18 years since 1986. Central to their work are the experiences of five indigenous peoples (Iku/ Arhuaco, Kankiamu, Kogui, Wiwa and Yukpa) in the ongoing armed conflict.

The case study analyses the underlying causes for conflict in land tenancy, environment and culture and draws on the experiences of ATI in empowering indigenous peoples in the area to better negotiate their rights through workshops, training, analyses, and impact assessment exercises. It also describes the formation of an inter-institutional mission to research the nature of conflicts - as a contribution to the consolidation of the peace process in Colombia. Government representatives with the capacity to take policy decisions were also included in the process, but unfortunately in the long run the Government suffered a loss of legitimacy due to their inability to address the escalation of conflict at the national level. It points out the initial successes of the process and highlights the importance of having the indigenous communities as the main actors for this process of conflict resolution. The author makes a number of recommendations including a role for the Permanent Forum on Indigenous Issues on the treatment of land as the central issue in indigenous conflicts, and the creation of an infrastructure of peace with UNDP as a key player.

Land as the key to change is the central issue of the case study on the land claim of the !Khomani San of South Africa. It describes how the !Khomani San people claimed back their ancestral lands in Southern Kalahari by challenging the new Constitution of 1996. The case study analyses this process and argues that while the problem of landlessness was being resolved, new ones emerged including tensions and conflicts with the Government and leadership struggles within the San who had to adapt to a new hierarchical representation system, and problems of assimilation and discrimination.

The case study examines the underlying issues behind the historic land claim settlement story which concluded with the second

phase in 2002. It highlights the problems faced by the community in adapting to a new system focused on individual decision-making and not the traditional consensual approach. The case study also spotlights the emotional and spiritual problems associated with sudden material wealth. It concludes by emphasizing the need for leadership training in new systems of voting and democracy (that differ from traditional systems based on consensus) and in reconciling differing visions of land and its uses. The success of the land claim has been a tremendous boost to the morale and collective identity of the !Khomani San. The author emphasizes that it has also been a learning experience for the !Khomani San leadership.

In Ecuador, indigenous peoples have increasingly had to negotiate not with the State, but with multinational companies. The case study, based on field work by the Centre for Economic and Social Rights, describes the process of negotiating the Secoya-Occidental code of conduct in 1999, enumerates the main principles agreed upon, and analyses of the role and motivation of the different actors. Looking at the lessons from the Secoya-Occidental oil exploration negotiations in Ecuador, the author states that the purpose of negotiating a code of conduct was to set the guidelines for meaningful dialogue based on transparency and equity. It was a complex and conflictive process, involving international observers and advisers to the Secoya from different civil society groups and facilitators. The government was involved only marginally. The code of conduct that was eventually signed led to an increase in the bargaining power of the Secoya indigenous people and improved their chances for a more equitable negotiation in subsequent oil explorations.

Drawing lessons from the experience and reflecting on its implementation over the last few years until today, the author recommends that the objective of the exercise must be clarified at the outset – whether it is to identify rules for dialogue or engage in negotiations. Indigenous peoples need to be assertive during the negotiations, be aware of the pressure exercised by the stronger party, and regularly evaluate the process. Although the code of conduct has not been a panacea, it has been an invaluable tool for the Secoyas to exercise their rights and it serves the purpose of reducing the differences in the asymmetrical relationship between two negotiating parties.

The working of another extractive industry is the subject of the case study from Peru, which analyses the impact of gold mining on

the Amarakaeri people. It focuses on strategies to prevent and resolve conflicts and highlights the positive influence of conflict as a mobilizing element. The study underscores how indigenous peoples mobilized in mid-2000 to initiate direct dialogue with government. Furthermore, the case study outlines the historical and political aspects of mining in Peru, and the emergence of an extractive-mercantile economy based on gold exploitation in Madre de Dios. 'Gold fecer,' however, brought little or no benefits to the indigenous peoples, with no plans to recover degraded areas or to prevent the effects of mercury poisoning.

The study draws attention to five major problem areas: (a) land and territory, (b) environment and natural resources, (c) basic services for education and health, (d) citizenship and rights to participation and (e) law and justice. It analyses the response of the Amarakeiri peoples (including the establishment of the Federation of the Madre de Dios River and Affluents – FENEMAD) to the most serious conflicts they face of land loss and pollution; and the contribution of NGOs in conflict prevention and peace building. Given the gravity of the health risks associated with gold mining, the author underlines the importance of environmental impact assessments, informed consent and full participation before formulating an intervention strategy. Knowledge bases of local communities in impact assessment and other areas should be acknowledged and integrated, thereby contributing to institutional development and networking. The goal should be the transfer and adaptation of responsive strategies to improve problem solving.

The construction of an electric energy transmission system from Venezuela to Brazil through the lands of the Pemón people has led to conflict rooted in differing concepts of development and values. This case study draws lessons from the struggle of the indigenous peoples and stresses the need to engage in an in-depth examination of the roots of the conflict. Empowering indigenous peoples and movements can provide the basis for a sustainable process of conflict resolution and prevention.

The case study chronicles the history of the conflict and examines each of its issues grouped under clusters. They include the supposed advantages to the indigenous peoples, the legal aspects, a public consultation process, the debate over indigenous territories and the individual/collective title, and the agreements with the indigenous peoples. The author emphasises how the struggle of the

indigenous peoples has influenced the Government's decisions – as manifested in the inclusion of a special section on indigenous peoples in the new Constitution (1999). However, this has been mutual with the Government also exerting some influence over the Pemón resistance. The conflict is not fully resolved yet, demonstrating the need to address in more depth the issues of environment and development, and the definition of national interest and cultural diversity.

## **Conclusions**

These case studies are all analyzed from the perspective of how indigenous peoples have learned to accommodate change and in the process create their own strategies for survival. All the ten situations described in the case studies are conflict-driven, and this has been considered as an opportunity to challenge governmental, inter-governmental and corporate policies and projects.

Instead of approaches that see indigenous peoples' organisations and movements as a threat to political stability, democratic rule or national integrity, there is a need to reflect on the contributions indigenous peoples can make to nation-building in terms of conflict-resolution, environmental protection, cultural diversity and human rights. Indigenous peoples need to be at the centre of a rights-based approach to development, one that is peoples-specific, culturally appropriate and implemented in a participatory manner grounded on the principle of prior informed consent as a fundamental criterion.

The relationship between local forms of self-government and authority, customary law with national legislation, international macro-economics and approaches, referred to in these case studies highlight the need to combat racism, social exclusion and internal armed conflicts with plans and programmes that meet the needs of Indigenous Peoples and that take into consideration their particular values, concepts and traditions. A culture of peace includes an end to violence and to military actions, and promoting inter-cultural integrity. To deny a culture is to provide the basis for exclusion and socio-political domination, and it is critical to recognize the diversity of a multicultural country to consolidate democracy.

The case studies are illustrative of how the demands of specific segments of the national societies can be positively addressed by UNDP and other UN bodies and agencies. The dialogue between the UN system agencies and the UN Permanent Forum on Indig-

enous Issues is a step in this direction. A related element stressed in the case studies is the need for monitoring agreements entered into by indigenous peoples with states, companies and other agents in order to ensure their implementation. The UN and relevant agencies and bodies of the international system including UNDP and the Permanent Forum have a key role to play in this regard.

The case studies also stress the important role of support organizations and capacity development, the value of partnerships, including technical advisory support, and the importance of organized resistance with dignity. 'The main lesson for us from the Secoyas case is about dignity. Making strength out of weakness to confront such powerful adversaries face to face and earning their respect is doubtless worthy of acclaim.'

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## Chapter 1

# In Search for Peace in the Chittagong Hill Tracts of Bangladesh

*Eleanor Dictaan-Bang-oa\**



The 5,093 square miles called the Chittagong Hill Tracts<sup>1</sup> comprises ten percent of the total land area of Bangladesh (91,695.75 sq. miles). It is home to several indigenous peoples since time immemorial. Officially referred to as ‘tribes’<sup>2</sup> and known collectively as the Jumma people - a term derived from ‘jum’, the practice of shifting cultivation, common to most of the indigenous peoples - they are the Bawm, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mro (Mru), Pankhua, Tanchangya and Tripura. Most of the indigenous peoples belong to the Tibeto-Burmese language group, with the Chakma and Tangchangya belonging to the Indo-Aryan branch.

Historically, the indigenous peoples are known to be living in the CHT for centuries, with their own forms of governance and socio-political institutions. Today, there are about 600,000 indigenous peoples in the CHT, out of a total population of approximately a million (974,445: 1991 Census).<sup>3</sup> Nearly half a million people were brought into the region through a government-sponsored population “transfer programme” during 1979-84.<sup>4</sup>

Until the 1950s, half of the total land area of CHT was characterized by moderate to dense forest cover. Sixty percent of the total forestland of Bangladesh (2,600,000 hectares) is in the CHT, of which 6,318 acres have reportedly been converted into pulp wood plantation to meet the demands of the paper mill industry in the first de-

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\*Tebtebba (Indigenous Peoples International Centre for Policy Research and Education), Baguio City, Philippines, 2004.

cade of the 21<sup>st</sup> century. There are also reports of large reserves of natural gas, coal and copper.<sup>5</sup>

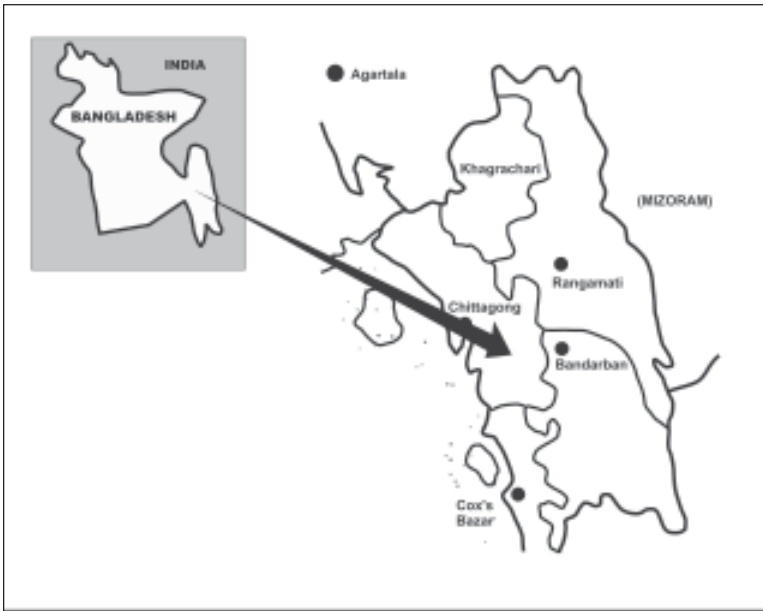
### HISTORY OF CONFLICT IN THE CHT

Historically an independent area, larger than it is today, the present conflict in the CHT may be traced back to the Mughal period which sought to impose its authority in the area. The only concession to repeated attempts by the Mughal emperors, the CHT remained outside their jurisdiction with the exception of an annual payment of cotton bales as a mark of suzerainty (Treaty of 1713). In 1776, the CHT peoples waged a war of resistance against the British East India Company, and the CHT remained relatively autonomous from British control until 1860, when it was annexed to the province of Bengal (Act No. XXII of 1860).

Between 1860-80 the British government introduced a toll tax on the export of forestry products and declared one-fourth of the total CHT land area as 'reserved' forests to be converted into teak plantations. Cultivation of lands within the reserved forests became a criminal act.<sup>6</sup> The British period saw the adoption of the Forest Act of 1927 which continues to set the parameters for Bangladesh' forest policy.

During the turn of the century, the CHT was recognized as an indigenous area with a certain amount of autonomy by Regulation 1 of 1900 – popularly known as the 1900 Regulations. The 1900 Regulations also restricted the immigration of non-indigenous peoples into the CHT. It was given a special status as a "Totally Excluded Area" as provided by the Government of India Act of 1935, which meant relative autonomy for the CHT under the jurisdiction of their traditional chieftains, with direct administration by the central government.

Ceded to the Pakistan nation-state in 1947, such special status and immigration restrictions were abolished resulting in the "systemic exploitation and appropriation of the land and resources, and the destabilization of Jhum cultivators accompanied by large-scale state sponsored migration of Bengali settlers into the CHT - which interacted to ruthlessly trample on the identity, culture, religion and aspirations of the hill people."<sup>7</sup> The Pakistan period also saw the Kaptai Hydro-Electric Project (1959-63) and the Karnaphuli Paper Mills established in the CHT. The Kaptai Dam inundated 40% of the CHT's total arable land and displaced more than 100,000 indigenous peoples, mostly from among the Chakmas.<sup>8</sup> The indigenous



peoples received little or no compensation. The 'trauma of being ousted by the dam remains the most bitter experience of the hill people. The Kaptai Dam deprived the hill people of their best land and increased pressure on the remaining land and forest resources'.<sup>9</sup> Of the Government's Rupees 280 million appropriations for rehabilitation, only Rupees 20 million was reportedly released.<sup>10</sup> About 40,000 of these developmental refugees left for the Indian state of Arunachal Pradesh where they remain to this day as "stateless refugees, under constant threat of eviction."<sup>11</sup>

### **The Move for Autonomy**

The partitioning of the Indian sub-continent became a divisive issue among the CHT peoples. While some favoured being included under Pakistan, the majority preferred to be under India which was to be secular; Pakistan comprising its two wings, East and West, was created as a homeland for the Muslims in undivided India. The indigenous peoples, under the leadership of their traditional chieftains formed the Hillmen Association in 1946 and proposed a confederation under the Indian government with the CHT as a princely state. This proposal fell on deaf ears, and the CHT was included in East Pakistan by the Radcliffe Boundary Commission, reportedly to

provide a hinterland for the port city of Chittagong.

Political organization among the CHT peoples existed as early as 1915, when the Chakma Jubok Samiti (Chakma youth association) was formed, followed in 1920, with the establishment of the Parbattya Chattagram Jana Samiti (CHT Peoples Association). In 1966, a student organization, called the CHT Welfare Association was formed under the leadership of JB Larma and Ananta Bihari Khisa – this organization later launched the Rangamati Communist Party (1970).

With the creation of Bangladesh in 1971, based on Bengali hegemony as a building block of national identity, the indigenous peoples of the CHT became further marginalized. In 1972, a CHT delegation led by MN Larma presented then Prime Minister and founder of Bangladesh, Sheikh Mujibur Rahman with a four-point manifesto: (i) demand for autonomy of the CHT with its own legislature; (ii) retention of the Regulation 1900 in the constitution; (iii) continuation of the offices of the indigenous kings; and (iv) restrictions on amending the 1900 Regulations and prohibition of Bengali settlement in the CHT. This was rejected, the indigenous peoples urged to embrace Bengali nationalism and assimilate into the majority culture.<sup>12</sup>

1972 also saw the birth of the Parbatya Chattagram Jana Samhati Samiti (PCJSS) whose main purpose was autonomy for the indigenous peoples according to the vision of the CHT people. It was based on the Panchayat system, with members elected by the village members. Its armed wing, known popularly as the Shanti Bahini (peace brigade) was formed in 1973 'to defend against the terror, rape, torture and looting by the Bengali settlers and the armed forces.'<sup>13</sup> In 1975, in response to demands for autonomy, Major-General Ziaur Rehman's administration increased the military presence in the area in the name of 'national security'. Since then the CHT has been fully militarized.

### **Economic Solutions to a Political Problem**

Successive administrations followed the policy of perceiving the CHT problem as economic in nature, and not a political and ethnic one. In 1976 the CHT Development Board was created. However, the development programmes designed under the Board were military-run and further strengthened their authority in the area, magnifying the sense of injustice and frustration of the CHT peoples, and their impoverishment. Despite the constraint in viable agricul-



tural land and resources created by the flooding of almost half of the CHT by the Kaptai dam, the state started a non consulted transmigration program to bring plains families into the area in 1979.

Between 1979 and 1984, about 400,000 Bengalis were resettled in the CHT, and provided with land, cash and other incentives.<sup>14</sup> These state-sponsored settlers are a major factor to the continuing ethnic tension. At the same time, an ADB-funded program forcing the Jummas to settle in village clusters where each family was given some land to plant rubber and horticultural crops, called Joutha Khamar (Cooperative Farms), was initiated. 'The corner-stone of the development policy for the CHT is the resettlement of Jhum cultivators, a move not only seen as a better (productive) pattern of land cultivation, but for strategic (military) and political motives as well.'<sup>15</sup> Relocating the indigenous peoples to cluster villages was aimed at isolating the growing armed resistance movement.

The indigenous Jumma women contributed to the PCJSS/SB cause of self-determination for the Jummas, performing traditional tasks like cooking, sewing, running messages etc. under risky and unstable political conditions. They also reared children, grew crops

and farmed lands and otherwise assumed the role and responsibilities of heading the household. As if this multiple burden was not enough, women also suffered the brunt of the violence erupting from the conflict. Targeted for their gender and for their ethnicity, countless women have been victims of indiscriminate military operations and suffered displacement, harassment and torture as well as sexual harassment and rape.<sup>16</sup> There are numerous reports of rape and other acts of violence against indigenous women. Four years after the peace accord in 1997, violence against women still persists including the Babuchara incident of 1998, the rape of three Jumma women by military elements during an anti-insurgency operation in Khagrachari on May 22, 2001 and the rape of nine Jumma women in August 2003. Indigenous children have also suffered during the armed conflict.

## Dialogue

A number of attempts were made to resolve the armed conflict. In 1977, a committee known as the Tribal Convention was established to mediate between the government and the PCJSS. However, internal constraints within the PCJSS and the assassination of President Ziaur Rehman in 1981 derailed these efforts. In 1980, Bangladesh passed its Disturbed Area Act which provided legal sanction for military atrocities in the CHT (Singh, 1996).<sup>17</sup> The 1982 Ershad government declared the CHT a special economic zone and offered general amnesty to the PCJSS/SB (1983 and 1985).

From 1985-1988 a series of dialogues took place between the PCJSS and government to resolve the CHT crisis. During these talks, the PCJSS presented the following five-point demand:

1. Removal of non-indigenous peoples settled in the CHT after 1947;
2. Withdrawal of all Bangladeshi armed forces from the CHT including non-indigenous police force;
3. Retention of the CHT regulations of 1900 and a constitutional provision restricting its amendment;
4. Autonomy for the CHT with its own legislature and recognition of Jumma nation's right to self-determination; and
5. Deployment of a United Nations peace-keeping force and implementation of these measures under the auspices of the UN.<sup>18</sup>

The talks were unsuccessful. The Ershad administration imposed the Hill District Councils (HDCs) on the CHT in 1989, criticised as a government ploy to further its two-pronged strategy for the CHT: (i) divide and rule policy by isolating the majority Chakma whose political consciousness was relatively more advanced than the rest of the hill peoples; and (ii) increasing its military operations.

The majority of the indigenous peoples rejected the HDCs as not addressing crucial issues such as the land question, the refugees and internally displaced, and their little administrative powers. In addition, it was also alleged that the allocation of seats for specific people did not respond to the actual number of that group e.g. the Chakmas while constituting the majority of the total CHT population (over 48%) had 33.3 % of the district council seats, while the Marma and the non-indigenous peoples (Bengalis) were given 32% and 30% respectively.

The PCJSS boycotted the 1989 elections as not responding to their demands, falling short of Jumma self-determination and not including provisions to protect Jumma lands and restitute that which had been illegally given to the state-sponsored settlers. They believed it to be a strategy to turn the CHT into a non-indigenous region and to legalize the state-sponsored settlers in the Hill Tracts.<sup>19</sup>

As if the ethnic animosity, resource constraint and lack of social services was not enough brew for a conflict, the interaction of militarization resulting in innumerable cases of human rights violations including rape, religious persecution, forced religious conversions, eviction, arrests, illegal detentions, kidnappings and massacres among others, economic underdevelopment and political marginalization further complicated the problems in the CHT. During this period, about 70,000 indigenous peoples crossed the border to seek refuge in India. All this and the reported clandestine purpose of the government's transmigration program - to dilute the ethnic composition of the region and make the indigenous peoples a numerical minority in their own homeland - prompted international attention<sup>20</sup> and the creation of an international fact finding commission on the CHT. This CHT Commission visited the region in 1991, and described the CHT as 'under military control.'<sup>21</sup>

The following year, in 1992, a multi-party committee composed of representatives from the Bangladesh National Party (BNP), the Awami League and Jamaat-e-Islami was constituted by the government to identify solutions to the CHT problem. In response, the PCJSS declared a unilateral cease-fire. Seven rounds of talks were reportedly held between the committee and the PCJSS (1992-96) un-



der the aegis of the BNP-led government, but there were no concrete results.

In October 1996, Prime Minister Sheikh Hasina, following up on the previous dialogue efforts, set up the National Committee on CHT to reinstate the peace process. The first meeting between the 12-member committee and the PCJSS was held in December, followed by other meetings. This was the last series of negotiations between the government and the PCJSS that ended in December 1997.

On 2<sup>nd</sup> December 1997 the PCJSS and the Hasina government signed the Chittagong Hill Tracts Peace Accord in Dhaka.

### THE CHT ACCORD OF 1997

The CHT Accord of 1997 was a welcome respite from more than 20 years of violence and aggression on the Jumma peoples.

Although the majority of the indigenous peoples viewed the accord as a step towards autonomy, the PCJSS drew a lot of criticisms with the signing of the peace accord. This was particularly vehement from a faction of its student organisation - which later on formed the United Peoples Democratic Front; the UPDF describes the accord as a 'sell-out'. Nonetheless, the Peace Accord boosted the image of the Bangladesh government in the international arena and earned the then Prime Minister the UNESCO Peace Prize in 1999.

The accord addresses four major issues in the CHT, namely:

1. Devolution of power to the Hill District Councils, Regional Councils and CHT Ministry as the units of self-government in the CHT;
2. Establishment of a land commission to deal with conflicts over land and natural resource rights;
3. Recognition of the cultural integrity of the indigenous peoples and the CHT as a 'tribal' area; and
4. The withdrawal of military forces from CHT and the de-commissioning and rehabilitation of JSS forces.

The accord also has obvious limitations. As Rupayan Dewan, a leading member of the PCJSS, states:

*I was not happy with the agreement...But we have appreciated the global situation...People want peace...The current administration was open to the idea, so we grabbed the opportunity....*<sup>22</sup>



## Implementation of the Accord

The following table is an overview of the salient features of the CHT Peace Accord of 1997 and its status of implementation:

### Status of the General Provisions of the CHT Peace Accord of 1997 (As of June 2004)

<b>1. Strengthening the CHT Self-Government System</b>	
<b>The Hill District Councils (1989)</b>	<p>The accord strengthens the power and authority of the 1989 HDCs. They are to be responsible for 33 subjects including land and natural resources, development, environment, fisheries, primary education and health.</p> <p>Composed of 34 members with a 2/3 indigenous majority (1/3 are to be from among the Bengalis), the HDCs are currently functional with five members each. In February 2002, the State appointed Dr. Maniwal Dewan, Mr. Nakkhatralal Dev Burman and Mrs. Maima Ching Chowdhury as Chairpersons of the Rangamati, Khagrachari and Bandarban Hill District Councils respectively. All are members of the ruling Bangladesh Nationalist Party.</p> <p>As yet they have no role in national decision-making processes regarding the allocation of funds for development-related projects to the CHT. The legislative prerogatives of the HDCs remain largely untested. It has also not been provided with the necessary financial resources. 22 subjects have not yet been transferred to the HDCs including land and natural resources and development since they were first established.</p>
<b>Establishment of a Regional Council</b>	<p>The 22-member Regional Council is to be an apex body and play a supervisory and coordinative role over HDCs, civil administration and the CHT Development Board.</p> <p>In 1991, an interim RC was established with the chairperson and majority of its members appointed from amongst the PCJSS nominees. The CHT Regional Council Act of 1998 is yet to be substantially implemented to enable the RC to play its supervisory and coordinative role while its legislative prerogatives are yet to be tested.</p>

<b>Ministry of CHT Affairs</b>	<p>The RC is to play a major role in policy at the central level and to work together with the RCs and HDCs.</p> <p>Following the 2001 elections, the BNP Government appointed Mr. Mani Swapan Dewan as deputy minister. The Prime Minister of Bangladesh, Begum Khaleda Zia has kept the CHT portfolio under her personal supervision, and with it the ministerial post.</p> <p>The ministry, like the RC is yet to evolve as a dynamic institution with a positive role as a spokesperson for the CHT institutions and to act as an effective body in influencing national decision-making processes regarding the CHT.</p>
<b>2. Resolving Land-Related Problems</b>	
<b>Recognition of Customary Rights</b>	<p>The land commission is to adjudicate land claims taking into account customary land laws.</p> <p>A highly controversial Land Disputes Resolution Act was passed by the previous Awami led government in July 2001 giving final deciding powers to the Chairman of the Land Commission regarding land disputes. The Regional Council has criticised the 2001 Act as giving wide-ranging and arbitrary powers to the commissioner and has proposed 18 amendments to the Act.<sup>23</sup></p>
<b>Land Administration Authority of HDCs</b>	<p>Only primary education, social welfare and health were transferred to the HDCs. Land, land management and security/police which are crucial in the CHT problem have not been devolved to the local level.</p>
<b>Land Commission</b>	<p>Retired Justice Mahmudur Rahman was appointed as head of the commission in October 2001, without proper consultation with the indigenous peoples and/or local government. An office has been established in Khagrachari district, but the other members of the commission including the HDC and RC, the traditional rajas/kings have not been formally appointed. As of May 2003, some 35,000 cases had been filed, involving land disputes between the indigenous peoples and the state-sponsored settlers.<sup>24</sup></p>
<b>3. Rehabilitation of Refugees and Internally Displaced People</b>	

<b>Refugees</b>	64,609 refugees who fled to Tripura, India have returned to the CHT under a repatriation agreement with the government. Although they have been provided with cash and other grants, some 9,780 refugee families have not been given back their homesteads, farms and paddylands as agreed, with 40 indigenous villages still occupied by Bengali settler families.
<b>Internally Displaced People</b>	There are a large number of internally displaced people in the CHT due to the dam, the settlement programme and counter-insurgency strategies, as well as afforestation policies. <sup>25</sup> A controversial list prepared by a task force identified some 90,208 Jumma and 38,156 Bengali families as internally displaced for rehabilitation. The indigenous peoples strongly oppose the inclusion of the settlers as 'internally displaced' contending that the settlement programme was itself a main reason for their displacement. No concrete rehabilitation efforts have been undertaken so far.
<b>4. Cultural Integrity of the Indigenous Peoples</b>	Although the Accord recognizes the CHT as a "tribal-inhabited area", this has not been recognised by legislation. So far, the HDCs and the RCs have not framed any subsidiary laws for the indigenous peoples of the CHT.
<b>5. Handing over of weapons by JSS</b>	About 1,947 PCJSS fighters handed over their arms to representatives of the GOB on four separate occasions.
<b>6. Dismantling of Military Camps</b>	There were reportedly more than 500 military bases in the CHT, out of which only about 31 are said to have been dismantled. The 1973 policy of military administration in the CHT is still in force and Operation Uttoran (Operation Upliftment) has been in operation since September 2001. Government plans include acquiring 66,239.00 acres of CHT land for military purposes.
<b>7. Rehabilitation of JSS Fighters</b>	Of the 999 cases pending, 720 are said to have been withdrawn; 19 out of 21 JSS members released from jail. The cash grants have been provided and members of the JSS are still receiving grants of food grains from the GOB. None of the 1,429 rehabilitation projects proposed by the JSS in 1998 have been funded. About 700 ex-JSS fighters have been appointed into the Bangladesh Police Force but posted outside the CHT.

According to CHT peoples, the Bangladesh government has been very slow, if not reluctant, in implementing the provisions of the 1997 Peace Accord. Rupayan Dewan, vice-chairperson of the JCSS, enumerates the Bangladesh government's major violation of the peace accord as follows:

- assignment of 700 SB forces who were integrated into the police outside of the CHT;
- transmigration into the CHT did not stop. About 400,000 settlers are distributed in the three districts who are willing to be repatriated. Government however has not done anything yet despite the reported rehabilitation fund from the European Union;
- no settlement of the land problem has been done yet. The land commission was created to deal with the land problem but is not yet functional;
- continuing militarization of the CHT and the presence of another insurgent group the United People's Democratic Front.<sup>26</sup>

Chief of the Chakma Raja Devasish Roy explains:

*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...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.<sup>27</sup>*

Roy encourages the vigilance of the CHT peoples in forwarding their demands, issues and active participation in the other legislative measures ensuing from the accord. In fact, government's inconsistencies have already been evident in its proposed local government council bills for the three districts of CHT. Chairman of the Liaison Committee between the Bangladesh government and the PCJSS, Mr. Hangsadhvaj Chakma, in an interview by Tebtebba Director Victoria Tauli Corpuz cited how:

*There were several words, phrases and statements that were altered and reformulated by the Parliament. We cannot identify*

*just one. The point is, they (Parliament) misrepresented the real intent and content of the agreement. We have gone through several sessions to change the formulation, but they still prevailed [in the Rangamati bill despite calls for and amendments by the Jumma peoples]. Not only that, according to the agreement, all military camps in the CHT should be removed. But up to now they are still here. The Land Commission has been established but it is not yet functioning...If the government is not going to show sincerity on the peace agreement, then it is not giving the people any other choice but to launch another movement – whether armed or unarmed.<sup>28</sup>*

The change of government in the October 2001 elections has not changed this problematic state of the Peace Accord. In fact the election was boycotted by 80% of the Jumma peoples because of the violation of Article 3 and 9 (4), Part B and Article 11, Part C of the accord whereby some 289,584 Bengali settlers and 49,000 military, paramilitary and police personnel have reportedly been included in the new voters list.<sup>29</sup>

Prime Minister Khaleda Zia of the Bangladesh Nationalist Party formed alliances with the Muslim fundamentalist Jamat-Islam – both historically opposed to the Accord. One of the new government's initial action with regards the CHT was the keeping of the portfolio for the Ministry of CHT Affairs with the Prime Minister, and the appointment of a non-indigenous person – from among the state-sponsored settlers – and a BNP colleague as head of the CHT Development Board – a step revealing of its indifference to the Jummas and the Peace Accord. Appeals made by the PCJSS against such appointment fell on deaf ears.<sup>30</sup>

It is as if the Accord was non-existent. The Khaleda Zia government has not lifted a finger in the controversial government plan to acquire 218,000 acres for afforestation in the Murung and Kiang lands within the CHT; the acquisition of some 65,793 acres for military purposes in the Bandarban and Rangamati districts; the leasing out of 18,333 acres by the Bandarban Deputy Commissioner and the much opposed Land Dispute Settlement Act of 2001 which gives the chairperson decisive powers in land dispute settlement. The Land Dispute Settlement Act also exempts from proper settlement the internally displaced Jummas and refugees repatriated from India under the 1992 agreement who are similarly involved in land disputes with the state-sponsored settlers.<sup>31</sup>

Ironically, the government continues to provide rehabilitation services to Bengali settlers ignoring the internally displaced Jummas.

It has also appointed Bengalis in key civil administrative posts i.e. the three Deputy Commissioners (DC) in each hill district and 25 sub-district administrators including the whole of the local police force. The DCs have reportedly been issuing “permanent resident certificates” even to new Bengali settlers. These certificates entitle the holder to hold land in the CHT, and to vote in the local elections. The issuance of these certificates to non-indigenous persons in violation of Regulation 1 of 1900 and the Accord was one of the main issues for the PCJSS boycotting the 2001 parliamentary elections as mentioned earlier.<sup>32</sup>

### PEACE AND DEVELOPMENT IN CHT

Several years after the signing of the Peace Accord, conflict resolution, thus, sustainable development in the CHT remains illusive. The high expectations of war-weary peoples in a blighted land were doused by continuing human rights violations and the slow or non-implementation of the provisions of the Peace Accord. For instance in August 2003, 14 indigenous villages were looted and burnt to ashes, people injured and killed, and ten indigenous women raped during a settler attack.<sup>33</sup>

Other factors affecting peace and development in the CHT are the presence of several political groups creating divisions among the CHT peoples and further instigating Jumma-Bengali animosity, imposed inappropriate development efforts by financing institutions, the creation of an NGO Bureau in 1999, and the suspension of all government development programs initiated under the Awami government by the present BNP government.

In an interview, Prof. Shapan Adnan sums up the issues in the CHT as three main problems: (1) the land problem, (2) the settler problem and (3) economic underdevelopment. Adnan further states that most of the respondents for a study he conducted on globalization and the CHT peoples cited the value of education as a way out of this limbo.

In a focused group discussion among non-government organizations in Khagrachari (Nov 10, 1999), participants identified the immediate solution to the land problem as the key to development in the CHT. Most of the fertile lands are reportedly occupied by Bengali settlers while the Jummas are pushed into less productive areas where long term cultivation is impossible. Largely agricultural communities, the need for agricultural development in the area requires infrastructure, facilities, technology and other services like market-

ing and financial/credit assistance.

Women shared their difficulty in pursuing justice for the violations done on their persons and families due to lack of capacity and capability, proper documentation and the bias of a traditionally patriarchal society. They have also identified the need for reproductive health services and education. Many of the indigenous women in CHT are engaged in weaving, which is also a major source of cash income. They are however burdened by the lack of support mechanisms to sustain weaving as an economic alternative.

Asked about their vision for development, most of the CHT people refer to the Rangamati Declaration of 1998 which they themselves have crafted to facilitate the peace building and development process in the area. The Rangamati Declaration is the product of a multi-sectoral Conference on Development in the CHT in line with Agenda 21. It comprehensively prescribes how work, policies and processes are to be undertaken in the areas of development, land, rehabilitation, mineral, water and forest resources and biodiversity, horticulture, environment, human development and capacity building, women, health, education, culture and language, information, sports and non-governmental organizations (see annex for details).

Post-conflict development work and civil society participation, however, are largely affected by the fragile peace and order situation, and local politics in the area. Numerous civil society organizations by and for the Jumma peoples and foreign/international agencies like the UNDP, UNICEF, UNESCO, the World Bank and the Asian Development Bank have been engaged in post-conflict development work in the CHT.

Many of these efforts are hindered by government interference which is particularly systematic through its NGO Bureau. The bureau decides whether an NGO, especially one with foreign funds, can enter and work in the CHT. However, government encourages the activities of large national and Islamic NGOs in the CHT such as the Bangladesh Rural Advancement Committee (BRAC) and Proshika among the first category, and the Bangladesh Islamic Foundation and the Al Rabeta for the latter. On the other hand, it is extremely difficult for indigenous peoples' organizations to obtain the registration as the bureau is suspicious of their work and political orientations as encouraging secession. The bureau has not been issuing permissions lately pending the formulation of a new code for NGOs.<sup>34</sup> As a result, many of the development initiatives since the accord have been implemented without the consent and participation of the indigenous Jumma peoples.

A hallmark decision with respect to development initiatives in the CHT was taken by the European Union with its January 17, 2001 Resolution calling for an accelerated implementation of the Peace Accord and reiterating its commitment for the resettlement program 'conditional upon the substantial progress in implementation of the peace accord and the need for culturally appropriate projects.'<sup>35</sup>

Frustrated at the slow progress, the PCJSS has been calling for full implementation of the accord and has initiated a campaign to this end. On 8 May 2004, a strike was called in the CHT to press forward the following four demands:

1. To implement the CHT Peace Accord properly;
2. To remove Abdul Wadud Bhuian, M.P. from the post of the Chairman, CHT Development Board and appoint a competent indigenous person as per the CHT Accord;
3. To immediately withdraw all temporary camps of Army, Ansar, APB and VDP including the '*Operation Uttoron*';
4. To appoint a full Minister from the indigenous peoples as the CHT Affairs Ministry as per the CHT Accord.<sup>36</sup>

As Shantu Larma, the Chairperson of the Regional Council and leader of the PCJSS states, 'Unless people can take control of their lives and have the freedom and capacity of taking decisions, there cannot be any sustainable peace or development.'<sup>37</sup>

## RECOMMENDATIONS

The CHT Peace Accord is the product of seeds of peace sown on bloody land which only bore fruit after more than a decade of an on-and-off negotiation – a compromise deal. Not a win - win solution, the CHT Peace Accord has, however, opened windows towards a more durable and relevant solution to the CHT problem.

The Accord is a testimony to the rigors - yet non-impossibility - of negotiated settlements even with long standing conflicts that have efficiently rubbed against ethnic/cultural differences. As one author puts it the CHT Accord of 1997 'demonstrates that a negotiated settlement is predicated upon yielding of grounds by both sides for finding out a common meeting ground...In other words, [it] is an example of a quid pro quo within the purview of the constitution.'<sup>38</sup>

That the Peace Accord has been signed does not imply that peace and development in the CHT ensues immediately as may be



seen in the very fragile turn of events after the signing. There is much more that needs to be done by the government, the PCJSS and other political groups, the Bangladesh civil society, the Jumma peoples and the international community. The Peace Accord, if fully implemented, provides a healthy ground for concerted development efforts in the CHT.

Based on the results of focused group discussions conducted by the Tebtebba Foundation in the CHT, demilitarization and the settlement of the land issue are the most immediate matters that have to be addressed if peace and development are to be realized in the area.

Under the framework of self determination as called for by the Jumma peoples, the following recommendations are made:

### **A. To the Bangladesh Government**

1. To be transparent and have the political will to implement the provisions of the Peace Accord including:
  - a. To recognise the Jumma peoples' national identity and thereby their right to self-determination in whatever form they may decide;
  - b. To immediately and unconditionally withdraw all military elements/camps from the CHT to foster confidence-building and trust;
  - c. To ensure the legitimacy of the Peace Accord through a constitutional amendment providing for this, the enactment of laws consistent with the accord and the repeal of all contradictory and discriminatory laws. This includes the review and amendment of the Land Dispute Settlement Act of 2001 and the Hill District Councils Act of 1998 among others;
  - d. To bring justice to the CHT peoples, by facilitating the immediate and full rehabilitation of all repatriated and internally displaced Jumma peoples back to their homes in the CHT as well as the immediate transfer and rehabilitation of the post-1947 Bengali settlers outside the CHT;
  - e. To ensure the proper rehabilitation and integration of the Shanti Bahini forces as provided for by the Accord;
  - f. To facilitate the legislative and administrative conditions to enable these institutions to work effectively,

especially with reference to the land issue, in addition to technical and logistical support among others with full participation of indigenous peoples;

- g. To appoint suitable and qualified indigenous peoples to the local self-government structures in the CHT i.e., the Hill District Councils, the Regional Council and the Ministry of CHT Affairs as provided for under the Accord. This includes the recall of the appointment of Mr. Abdul Wadud Bhuiyan as chairman of the CHT Development Board and the appointment of a qualified Jumma and to reserve three seats for indigenous CHT women to the national Parliament;
- h. To mobilize the Land Commission, efficient execution of the CHT Regional Council Act of 1998 and to effect the transfer of all subjects and functions to the Hill District Councils;
- i. To revise the existing voters' list according to the accord;
- j. To guarantee the protection of human rights and fundamental freedoms by ensuring that victims of war and human rights violations be given due process and justice with true and reparations programmes, and that the perpetrators are brought to justice;
- k. To ratify ILO Convention No. 169 and speedily adopt the UN (draft) Declaration on the Rights of Indigenous Peoples.

2. To facilitate and ensure a participatory and sustainable development agenda sensitive to the needs, overall conditions and culture of the CHT peoples:

- a. To dismantle all oppressive structures perpetrating violations of human and indigenous peoples' rights and to institute necessary government reforms to this effect. This includes the recall and prohibition of all military personnel from holding civilian positions in the CHT to facilitate confidence-building and the full participation by the civil society and the dismantling of military bases, land mines and other sources of contamination related to the use of weapons;
- b. To recognize through legislation indigenous land, knowledge and resource ownership, use, control and

- management systems consistent to the Peace Accord and the CHT peoples' vision of development;
- c. To call a moratorium and investigate all development efforts in the CHT which are detrimental to the indigenous peoples and their culture. Of immediate concern is the government land acquisition plans for afforestation/ forest reservation program and military facilities in the CHT<sup>39</sup> and the arbitrary issuing of permanent resident certificates to Bengali settlers;
  - d. To strengthen existing mechanisms (i.e. the CHT Development Board) and/or create mechanisms where and when needed to design a comprehensive and sustainable development plan done by and for the Jumma peoples, which is based on their concept of development;
  - e. To guarantee free and prior informed consent by ensuring genuine multi-sectoral, multi-level and participatory consultation of and with the Jummas on all development interventions initiated within the CHT; and
  - f. To promote respect for human rights, fundamental freedoms and cultural and religious diversity as well as ensure administrative reforms towards strengthening democracy, good governance and rule of law in Bangladesh.

## **B. To the Jumma Peoples**

- a. To respect diversity and transcend differences to constructively respond to the common and pressing needs for peace and development in the CHT. This may be done through continuous multi-sectoral and multi-level dialogue with the majority Bengali population, other indigenous peoples and minorities and the civil society at large towards a holistic understanding of CHT issues and mobilizing their support for the realization of the Accord;
- b. To strengthen unity among all sectors by building on past experiences/ traditional conflict management concepts and practices to facilitate and participate in meaningful peace building and development efforts within and outside the CHT;
- c. To organize and mobilize maximum participation in

- pursuit of processes of development that are needed, which are practical and sustainable in the CHT;
- d. To enjoin national and international civil society and institutions to participate and contribute to peace-building and sustainable development in the CHT including the formation of an independent monitoring body to oversee the implementation of the Peace Accord, with the participation of UN Human Rights bodies;
  - e. To recognize and work for the transformation of non-equitable concepts and structures especially with reference to gender roles and relations;
  - f. For the PCJSS to strengthen their ranks based on the principles of indigenous peoples' rights to self-determination, peace-building and sustainable development and to be more vigilant in the genuine implementation of the provisions of the Peace Accord.

### **C. To UNDP and other United Nations Bodies, Donor Countries, Foreign and International Funding Agencies**

- a. To monitor and accompany all development initiatives and financial assistance to the government of Bangladesh to ensure recognition and respect for the rights of indigenous peoples and religious minorities, with particular reference to the commitment of the government to fully implement the CHT Peace Accord of 1997;
- b. To uphold and recognize Jumma peoples' concept of development and adopt the Rangamati Declaration as the basis for all peace and development efforts in the CHT. This includes fostering a better understanding of the root causes of the conflict and the development issues and addressing them from the perspectives of, in close coordination with, and with the full participation of, the Jumma peoples;
- c. To create synergies to effectively respond to the needs identified by the people such as access to basic health and education services as well as the long term needs for capacity-building and people-empowerment through a comprehensive development program anchored on the principles of self-determination and

- human rights. This includes organizing at the grassroots level, capacity-building trainings for peoples' organizations and local non-government organizations and providing other technical, financial and moral support to people-initiated development;
- d. To facilitate constant dialogue with, between and among the CHT peoples, the state and the civil society at large to effectively address issues that impact on the overall peace and development in the CHT;
  - e. To develop and provide venues for constructive transformation of traditional values, practices and structures that may impede development initiatives especially that with regard to gender roles and relations;
  - f. For the UN to set up an independent multi-sectoral body to monitor developments and commitments to the Peace Accord and to review the Bangladesh state's adherence to the United Nations Charter of 1948, the Universal Declaration of Human Rights, 1948; the International Covenants on Civil and Political Rights, 1966 and Economic, Social and Cultural Rights 1966; the International Convention on the Elimination of All Forms of Racial Discrimination, 1965; the Vienna Declaration of Human Rights, 1993 and ILO Convention No. 107, and other pertinent Human Rights instruments. It should also draw the attention of the Bangladesh government to the concerns and recommendations made by the UN Committee on the Elimination of All Forms of Racial Discrimination with regards the indigenous peoples of the CHT on April 27, 2001.

#### Endnotes:

<sup>1</sup> The Hill Tracts are associated with the nearby city of Chittagong, hence the misnomer. This was coined by the British to distinguish them from the Arakan Hill Tracts.

<sup>2</sup> The indigenous peoples of the CHT are recognized as "indigenous" to the region by the CHT Regulation of 1900 and Act 12 of 1995, and both the Prime Minister of Bangladesh (Begum Khaleda Zia) and the Leader of the Opposition (Sheikh Hasina) have used the term *Adivasi* i.e. "indigenous" or "aboriginal" - in their goodwill messages to the indig-

enous peoples of Bangladesh on International Day of the World's Indigenous Peoples on 9 August, 2003. 'While this may and should be regarded as growing respect for the indigenous peoples of Bangladesh, the overall political situation in the country suggests that formal acceptance of many of their basic demands on political, economic and cultural matters, including constitutional recognition as *indigenous peoples*, is still a long way away.' Raja Devasish Roy, "Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh" in Chandra Roy (ed.), *Defending Diversity: Case Studies* (Sweden: Saami Council, 2004), 97.

<sup>3</sup> The census was conducted during the conflict when there were some 50,000-75,000 Jumma refugees in India (Copenhagen: IWGIA-Anthro-Watch, 2001). Thus the census figures are not believed to be entirely accurate.

<sup>4</sup> For more details see RCK Roy: *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts*, Bangladesh (Copenhagen: IWGIA, 2000).

<sup>5</sup> Zainul Abedin: *CHT: That Sheds Blood* (Dhaka: Ramon Publishers, 1997).

<sup>6</sup> Raja Devasish Roy. "The Land Question and the Chittagong Hill Tracts Accord" in *The Chittagong Hill Tracts: The Road to a Lasting Peace* (Baguio City: Tebtebba Foundation Inc., 2000), 33.

<sup>7</sup> Raajen Singh: "The Chittagong Hill Tracts in Bangladesh" in C. Nicholas & R Singh (eds.), *Indigenous Peoples of Asia: Many Peoples, One Struggle* (Bangkok: Asia Indigenous Peoples Pact, 1996), 129.

<sup>8</sup> Syed Anwar Husain, *War and Peace in the Chittagong Hill Tracts: Retrospect and Prospect*, (Dhaka: Agamee Prakashani, 1999).

<sup>9</sup> Singh.

<sup>10</sup> Ibid.

<sup>11</sup> RCK Roy., 34.

<sup>12</sup> Amena Mohsin 1997: *The Politics of Nationalism: The Case of the Chittagong Hill Tracts, Bangladesh* (Dhaka: The University Press Limited, 1997), 57-59.

<sup>13</sup> Singh., 132.

<sup>14</sup> See RCK Roy 2000 for details.

<sup>15</sup> Singh., 130.

<sup>16</sup> For details on the impact of the armed conflict on indigenous Jumma women see RCK Roy: *Indigenous Women: A Gender Perspective*, (2004), <[www.galdu.org](http://www.galdu.org)>

<sup>17</sup> This was just after the Kalampati (Kaokhali) massacre when some 300 indigenous peoples were killed reportedly when the army opened fire on a meeting convened to discuss the rebuilding of a Buddhist temple.

<sup>18</sup> Singh., 135.

<sup>19</sup> Bikach Kumar Choudhury, *Genesis of the Chakma Movement (1772-1989): Historic Background* (Agartala: Tripura Darpan Prakashani, 1991), 30.

<sup>20</sup> For details see *The Chittagong Hill Tracts: Militarization, Oppression*

and the Hill Tribes (London: Anti-Slavery Society, 1984); *Unlawful Killings and Torture in the Chittagong Hill Tracts* (London: Amnesty International, 1986); and *Report of the Committee of Experts of the International Labour Organization* (Geneva: ILO, 1986-2001) under Bangladesh's reports on Convention No. 107 on Indigenous and Tribal Populations, 1957.

<sup>21</sup> CHT Commission, *Life is not ours': Land and Human Rights in the Chittagong Hill Tracts, Bangladesh*, (Copenhagen: International Work Group for Indigenous Affairs (IWGIA) & Netherlands: Organizing Committee CHT Campaign, 1991), 112.

<sup>22</sup> Raymundo Rovillos, "Process Documentation of Training Needs Assessment in the Chittagong Hill Tracts, November 6-14, 1999" (Baguio City: Tebtebba, 1999) (Unpublished).

<sup>23</sup> PCJSS, *Report on the Implementation of the CHT Accord signed between the Government of Bangladesh and the PCJSS*, (Rangamati, CHT: April, 2004).

<sup>24</sup> Jumma Peoples Network, "Bangladesh: The Chittagong Hill Tracts" in *The Indigenous World 2004*, (Copenhagen: IWGIA 2004), 290-301.

<sup>25</sup> A 2001 report of the Asian Development Bank on the CHT region estimates there are some 150,000 - 200,000 internally displaced indigenous peoples in the CHT (ADB TA No. 3328-BAN). For more details see the Global Internal Displacement Project, "'Bangladesh: land disputes perpetuate internal displacement (December 2003 report), <[www.idpproject.org](http://www.idpproject.org)>

<sup>26</sup> Rovillos.

<sup>27</sup> Raja Devasish Roy, "Salient Features of the Chittagong Hill Tracts Accord of 1997" in *The Road to a Lasting Peace* (Baguio City: Tebtebba Foundation Inc., 2000), 62.

<sup>28</sup> Raja Roy., 58-59.

<sup>29</sup> Peace Campaign Group Report (New Delhi: 2002).

<sup>30</sup> Report of the International Jumma Community, 2002.

<sup>31</sup> PCG and PCJSS.

<sup>32</sup> RCK Roy, *Indigenous Peoples and Elections...*, 141-160.

<sup>33</sup> PCJSS, *An Account of the Communal Attack on the Jumma People in Mahalchari by the Bengali settlers with the full backing of the Army*, (Rangamati, CHT: PCJSS, 2003).

<sup>34</sup> PCG and PCJSS.

<sup>35</sup> IWGIA.

<sup>36</sup> PCJSS, *Situation Report, May 2004* (Rangamati, CHT: 2004).

<sup>37</sup> Amena Mohsin, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series (London & Colorado: Lynne Rienner Publishers Inc., 2003), 122.

<sup>38</sup> Husain, Syed Anwar, *War and Peace in the Chittagong Hill Tracts: Retrospect and Prospect*, (Dhaka: Agamee Prakashani, 1999).

<sup>39</sup> The PCJSS reports this to be some 156,076 acres in the Bandarban Hill District alone (Rangamati, CHT: 2004).

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## Chapter 2

# Poverty and Participation Mechanisms of Indigenous Peoples: Lessons from Conflict-Driven Struggles in Bolivia

Luz Beatriz Gaviria V.\*



*Taking poverty as a central analytical variable, this case study argues that poverty is a driving factor in the conflicts, and that the specific issues of land tenancy and land-based production are the keys to preventing and resolving conflicts.<sup>1</sup>*

Indigenous peoples in Bolivia have received much publicity over the last decade for their aggressive struggles to protect their rights and gain a voice in national policies. Driven by a combination of overwhelming poverty, cultural discrimination, and pressures on their lands by a variety of actors, the indigenous peoples have been successful in engaging in a process of enshrining their rights in the legal framework of the country.

At the same time, the pressure brought about by the indigenous peoples has also led to an opening up of spaces of dialogue with the Government that complement the strategies of mobilization and protest employed by civil society in Bolivia. While these spaces of dialogue have severe limitations, the combination of increased legal recourse and participation in policy decisions represents slow progress towards laying the basis for conflict prevention and resolution strategies in the future.

This case study looks at how indigenous peoples have mobi-

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\*Amazon Indigenous Peoples Regional Programme of the Andean Development Fund (PRAIA), 2001.

lized for their rights and for participation in policies that affect them, and the impact they have had in rewriting the legal framework of the nation-state to institutionalize these claims. It concludes that in situations of extreme poverty and inequality of power, the international community and institutions that are interested in accompanying indigenous peoples in preventing and resolving conflicts should focus on a three-pronged approach: empower indigenous populations and organizations to develop capacity at the grassroots to organize and mobilize to make their demands heard, work with the indigenous peoples to create and enshrine legal frameworks and policy approaches that guarantee protection of rights and access to participation, and accompany indigenous peoples in the development of economic production and organization in a way that is integrated with the other two prongs.

## BACKGROUND

### Country Overview

Bolivia is a land-locked country with an area of 1,098,581 km<sup>2</sup> located in the heart of South America. It shares borders with Argentina, Brazil, Chile, Paraguay and Peru. It has a vast range of topography and diversity of climates, with 11 ecological regions. The country is one of the richest in biodiversity in Latin America: its ecosystems contain approximately 18,000 plant species.

Bolivia has a population of 8.4 million inhabitants, with 60% living in rural areas. The majority of the Bolivian people are of indigenous origin. Bolivia has one of the highest poverty levels in Latin America with 63% of the population living in conditions of extreme poverty. Life expectancy is 61 years; child mortality is 67 per 1000 births, with 9% of children five years or younger malnourished; it is estimated that 85% of the population consume less than the 2200 calories recommended for daily intake. Sixty percent of the population has no access to drinking water. The situation is most critical in the rural areas where 94% of homes do not have access to basic services and are classified as poor. Some 78% of poverty-stricken rural homes do not have access to drinking water and 72% lack sanitary services. Various regions suffer from endemic illnesses associated with poverty. Malaria, tuberculosis and *chagas* disease combined with diarrhea and respiratory infections cause a high prevalence of infant mortality.

Poverty in urban areas is closely linked to integration into the



workforce, to unemployment and lack of opportunities for income-generation. In contrast, rural poverty presents important links to obstacles that determine agriculture and livestock productivity, productive infrastructure and access to agricultural goods markets. In Bolivia there are about 660,000 farming units (of which 87% are small farming units) with 2.7 million people dependent on them, and occupying 14% of the cultivable surface. This fact emphasizes the magnitude of the problem of smallholdings and land distribution in Bolivia.

The lack of definition of property rights over the land and the natural resources has caused problems and resulting in their not being put to optimal use. The difficulties of rural production are exacerbated by water shortages. Forty percent of the country has a water deficit for more than six months every year, while in the Plateau area the water deficit is for at least nine months per year. Currently, only 10% of the total cultivated surface area (2.2 million hectares) is covered by irrigation systems. In addition, there is little road infrastructure, leading to high transportation costs and a network of intermediaries known in Bolivia as *rescatistas* (wholesalers).

Bolivia is also faced with threats to biodiversity, soil, and water. Destruction of habitat caused by selective forest extraction by lumber companies, massive colonization of new lands by farmers,

settlers, and cattle ranchers is the main cause of loss of biodiversity. The introduction of exotic species has caused the extinction of indigenous species. The increasing use of genetically modified organisms is another source of concern, as is the unregulated and illegal commerce and export of wildlife, a main source of income for many Bolivians, which also has consequences for biodiversity. The importation and use of pesticides and insecticides - which are prohibited by law - has serious environmental impacts. Finally, contamination from mining and industry also pose a threat, as mercury and other effluents pollute the environment.

### **Indigenous Peoples**

Some 60% of Bolivians are indigenous belonging to the Aymara, Chiquitano, Guaraní, Guarayo, Moxeno, Quechua and other smaller ethnic groups. The indigenous peoples are generally divided between the lowland or 'indigenous' (Amazon, Chaco, and the East) and highland or 'of origin' (Andean) inhabitants. The following gives an organizational overview of the Indigenous Peoples:

#### *Lowland Indigenous Peoples*

In the lowlands, there are smaller, more dispersed and isolated Indigenous Peoples. The Amazonian Indigenous Peoples suffered fundamental changes due to the intervention of religious missionaries, especially in relation to the new production methods and the introduction and imposition of new political and social organization forms. With the advent of the Republic at the end of the 19<sup>th</sup> century, its links to international capitalism and its demands began another stage of domination amidst indigenous resistance. The "enganche" system, a form of coercive recruitment and employment, was exploitative and resulted in population relocation and displacement.

During the 1980s, the lowlands indigenous peoples began to organize, creating organizations such as the Assembly of the Guaraní People (APG), Santa Cruz Ethnic Peoples Coordinating Committee (CPESC), Bolivian Amazon Indigenous Coordinating Committee (CIRABO), Local Weenhayek Communities Organization (ORCAWE), and Indigenous People of Beni Head Office (CPIB). In October 1982, these organizations came together to form the Indigenous Federation of the Bolivian East, Chaco and Amazon (CIDOB), which in turn helped to create the Amazon Basin Indigenous Coordinating Committee (COICA). CIDOB has an indigenous law project and advocates total independence from any political party.



More recently, Base Territorial Organizations (OTBs) have been created with authorities selected by community assemblies. The highest authority is the Chief or “*Cacique*” chosen on the basis of wisdom, age and work within the community. This position is a life long position and can be inherited. Another natural authority with more operative functions is the Council President, who deals with mayors, organizations’ managers and others.

#### *Indigenous Peoples of the Andean Highlands*

Unlike the indigenous lowlands people, who are identified and differentiated clearly by territory, language and culture, in the highlands this is true only for the Aymaras and Quechuas, that share nationality with Peruvian indigenous peoples. The ethnic groups in the Andean highlands have a large population, and traditional indigenous organizations and peasant farmer unions coexist and overlap.

One of the most important forms of indigenous organization, the *Ayllus*<sup>2</sup> system, a socio-economic grouping made up of a number of families and composed of 100-10,000 individuals, has decreased

in power because of the problems in agricultural production and access to cultivable lands. This system is re-emerging again as a representative authority of indigenous farmers, and has been generated in large part by a deepening of the conflict between the indigenous peoples and the State, accentuated especially immediately after the days of the national blockade in April and September 2000 during the “war on water” and more recently between November 2003 and January 2004 (during the “war on gas”); additionally there have been differences of opinion on the criteria to be used to identify indigenous representations of the highland region in Bolivia.

Traditional authorities such as the *Jilakatas*, *Mallkus* (Chief), *Foremen*, *Jilancos*, *Segunda Mayor*, and *Kuracas* (traditional doctors) have been at the forefront of this movement, and have formed the *Ayllus’* Western Council of *Jach’a Carangas* (COAJC), the *Oruro Ayllus Federation* (FASOR), the *Ayllus Association of Potosí’s North* (AANOP) and the *Ayllus and Communities of Origin Federation of the Ingavi Province* (FACOPI). There are also several organizations supportive of and working closely with the indigenous movement including the *Sole Union Federation of Rural Workers of Bolivia* (CSUTCB), the *National Federation of Rural Women of Bolivia - Bartolina Sisa* (FNM-BS), among others.

#### *Urban Indigenous Peoples*

When mentioning the organizational panorama of Bolivia it is essential to refer to the organizations of indigenous peoples living and working in the cities. They maintain their customs and traditions, and close ties with their communities of origin, and are generally linked to the informal urban sector as craftsmen, small merchants, businesspeople, etc. There are also organizations of home workers (domestic employees), who are mostly of indigenous origin; and associations of policemen, policemen’s wife, transporters, teachers, among others, composed mostly of indigenous and persons of this origin who maintain close ties with each other.

#### *Indigenous Organizations with an Economic Focus*

Indigenous organizations have formed the *Producers’ Associations* (APs) in the rural areas which play a key role in Bolivian society. Supported by non-governmental organizations, international cooperation, and the Government, these associations are organizations created for economic purposes. Of these, the grassroots economic organizations, or rural economic organizations, the *Peasant Farmers Agricultural Corporation* (CORACA) and *Rural Cooperative Societies* are noteworthy.

### *Non-Governmental Organizations*

There are also many non-governmental organizations (NGOs) that work with rural populations but only a few center their work from an indigenous perspective. The pioneering organizations identified and prioritized the work in the impoverished rural west, and the urban marginal spaces with extremely poor shantytowns, focusing on popular education and communication, technical support and appropriate technologies. In the Amazonian region the initial intervention of the NGOs was generated mostly from an anthropologic perspective. Currently, the emphasis is on the consolidation of territories, production projects, and ecological and natural resources management projects.

### **Demands of the Indigenous Movement**

The indigenous organizations, from the lowlands and from the Andean region, carry out joint activities and support each other when mobilizing and presenting demands. These demands range from historic land claims to the inclusion of new policies on economic development and the right of political participation (see Appendix A for a comprehensive list of the demands put forth by the indigenous organizations).

In addition to these demands, the lowlands and highlands organizations have also collaborated on health and education. The indigenous people all over Bolivia practice ethno-medicine and traditional medicine. They have their traditional medical authorities, and have been struggling to get legal recognition of the traditional knowledge and ancestral procedures including in the training of health personnel. The Bolivian Society of Traditional Doctors (SOBOMETRA), which was created in 1970 and granted formal recognition in 1984, is highlighted as an organization in the field of traditional medicine. The organization has as members some 6,000 *Kallawayas* or indigenous doctors.

The struggle over traditional medicine takes place in the context of an agreement signed by the Pan-American Health Organization (OPS) – which is the regional office of the World Health Organization (WHO) – and the Indigenous Parliament of America in May 1996 to improve the health of the indigenous people of the Americas. Indigenous demands on health have grown as awareness of their rights has increased. The main claims are for health care protection programs and recognition, recovery and implementation of indigenous traditional medicine. The Amazonian Program of



UNICEF implements a budget of US\$ 5 million to improve health care in Beni and Santa Cruz. The program has an innovative education proposal based on traditional culture, training bilingual teachers and health personnel. Despite these improvements, the lack of access to land and services pose serious obstacles to the realization of the right to health for indigenous peoples.

The issue of education is also at the centre of the conflict between the indigenous peoples and the Bolivian state. One of the successes of the indigenous movement has been the passing and ongoing implementation of the 1994 Education Reform Law (LRE). This law established Bilingual Intercultural Education, with the indigenous languages considered as the first languages and Spanish as the second language, where the curriculum is based on the daily life and interests of the indigenous peoples, and emphasizes the role of the community and indigenous organizations in the management of education.

Organizing indigenous communities and national networks has resulted in a deep and vibrant organizational setting all over Bolivia. Nevertheless, the relationships between the lowlands and highlands organizations have some difficulties. There are often accusations of misappropriation of funds, partial politicization or conflicts of interest. Thus disqualifications due to conflicts about sector representation are common, and this in turn causes successive leadership disintegration and constant internal renovation.

## INDIGENOUS WOMEN

### Poverty

The diversity of cultures and ecosystems in Bolivia prevents the establishment of only one characterization pattern for rural and indigenous women in this country. However, overall they are the poorest of the poor. The Gender Development Rate for Bolivia shows that in terms of access to education, indigenous and rural women suffer more than other sectors of the population, and lead also in rates of infant mortality and malnutrition that almost double that of the rest of Latin America.

In the health area, indigenous women show a high percentage of mortality during childbirth, do not have access to sexual and reproductive rights services, have high malnutrition rates, and are socially, racially and domestically abused. Indigenous women do not have public or private services related to childcare, primary



healthcare and others (water, electricity, environmental cleaning), which are added to reproductive tasks.

### **Economic Role**

Women play a key role in the whole cycle of agricultural and cattle production. They are in charge of cattle and poultry, agricultural production for family consumption and sale, and horticultural production. Indigenous women play a fundamental role in the management of the natural resources since the tasks tied to collection and utilization are, to a great extent, their responsibility. Because of this, they are knowledgeable of the species of medicinal flora, wild edible fruits, fuel, wood and other forest products.

In terms of interaction with markets, the family or couple decides which products are to be commercialized, but generally it is the male family members who deal with the transactions. In the absence of the men, women make sales and handle some agricultural and cattle products such as peanut, chilli, fruits, and poultry. Indigenous women make handcrafts for use or decoration and for consumption and trade. This activity constitutes an important income source for the families involved. Women head 24% of the households in Bolivia (1992 Census).

### **Rights and Participation**

Women face limitations in terms of their rights and participation in society, despite government and non-government efforts to develop strategies and activities to reduce inequality. These measures began in 1994 and were institutionalized in 1997 with the creation of the Vice-Department of Gender, Generational and Family Matters (VAGGF) as the authority responsible for implementing public policies with a gender approach.

Despite the fact that women's rights are specifically established in recent Bolivian laws, rural and poor marginalized urban women still have difficulties of access to inheritance, property and income. This is mainly because customary law is applicable in communities and this places restrictions and limitations on land ownership by women. Women's participation in the political sphere is also limited, especially in the rural areas, by a series of cultural obstacles, and literacy becomes a major factor in overcoming these. The high percentage of indigenous women who are monolingual and speak indigenous languages only leads to the males dominating the dia-

logue with non-community members.

Women also face serious problems in the electoral arena, despite the fact that the Electoral Law of Bolivia establishes the obligation that parties include 30% female candidates in their electoral lists. Mayors and Councillors in rural municipalities, especially in the Plateau, have developed a series of strategies to prevent the participation of women in municipal government. These range from changing the names on the voting lists (for example, Maria instead of Mario), to insulting, assaulting and threatening the life and the personal integrity of the elected women in order to pressurise them into resigning. Women are taken advantage of, because of their ignorance or lack of knowledge of the law. These negative factors affect women in a unique way; Bolivian society does not favour women's education.

### **Women's Organizations**

In response to the situation they face, rural and indigenous women have engaged in a process of organization. In addition to organizing small companies for production and marketing of handicrafts and fruit processing, indigenous women have promoted and directed women's organizations affiliated to the agrarian unions or the indigenous organizations.

In response to the troubles faced by elected women as mentioned earlier, the Women Councillors' Association of Bolivia (ACOBOL) was formed. It has documented multiple cases of violation of the rights of councillors and reported these in public hearings before the Senate's Popular Participation Commissions and the Chamber of Deputies.

### **HISTORY OF CONFLICT – PHASE 1: MARCH FOR TERRITORY AND DIGNITY (1990)**

In August 1990, the indigenous peoples of Beni, under the leadership of the Mojeño *cabildo* or *council*, initiated the March For Territory And Dignity that started at Trinidad, the Beni capital, and arrived at the Government headquarters in La Paz, having travelled 650 km. for two months. This group of more than 50,000 indigenous persons marched through the country's highways blocking the road system completely.

The March for Territory and Dignity brought together communities and organizations of the indigenous peoples of the East, Chaco

and Amazon, with demands including the following:

- Legal recognition of the communities and indigenous organizations and their authorities;
- The creation of mechanisms for social participation on issues that affect the indigenous peoples directly, in decision-making instances at the level of the government and national, regional and local bodies;
- The free exercise of self-management in harmony with sectoral programs;
- The study and discussions of a law for indigenous peoples of the East and the Amazon;
- To review and modify the adjudication policies regarding forest and agro-industrial areas in indigenous peoples traditional lands;
- To recognize and to incorporate into the national legislation the indigenous peoples' internal norms;
- To adopt and implement bilingual and bicultural education;
- Having in mind that the ethnic groups in the Amazon are considered the most skilled in preserving the environment of the tropical and subtropical forests, to initiate programs and projects that take into account the indigenous models of rational and sustainable management of the natural resources; and
- In the political sphere: to achieve an effective indigenous peoples' participation in the national issues.

The demands were contained in the Indigenous National Defence and Development Plan, which was based on four pillars of action:

- Recognition and participation
- Territory for the indigenous peoples
- Economic development, health and education, and
- Indigenous legislation.

Constitutional reforms and national laws were developed legally establishing some of the above demands. Decrees and resolu-

tions in favour of the first four Indigenous Territories of the Amazon: Isiboro Sécure, Multiethnic, Tsmane (Chimán) and Sirionó were adopted. The bases for the constitutional definition, which proclaims that 'Community Lands of Origin' are 'places where rural communities and indigenous peoples live, based on their own forms of economic and cultural organization' were established. These lands are non-transferable, cannot be expropriated or divided, are non-taxable, and non-revertible.

In addition to the recognition of the indigenous territories, certain norms were adopted. Of special importance are:

- The Agrarian Reform Law
- The incorporation of indigenous peoples in the Law of Participation
- Ratification in June 1991 of ILO Convention No. 169 on Indigenous and Tribal Peoples (1989)
- The creation of the Latin American and Caribbean Indigenous Development Fund in February 1993)
- The adoption of the East, Chaco and Amazon Indigenous Bill of August 1991, which includes the Law of Constitution Reform (April 1993)
- Diplomacy of the coca under the slogan 'coca is not a cocaine,' and
- The official recognition of the indigenous flag WIPALA as a national symbol.

Thus, the indigenous March for Territory and Dignity constituted an immediate and fundamental precedent in the legal establishment of indigenous peoples' rights in Bolivia.

### **The Indigenous-Government Relationship**

After a sequence of dictatorships, Bolivia has experienced constitutional regimes since the mid-1980 that have been characterized by constant mobilizations and pressure from different actors of the society. The indigenous movements have played a key role in the still slow progress towards changing the way the Bolivian state relates to its citizens, and the policies it puts forth. An analysis of this process is provided below:

### *Constitutional Rights*

The Political Constitution of Bolivia was reformed by Law No. 1585 of 12 August 1994 to incorporate Indigenous Peoples' Rights. Article 1 of the new Constitution acknowledges that Bolivia is a multiethnic and pluri-cultural Republic, and recognizes the existence of its indigenous peoples as an integral element in the national composition.

Article 171 (1) states: 'the legal, social, economic and cultural rights of the indigenous peoples that inhabit the national territory, especially the ones relating to their Traditional Indigenous Territories (*Tierras Comunitarias de Origen* - TCOs), identity, values, languages, customs and institutions, are recognized, respected and protected by the Law, guaranteeing the sustainable exploitation of the natural resources.' The law also establishes that the State recognizes the legal status of the agricultural indigenous communities and of the associations and unions of agricultural workers. Further, traditional indigenous authorities and their power and entitlement in applying their own rules in resolving conflicts, according to their customs and procedures, were also recognized through this constitutional amendment, so long as they are not contrary to the Constitution and national laws.

Indigenous law and justice system, in spite of their constitutional status and internal dynamics, are practically unknown. These are recognized even less in the public official sphere and sometimes they turn out to be contrary to the official law. In the majority of the communities where these rights are practiced, they acquire the form of a complex system in which pre-Hispanic, colonial and republican practices are combined. The recognition of indigenous peoples' rights in the Bolivian Political Constitutional reform is limited and subordinated to the parameters of the official justice system. For example, while the INRA (National Service of Agrarian Reform) and Forest Law establish that the communities have the right to 'forest utilization,' the Law of Hydrocarbons and the Code of Mining Industry allow resources exploitation even in indigenous areas identified as Traditional Indigenous Territories.

### *National Laws*

Intercultural conflict and the structural reforms generated two laws of great impact on rural areas:

- Law of National Service of Agrarian Reform (1996)

The Law of National Service of Agrarian Reform, best known as the INRA Law, constituted the most important regulation measure in the use and possession of land, since the agrarian reform in 1952 which created the National Institute for Agrarian Reform (INRA). The INRA is the institution in charge of the plots of land and the issuing of title deeds.

The fundamental aim of the INRA law of 1996 is to regularize rights on agrarian properties and to grant legal safety to the rural owners, including indigenous peoples. To this end, the process of agrarian reform is directed at consolidating the land rights of those who have obtained it legally and are fulfilling a social function, and to establish the areas of ancestral domain of indigenous peoples and grant them title over these lands.

The process of reform established in the Agrarian Reform Law adopts three modalities:

- i. Simple reform (SAN-SIM)
- ii. Reform tied to the Land Registry (CAT-SAN), and
- iii. Special reform as Traditional Indigenous Territories (SAN-TCO).

The latter has been established in the Law to regularize agricultural laws in the areas demanded by the indigenous peoples as traditional indigenous territories. The INRA law proscribes the following as characteristics of the Traditional Indigenous Territories (TCOs):

- The name *Tierras Comunitarias de Origen* entails the concept of indigenous lands as prescribed in ILO Convention No. 169.
- The title deeds are collective property titles granted to the indigenous peoples.
- The distribution and redistribution of land for individual and family use within these territories will be governed by the community in accordance to their customs and procedures.
- The title deeds are compatible to the declaration of these territories as protected areas.

In addition to the property, the collective title deeds grant the indigenous peoples and communities the right to take part in the sustainable utilization of natural renewable resources existing in these territories.

The Law of National Service of Agrarian Reform forces the government to delimit and to title Traditional Indigenous Territories, as claimed by the indigenous peoples, in a period of ten months. In July 1997, the National Institute for Agrarian Reform (INRA) issued 'Decrees of Immobilization' for 11.5 million hectares within 16 areas of the country. In 1998, eight were categorised as Indigenous Territories, with legitimate titles and provisional land extensions subject to compensation. Since the Agrarian Reform law was passed, 158 demands have been made for titling of traditional indigenous territories. By the end of 2003, only 3 million hectares (less than 10% of the total requested) have been titled and many have been extinguished, in particular in the Guaraní area.<sup>3</sup>

Some of the reasons for this relate to: (i) the climate, long distances and work conditions; (ii) lack of will of the state institutions in charge; (iii) interventions of miners, petroleum companies, lumber companies, foreign settlers, or other third parties; and (iv) disagreements over boundaries and dimensions. Each of these problems includes conflictive relations that are often very difficult to solve, and may even lead to the death of the indigenous leaders. However, the major problem in this demarcation and identification process is that of finances, as 62 % of these territories do not have the necessary funds. In spite of the attempts for clarifying and rectifying the legal possession of land and forests, superimpositions with regard to the definition of protected areas, indigenous territories, lumber grants, agricultural properties, mining grants and areas used by informal wood producers and collectors of forests products continue to exist.

Unlike in the indigenous territories in the Amazon, the problems in the Andean area related to the restitution of the traditional territories are not dependent on the financing and differ in two main aspects: (i) the Andean world vision of population, occupation and use of space patterns is different; and (ii) as a result of the Agrarian Reform of 1953, individual title deeds were distributed in the highlands. These plots of land have in turn been divided into multiple properties, especially through inheritance, which their owners are not prepared to relinquish in order to gain collective title deeds.

- The Law of Popular Participation (LPP)

Another measure of strong impact was the Law No. 1551 of Popular Participation (LPP) of April 1994. This Law democratized and decentralized the municipal management; incorporated the rural areas into its jurisdiction; recognized the intervention of basic territorial organizations (*Organizaciones Territoriales de Base* - OTB) as the representative of the communities, indigenous peoples and local entities; introduced the participatory planning of local management; and classified tax resources according to the relative importance of the population of each municipality. The LPP recognizes the Basic Territorial Organizations (OTB's) - which can be incorporated- as subjects of Popular Participation. These organizations are organized according to their uses and customs or statutory regulations.

*Environmental Management Legal Framework*

The results of the indigenous mobilization of 1990 were also felt in the sphere of natural resources management. During the last decade in Bolivia considerable investments and actions have been carried out to develop a legal framework and to create and strengthen institutions at the national and regional level. The aim of these institutions is to respond to the increasing concerns regarding the negative impacts of the utilization of natural resources on ecological systems and biodiversity, as a result of the economic growth.

In April 1992, Bolivia passed the Law of Environment (LMA). In 1993, the Sustainable Development Ministry was created as a means to institutionalize the approach to the environment. The environmental law works as a global law that provides the framework for a broad perspective in the incorporation of basic concepts of environmental management and sustainable development in the policies, planning and programs at all government levels. In order to assure its effective implementation, the Government proclaimed the corresponding by-laws in December 1995. Relevant laws such as the Law of Popular Participation, Administrative Decentralization, Educational Reform, and the execution of the Capitalization Program were initiated. These laws have changed the context and imposed new requirements to the emerging environmental management system in Bolivia.

With the approval of Forest Law No. 1700 of 1996 and its regulatory framework contained in Supreme Decree No. 24453, (i) the Government explicitly declared its decision to pass on rights and



responsibilities over forest matters to the municipal governments; (ii) landowners obtained the exclusive right to exploit the forests within their properties; and (iii) established that Protected Areas are ruled by special procedures, allowing the possibility of creating private protected areas, through the Natural Patrimony Private Reserve.

The indigenous peoples also receive some protection from the Law of Hydrocarbons. By constitutional law hydrocarbons deposits, whatever their condition or form may be, are the direct, non-transferable domain of the State in infinity i.e. with no expiration date. No grant or contract can award the property of the deposits. However, Law 1989 of April 30, 1996 besides establishing classifications and conditions for the exploration, exploitation, marketing, transport, refining and industrialization of hydrocarbons and the distribution of natural gas through gas pipelines, expressly dedicates the subordination of the hydrocarbons sector to the regulations of paragraph 171 of the Political Constitution – that establishes the indigenous peoples' rights to their lands and the guarantee of the use of their natural resources- and the application of the LMA and its bylaws on the hydrocarbons sector.

- International legislation

The indigenous peoples are backed by international legislation with regard to rights to access natural resources. Bolivia has ratified several international Conventions, including the Agreement for the Managing and the Conservation of the Vicuña, signed in La Paz in 1969; the Convention on Wetlands; the Convention on International Trade in Endangered Species (CITES); the United Nations Conference on Environment and Development (UNCED June 1992) and related standards on environmental management contained in the Rio Declaration, the Convention on Biodiversity, Agenda 21, Framework Convention on Climate Change, Convention on Desertification, Convention No. 169 of the ILO, which establishes the indigenous peoples' rights to the utilization, administration and conservation of natural resources existing on their lands (article 15), the Cartagena Agreement on Access to Genetic Resources, etc.

Besides the national and international outlined norms, there is also a draft domestic legislation for the conservation of biodiversity (proposed in 1992). As national law, this legislation would constitute the development of the agreements on biodiversity from the Earth Summit in Rio. The indigenous peoples' expectations on the

distribution of benefits depend on the final regulation established. The benefits can stem from controlled access to genetic resources and the participation in scientific investigation, from participation in the investigation findings and developments, from commercial or other benefits achieved as a result of the use of genetic resources, from access to technology and transference used in genetic resources especially in biotechnology and from prior access to the results and benefits that come from the biotechnological use of the genetic resources.

### **HISTORY OF CONFLICT – PHASE 2: PROTESTS OF 2000**

The year 2000 was framed in a context of (i) a reduction in economic growth, (ii) increasing social demands, (iii) a constant clash against a weak and vulnerable political system, and (iv) increasing distance between State and civil society.

Three events marked the situation and the political environment in Bolivia in the year 2000: (i) The ‘war on water’ in April, (ii) the Rural Strike of September and (iii) the Government’s call to National Dialogue. All these conflicts related to teacher demands to improve their wages and their resistance to changes in supervisory administrative services; the resistance of the coca leaf producers to the forceful eradication of coca plantations, demanding effective measures that allowed crop substitution; the plateau peasant farmers’ demands with regard to modifications to the INRA law, land entitlement, seed endowment, review of the Environment law, postponement of the Water law, improvement and construction of roads and bigger health and education infrastructure. The demands reflected the problems of poverty and marginalization of the rural area and its inhabitants.

#### **Conflicts and Results**

The main actors in the 2000 April and September conflicts were (i) Cochabamba’s civic movement organized across the Cochabamba’s Water Coordinating Table that centred its demands against the structural reforms policies and against the privatization of the water services, and (ii) the *cocalero* (coca growers) movement. The peasant farmers surrounded La Paz, Cochabamba and isolated Santa Cruz. The highways were blocked and destroyed, the crops were lost, there was a food shortage in the cities, the military suppressed the protests but finally the demonstrators were listened to.

The Water Coordinating Table highlighted that the events of April brought to light the weariness and tedium of all Bolivians in relation to more than 15 years of neo-liberal policies implemented by the government and international organisations. During the confrontation, the Water Coordination Table had the support of the entire Cochabamba population and the rural population joined to demonstrate their opposition to the Law of Basic Reparation project that changed the conflict for land property into a dispute for the control of natural resources. The mobilizations' primal point was water.

Settlers and small rural producers, the *cocaleros*, were the leading sector in the disturbances of April and September. For the most part they were of Quechua origin and lived in Cochabamba's tropics and the Chapare area. The *cocaleros* are identified as producers of coca leaves and have a powerful social and political movement headed by Evo Morales to oppose the forceful eradication of coca plantations asking for real 'alternative indigenous development.' They restore 'sacred coca leaf' in its nourishing and medicinal capacities and its industrialization potential, in an ethno-cultural approach. According to the *cocalero* leaders the crisis was the result of three years of forceful eradication during which US\$ 3 billion did not enter the country. The coca economy generated more than 1 billion dollars per year, which is equivalent to the annual exports of Bolivia. This meant the explosion of a deep economic crisis which was expressed in April 2000 under the name of 'war on water'.

In September, the 'National Roads Blockade' began with the coca leaf producers rejecting the goal of eradicating coca. The conflict then spread to other sectors of society (managing even to repeatedly request the President's resignation) to prevent the restructuring of chestnut and rubber areas into forest grants. Sectors dealing with water, wood, hydrocarbons, minerals, genetic resources, biodiversity, tourism and even oxygen entered the conflict.

The Ombudsman Office summarizes a perspective that makes the conflict clear: the people are tired of laws that are not fulfilled, of institutions that do not work, of endless steps that cost time and money and that often end up fomenting corruption or filling the pockets of government workers of whom there is insufficient social control. The unjustified collections, the bad health care, the increase of public services taxes and the innumerable obstacles that they face every day bother the people. The Ombudsman Office has 'the system of service to the citizen,' (customers service) which is an instrument that allows it to meet the demands of the people. The aim of the

system is to give service, being able to listen and prepared to recognize differences and respect them. The system should be sensitive to the demands of the poor and act efficiently, confidentially, skilfully, but firmly in the fulfilment of the constitutional mandates. In Bolivia only the Ombudsman Office offers a service of this character.

In Bolivia, more serious than the conflict produced by poverty conditions is the backdrop of popular participation and the inadequate or misplaced State intervention. These conditions have turned the institutions into inaccessible spaces for the average population. They have made the access to administrative processes, policies and plan definitions that affect the poor difficult. The common attitude is that citizens distrust the State due to corruption. In 1997 Bolivia ranked as the second highest country in terms of corruption perception, of 51 countries evaluated by the Index of Corruption Perception published by the organization International Transparency. This situation has improved somewhat in the last three years but it is still below satisfactory levels. At an internal level, from surveys carried out in 1998, it was established that 86 % of the Bolivian population thinks that corruption is a serious or very serious problem in the country. This situation has not changed over the last few years.

The CSUTCB (Confederation of the Rural Workers of Bolivia - Confederación Sindical Unica de Trabajadores Campesinos de Bolivia) expressed the reasons and state of the conflicts:

*In April and September of 2000 we have reconstituted the Tupac Katari's revolutionary struggle: to surround the cities where political power reigns. It has been a test and simultaneously a model for the formation of new revolutionary settings for future struggles. Now the indigenous movement stands straight, tall, conscious of who it is. We have raised the peasant farmers of origin and the indigenous to a higher, more organized and prepared level. Now the indigenous question is not only the question of the land, as theorists argued but it is the question of this original indigenous nation; it is the struggle for its territory and the Power.*

The intensification of the conflict put the government and the population against a wall because of the absence of perspectives on solutions. The mediation of the Catholic Church was requested, along with the Ombudsman Office and the Permanent Human Rights Assembly, which are institutions that still have the capacity to summon and give credibility to Bolivia. These institutions, with the sup-

port of some NGOs, particularly of CARITAS and the Net UNITAS, formed a facilitating commission to promote dialogue.

As a result of negotiation, an agreement was signed with 50 commitments by the government on: (1) laws and guarantees, (2) land, (3) water resources, (4) environment and biodiversity, (5) economy and (6) coca. These were the bases on which the various demands were organized. Specific demands in the negotiation which the government agreed to:

1. Lands: The government agreed to modify and amend the INRA Law. In the interim period, it agreed to continue the restitution processes under the peasant farmers' supervision. By means of a decree, the government provided 3,800,000 hectares for peasant farmers, settlers and indigenous peoples. It also agreed to suspend evictions that affect the peasants without land in the Chaco and Ixiamas.
2. Water: The water law projects were closed and a commission to evaluate the situation of water resources and other possible projects was formed.
3. Environment and biodiversity: By means of a decree, the experiments for genetically modified food production were suspended until a consensus on its regulation can be reached. The participation of 50% of rural, settlers and indigenous organizations in the administration of protected areas was established. Compensation to communities for oil spillage by the company *Transredes* was needed.
4. Economic issues: The government promised: to provide technical teams that advise the organizations in the production of integral plans for rural development; to support small producers' exports, eliminating obstacles in exporting and in importing materials; to finance the construction, equipping and refurbishment of rural markets with resources from the HIPC II (Initiative for Heavily Indebted Poor Countries) and the transference of new funds to the municipalities, distributed depending on the poverty indicators; to create a commission that elaborates an offer allowing the transfer of the rural markets' organization and property to their organizations; commissions were created to work on the production of organic fertilizers, a gov-

erning commission for coffee production, and a commission to study donations. The government promised to offer peasant farmers' products the same treatment that it grants national sugar production and undertook to accelerate the establishment of technological development foundations and to organize informative seminars to include the rural and colonizing workers in the social safety system.

5. Coca leaf producing areas: The government undertook to respect the legislation on traditional farming areas and on the industrialization of the coca leaf. Most importantly, new military bases for the struggle against drug trafficking in the areas of the Chapare and Yungas will not be constructed.

Other results from the agreements were the liberation of prisoners, and compensation for the injured and families of the deceased from the events that occurred when police and army officers disrupted indigenous peoples' demonstrations violently.

The institution identified by the Government to carry out policies and apply laws in the Traditional Indigenous Territories was changed from the Vice Department of Matters for Peoples of Origin and Indigenous (VAIPO) to the Department of Peoples of Origin and Indigenous, headed by a minister chosen by consensus at the negotiation tables. Meanwhile, efforts continue to fulfil the 50 commitments in the agreement and/or to explain why they have not been fulfilled. These efforts are current in the national debate, and demonstrate difficulties that foresee a rough climate in the conflicts expressed since April 1991.

### **The 2000 National Dialogue**

Dialogue I (1997) existed as a precedent for conciliation and public policies definition with the participation of the general public. In it, the need to consider poverty as an aspect of central public policy was outlined.

For the accomplishment of the 2000 National Dialogue, it was necessary to lead other participation processes, including: the Jubilee Forum 2000, the Producers' Link Committee, the dialogue of East Peoples of Origin Council, meetings of Development Private Institutions, meetings of Rural Women of La Paz, and the National Council of Ayllus and Markas of Qullasuyu.

In its beginning, the dialogue was called to define, through participation, mechanisms of assignment and social control of the resources coming from the debt pardon (HIPC) on the basis of a social agenda. Nevertheless, the participants agreed to include an additional economic agenda and a political agenda. In terms of the approach and the perspectives the National Union of Institutions for Social Action Work (UNITAS) stated:

*International cooperation gives a lot of money to Bolivia. Previously these resources were assigned by sector. What the cooperation is asking for is to coordinate the demands between government and civil society to establish their needs. It is not a question of making a strategy for Poverty Reduction for HIPC resources, but creating a strategy of Poverty Reduction for the country with HIPC resources, together with the country's resources, prioritizing needs. In addition, it is necessary that the general public take part in this process.*

- On the Social Agenda primary actions were decided on for poverty reduction on issues of road infrastructure, production support, education, health, basic repair and lands. Problems were also identified that prevent poverty reduction, mechanisms and criteria of assignment of the resources, aspects related to regional development, civil participation and the political institutional framework necessary for the struggle against poverty.
- The Economic Agenda considered problems and solutions of production such as: productivity, competitiveness of the economy and capacity of the productive system to generate employment. Four areas of action were identified: technological innovation, State reforms, promotion of private sector participation, productive use of HIPC II resources, and dialogues as mechanism of policies conciliation.
- The Political Agenda is an input that will help to define the institutional framework for the struggle against poverty. This process assembled different sectors of civil society, the political system and representatives of the State in a local, departmental and national level to treat aspects in relation to democracy, transparency and citizenship. Mentioned in this consultation were



aspects referring to the deepening of democracy, extending areas of participation and the exercise of full citizenship. Likewise, the need to introduce institutional reforms that improve the struggle against corruption were discussed.

As a result of the dialogue process, the Strategy for Poverty Reduction in Bolivia (SPRB) was elaborated and put into discussion. The strategy considers that the deterioration of productivity, associated with extreme poverty, is a manifestation of the limited performance of different production factors (i.e. land, work and capital). This situation is the result of the lack of capital and technology, as well as the inadequate managing of land and lack of irrigation infrastructure.

In the National Dialogue, vulnerability was identified as a problem associated with water shortage, natural disasters, the lack of land legalization, and reparation and unemployment. As well, the lack of environmental protection, and topics associated with smuggling were mentioned as problems. During the National Dialogue serious limitations and problems in the public organs leading public investments were identified in particular problems of low efficiency and transparency in Investment Funds (FIS, FDC and FNDR), in the Departmental Prefectures and Municipal Governments themselves.

Among the actions to reduce risk and vulnerability levels several points were mentioned: need of information and training on the law INRA and the law of Environment; the depoliticizing and institutionalization of the INRA; the development of a process of legal reparation and land entitlement in rural areas; the protection of lands by means of defensive environmental systems and forestation with technical and financial assistance; and environmental conservation by means of integrated and sustainable managing of the natural resources. Problems were derived from centralism in State institutions, which prevent seeing local demands, creating barriers to the participation of certain population groups in public resources, and provoking not only inequality of opportunities and capacities but also of political representation.

In the framework of Dialogue 2000, the general population identified political and institutional problems that affect public management, particularly corruption, bureaucracy and centralism. The overcoming of these problems as indispensable conditions to overcoming poverty appeared as one of the central concerns of the popu-



lation in the Social and Political Agenda. The fulfillment of these aims needs a suitable institutional framework that emphasizes the struggle against corruption and assures competitiveness, uncertainty reduction and equality of opportunities. The SPRB proposes to concentrate efforts and resources destined to make policies more efficient, with a double purpose: to indicate the most important courses of action to promote the country's integral development, and to raise the population's quality of life, particularly of the poorest people.

#### *Use of Resources*

The agreement reached at the National Table defined that 70% of the HIPC resources available every year will have to be distributed in accordance to the Index of Basic Unsatisfied Needs (NBI) of every municipality, so that the poorest municipalities in the NBI get a larger quantity of resources. Thirty percent of the remaining resources will be distributed in equal parts among the nine departments, based predominantly on geographical condition and not depending on population criteria. This would facilitate 'territorial equity.' The remaining amount per Department will be distributed among all the municipalities using poverty criteria.

The Investment and Development Funds, restructured recently since the conformation of the Funds Board of Directors (DUF), will offer financial support through credits and co-financing of different municipal projects as defined in the SPRB.

#### **Evaluation of the Dialogue Process**

The opinions on the Dialogue 2000 process and the Strategy (SPRB) monitored by the Labour and Agrarian Development Studies Centre (CEDLA) are diverse. The institution defenders affirm it constitutes the participation and conciliation authority most representative and democratic. Its critics coincide indicating that:

- The process is not representative because the most representative organizations of the country such as the Bolivian Central of Workers (Central Obrera de Bolivia - COB), *cocaleros*, teachers, peasant farmers and industrial workers were not present. The defenders of the process affirm that they were not there because the organizations exercised the right not to take part. The president of the CSUTB clarifies that although initially

they were to have been invited, they were not invited in response to the April conflicts, while the September clashes were a rejection for not having been invited to the national dialogue in June.

- The resources will not serve to successfully implement the strategy because (i) the bureaucracy and political corruption will prevent the resources from arriving at their destination and (ii) the resources are prioritized to the businessmen of the East, which excludes the peasant farmers of the West from the resources; (iii) because the obtained resources are lower than the negotiated resources in the previous years.
- The process only included municipal or territorial vision and problems, with participants from the political and municipal system. In accordance to the invitation extended to the Municipalities, the following should have been present: the municipal mayor, the Town-council vice-president, the president of the safety committee and one woman chosen by the latter.
- As for participation of the civil society, NGO participation was favoured before that of the fundamental organizations.
- There was no will to listen to civil society.
- It was a mechanism imposed by financing institutions.
- It is thought that the demands of the community based organizations were not attended to adequately because (1) the demands were of a regional character and immediate problems were prioritized before structural problems; and (2) because the Government only contacted the highest level of leaders.

*Some comments:*

- According to the COB, 'it is a strategy focused on benefiting and improving the situation of private companies, but not of improving and answering the issue of employment in the country;'
- The Association of Small Producers that has actively participated in the process states that since 1985 economic policies that achieve and promote stability have

been favoured, but that they negatively affect the people's economy;

- According to Small Producers Link Committee coordinator, the strategy of struggle against poverty left the idea of improving small producers' income and employment as a requirement to attain benefits that reach the people and reduce poverty;
- In media declarations, the following were expressed as critiques to the final SPRB program document: (i) The cultural approach is eliminated; (ii) Small producers are eliminated as fundamental actors in the struggle against poverty; (iii) The productive orientation for the municipalities is eliminated; (iv) The strategy does not assume a better quality of life for the poor or sustainable improvements; (v) The SPRB does not reflect the wealth of the processes before the different stages of the Dialogue; and (vi) It presents serious inconsistencies in its goals, indicators, follow-up actions and prior actions.

### **CONCLUSIONS: LESSONS LEARNED**

There is no doubt that the indigenous peoples in Bolivia have been very successful in using conflict-driven approaches to secure changes in national legislation and a space for dialogue to protect and promote their rights and policy priorities. Nevertheless, there are limitations to the ability to use and enforce the legal tools now available, and to the effectiveness of the spaces of dialogue to which they now have access.

These conflict-driven approaches were pushed by the extreme situation of poverty, coupled with a lack of respect for rights that characterizes Bolivia. However, Bolivia has a great abundance of resources that if used correctly can lead to a reduction in poverty and in conflict. The questions the Government and international cooperation partners have to ask is how they can support the indigenous peoples in protecting and drawing on the resources available.

This case study attempts to respond to that question. The indigenous movements were accompanied by NGOs and international cooperation in the development of their capacity to organize at the local level, and press for changes in national legislation and policy-making. At the same time, the indigenous peoples were supported

by international cooperation and even the Government in building up organizational capacity around production and marketing, a process that fed into and sustained the other two processes. This three-pronged strategy has given very good results, although since it is a process there is still much to be accomplished in terms of increasing the effectiveness of the tools and spaces developed.

A focus on only the 'political' side of the equation, without the two other components, will in the long-run have difficulties of success in changing strategies based on conflict to strategies based on conflict resolution and prevention. For that, attention to the material side of things needs to receive equal attention, integrated into the development of the organizational capacity of the indigenous movement. The indigenous peoples in Bolivia have three fundamental tools: (i) They inhabit the territories with the most biodiversity in the world – which constitutes the biggest source of wealth; (ii) The lands and the resources are indigenous property and they are in charge of their administration; and (iii) They have known and managed their traditional lands and natural resources since time immemorial.

There are two challenges:

1. The indigenous peoples have little knowledge of the markets and do not possess capital for production or to implement marketing systems. In normal circumstances they do not possess the conditions to access resources from private financial entities, for example due to insufficient credit guarantees or fear of the financial system;
2. They do not have easy access to funding because of difficulties in meeting the requirements of the donors and/or technical assistance contracts. The development institutions have not made these requirements flexible to enable their adaptation to different conditions and cultures; for example: in the jungles and indigenous territories no suppliers (fishermen, boatmen, food cultivators, guides, etc.) provide invoices, which are demanded as legal support for expenses. For 'consultants' a three pages long resume is demanded, even in cases where the person who should be contracted is the 'wise old man' of the community or when it is merely a person who has the experience to be shared.

In summary, international cooperation should continue to work on a three-pronged strategy in an integrated manner, one that focuses on developing and enhancing the capacity of indigenous peoples to mobilize at the local and national levels, to press forward their demands and develop their capacity in terms of economic production and marketing. This is especially true in contexts where poverty is endemic as in the case of Bolivia, and political structures respond only when there is mass movements and mobilizations and protests for more participatory democracy. As this case study shows, using conflict-driven approaches can begin to create the basis for future relationships between the state and its citizens that depend more on dialogue than on conflict.

## Appendix A

### Demands of Indigenous Organizations

#### Land

- Approval of the Indigenous Law proposed by CIDOB;
- Recognition of indigenous territories;
- Autonomy in the use and management of natural resources;
- To give priority to territory, mass media, participation, strengthening of indigenous organizations, direct and autonomous management of natural resources, recognition and conservation of own culture, direct financing for projects for natives and legal status for all indigenous organizations;
- To generate patent systems to register our knowledge as property of the indigenous peoples, when we have to make our knowledge count;
- Need for legal title deeds for communal properties 'far from the individual title deeds'.

#### Economic Production Demands

- Prioritization of roads, electricity, improvements of pastures and water;
- Training and information for self-management in de-

centralization, organization, administration, computation;

- Training and information for self-management in technical agricultural and handcrafting centers;
- They must strengthen us because 'we are not isolated from the market;'
- To face the situation of monoculture phenomenon on the basis of technical assistance and credit, which when deteriorating leads to the disappearance of support and subsidies, increasing migrations;
- To gain better knowledge of the local economies with their diversity of activities, where the people are capable of continuing agricultural efforts in spite of the fact that calculations show that they are not profitable. There exists a whole economic strategy, a strategy of life that justifies it, since a misunderstanding was detected between the culture of development promoted and the self-development stimulated;
- To alter the offers of NGO's, IBTA, CSUTCB with CORACA that go hand in hand with the package of the 'green revolution,' and understand that what happens in Jacha Carangas is the awakening of the sleeping giant;
- To stop denying traditional agriculture and to learn to know it;
- To work with peoples and their ethnic and syndical territories, without subordinating to the administrative departmental provincial logic;
- To go from studying the isolated textiles to studying the territory, from productivity to the management of natural resources and economic sustainability, extending visions and breaking models;
- Not to try to refer to processes but to accompany them. Self-development is defined by its actors and not by its actions;
- To reverse efforts and investments that for five centuries destroyed and eroded knowledge. The Andean technology exists but it has not been developed. The

key is in the Andean, in his knowledge and managing of the environment;

#### Demands in Respect to Markets

- To find our own economically viable ways that are competitive in the market, securing and preserving territories and resources;
- Access to technology and new discoveries;
- To develop a new moral order that allows natives to take part in both economies successfully and without losing the social solidarity and identity of their people;
- To intervene in the market in the globalization process, with self-valorization and identity, supporting customs and valuing the environment and knowledge;
- To take precautions in market dealings that allow a high economic income but also generate undesired changes;
- Balance between production for self-consumption and the one destined for the market, without sacrificing either local ecosystems or identity;
- To recover knowledge as a source of revenue;
- To know capitalism but not to be afraid of it and to compete, demanding uniform rules;
- To preserve nature and recover it, generating income;
- To develop native based ecotourism with a high concentration of flora and fauna, which is easy and very visible, with an organized indigenous population and close communication infrastructure;
- Not to think about the Amazon from the Andean perspective;
- Instead of bringing in animals, which are foreign to the zone with adjustment and food problems, which destroy the woods, it is necessary to develop a technology to increase the production of Amazonian fauna;
- To develop indigenous economic strategies with all the actors whose interests complement each other, looking for alliances with related financial groups, achieving agreements on the exchange of technology, trade and cooperation;

- Care and evaluation in the projects, guaranteeing respect of different cultures and own organizations, eradicating paternalism;
- To prevent our poverty from being in our minds, preventing others from promoting cows when the people eat fish;
- The promising Amazonian crops are: palm heart, which has a high world demand, without visible saturation over the next 20 years, either packed, in flesh, or fresh; the *camú camú*, a native species of Amazonian fruit tree, which also has a growing market, profitable in areas of high rainfall, and adapted to associated crops such as yucca, pineapple and others like '*uña de gato*,'
- Use of aquaculture for several plant and animal species;
- Not to neglect the managing and breeding of alligators in humid zones, the breeding of butterflies, the production of crystallized serpent poison, or the breeding of rare parrots for zoos;
- To prioritize agroforest diversification ;
- To prioritize communal forms of handicraft marketing and production;
- To emphasize technical assistance with appropriate local technologies;
- Development of integrated systems of river and road access;
- Suitable management and legislation for the fishing and mining industries and the extraction of wood;
- Horizontal interchanges of interinstitutional cooperation;
- Creation of a financial mechanism such as the National Fund of Indigenous Development (FONDI), using the FDC as the first step to canalize urgent resources, by means of specific internal mechanisms.

#### Social demands

- Service structure depending on the territoriality of the *ayllu* and its participation;



- To prioritize solutions to basic education, literacy and health problems;
- Training and information for self-management on history and culture of the *ayllus*;
- Training and information for self-management on education and health;
- Endowment of infrastructure of our own radio communication;
- To solve the problem of 79,000 Aymara province inhabitants, where 92% lack basic sanitation standards, 84% lack electricity and health services and 82% do not have access to education;
- To preserve respect for the elderly, recognizing their role and wisdom, helping the ones that know about nature and healing (shaman, witches, *payes*, midwives, etc.), without exchanging them for health promoters and medical positions. It is a question of coordinating efforts without a different knowledge replacing ours but complementing it;
- Development of bilingual education as a cultural base;
- To improve modern medicine without disdaining traditional medicine.

### Endnotes:

<sup>1</sup> Editorial Note: This case study was written in 2001, following the water conflicts of 2000. However, the central issue of poverty as a mobilizing force remains a germane and relevant issue in Bolivia.

<sup>2</sup> Quispe Callisaya, "Aymaras and Quechuas: Towards a Multi-ethnic State" in *Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends*, (2000), 213-241.

<sup>3</sup> *The Indigenous World 2004*, (2004), 165.

### Chapter 3

## Conflict Prevention and Resolution in Colombia: Empowering Indigenous Communities in the Sierra Nevada and Perijá

Rosa Salamanca\*



*This case study describes the work of the Association for Interdisciplinary Work (ATI) in empowering indigenous communities in the midst of an ongoing and complex conflict situation in Colombia. It illustrates the importance of an approach which combines capacity-building initiatives with cooperation and participation by a variety of organizations to ensure that conflicts are addressed and appropriate methods for their resolution found.*

Indigenous peoples in the Sierra Nevada de Santa Marta and Perijá Sierra are an important part of the 85 different ethnic groups existing in Colombia. Working with Iku (or Arhuaco), Kankuamu, Kogui, Wiwa, and Yukpa communities in the mountain ranges of the Sierra Nevada de Santa Marta and Perijá in the Magdalena and Cesar Departments of Colombia, respectively, the ATI has facilitated a process of dialogue, training, planning, organization, and action oriented towards the diminution and prevention of the impacts of ongoing violent conflicts. This process drew on and was guided by the indigenous organizations themselves, facilitated by their cultural cohesion, their commitment to non-violence, their vision of peace, and their struggle for autonomy. At the same time, the integration of many different parties into the process, including government, NGOs,

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\*Association for Interdisciplinary Work (ATI), Bogotá, April 2001.

and international actors, among them the United Nations, has proven to be a crucial element in the initial successes of this endeavour.

While the death, destruction, and displacement caused by the armed conflict tends to receive the most publicity in the studies undertaken of the indigenous peoples in Colombia, the war masks a whole multitude of other conflicts both in this region and in Colombia as a whole. Land tenancy, environment, and culture are some of the factors that lead the indigenous communities to confront each other, the rural population, the State and the armed parties.

To a large extent, the underlying reasons for these conflicts are interrelated and demand a comprehensive approach. In response to this situation, the process facilitated by ATI has concentrated on developing and promoting agreements and understandings among all the key actors to the conflicts on the importance of harmonious coexistence based on an inter-ethnic and inter-cultural tolerance and respect. The formation of a permanent working table in 2004 as a way to institutionalize this process and thereby give it sustainability is ground for hope that this attempt to build peace will bear fruit.

## BACKGROUND

This case study focuses on the Kogui, Kankuamu, Iku, Wiwa, and Yukpa indigenous peoples in the Sierra Nevada de Santa Marta of the Magdalena Province and the Perijá region of the Cesar Province in northern Colombia. The Sierra Nevada de Santa Marta is the highest snow mountain located in a coastal zone in the world; it shares territory with Magdalena and Cesar Departments or Provinces in northern Colombia. The Sierra de Perijá is a natural barrier that marks the frontier with Venezuela.

Sharing a border with the Republic of Venezuela, Cesar is regarded as part of the Caribbean region, and is culturally very diverse. As a result of the migrations stemming from the War of the Thousand Days (Colombia's 1899-1902 Civil War), the Banana Massacre of 1928 and the violence of the 1940s and 1950s, there is a substantial presence of *colono*-mestizo and white settlers from outside the area - and Afro descendant peasant communities in addition to the indigenous peoples. Land disputes between the indigenous peoples, settlers, and peasants are a major source of conflict, especially in the border area of the Serranía del Perijá where the Yukpas live.

Political and economic power is highly concentrated in the

large landholding families of the region, who control the political parties as well as the government posts. With little industrial development beyond basic food processing, Cesar's assets are concentrated in agricultural and livestock production. After the collapse of the vibrant cotton, rice, sorghum, and sugar cane industrial production with the introduction of economic liberalization, large cattle ranches dominate the flatland regions of the department, and have become the main source of wealth of the region. Also, African palm cultivation is being intensively promoted by powerful economic sectors as a substitute.

Due to their difficult topography and strategic location, Magdalena and Cesar Provinces have long been a strategic region for a myriad of players. Smuggling has a long history in the region, focusing on liquor, household appliances, automobiles, and gasoline. Drug producers have for many years used this area for the cultivation and distribution of illicit crops. Due to its vicinity to Guajira Province and the sea (see map above for details), the Cesar Province is recently also being used as an important corridor in the illegal weapons trade and for the provisioning and mobilization of troops by those involved in the Colombian armed conflict.

Historically, the National Liberation Army (ELN) was the guerrilla group with the most presence in the area, mainly for rearguard actions and security. However, two other guerrilla groups operating in Colombia, the Revolutionary Armed Forces of Colombia (FARC) and the People's Liberation Army (EPL), have increased their presence in the region. The Self-Defence Units, paramilitary groups which were formed at the end of the 1980s, promoted and financed by economically powerful groups in the region and by front men for drug traffickers are also operational in the area. In the mid-90s they were strengthened with the support of self-defence forces from other areas of Colombia, thereby establishing a strong presence in the northern and central areas of Cesar Province. These paramilitary groups have camps in the flatlands from which they patrol the region and launch incursions into indigenous and peasant regions. The Colombian army that for decades supported covertly paramilitary groups has also entered into the fray, engaging today in military actions geared toward a 'reconquista,' reconquering of territory, fighting even their former allies

This armed presence has had a deep impact in the region, especially on indigenous peoples. Subject to pressure and intimidation, massacres, and military confrontations, they have been forced to leave their communities as an increasing number of clashes take



place in their territories in a struggle for control waged by guerrilla groups, the paramilitary and government forces. Government military operations linked to the war on drugs entail indiscriminate aerial spraying with chemicals over coca, poppy and marijuana plantations. A major impact of these operations is displacement, with 3,761 persons, the majority indigenous, displaced by the conflicts in 2000 alone, according to reports from the NGO Human Rights and Displacement Research Association (CODHES). This has increased with the continuing conflict.

An estimated 30,000 people were displaced in 2003 as a result of the fumigation of illicit crops ordered by the government to deprive armed groups of a major source of income (CODHES, 10 December 2003). Fumigations have stripped peasants of their basic means of survival by indiscriminately destroying food alongside coca crops. Most people displaced by fumigations remain unrecognised, as they are considered 'migrants' by the authorities and are excluded from official IDP registers. The state has not provided affected populations with substitution crops, and it has ignored proposals to replace aerial fumigations with pesticides by manual eradication of coca. An estimated total of 35,000 families have been uprooted in connection with fumigations since 1999 (CODHES, 29 October 2003, p.26).<sup>1</sup>

Civil society organizations and representatives have also suffered severe repression, as the social conflicts and armed conflicts blend together. Many union, community, peasant, women's, indigenous and peace and human rights leaders who have sought to claim their rights before the state or demand respect from the armed actors for their decision to stay out of the armed conflict have been assassinated. This has silenced the social sectors.

### The Indigenous Peoples

*As you know, the Sierra Nevada de Santa Marta and the Serranía de Perijá are territories that have always been inhabited by our indigenous peoples. These are the territories our different Fathers and Mothers left us, and although we have faced multiple problems, we persevere in them, complying with our different laws of origin and trying to preserve life in them. Today we face many problems but continue to believe there are ways to have our rights recognized and our autonomy respected, within a climate characterized by proposals and agreements reached between the different entities, organizations and our peoples. Indigenous Community Authorities*

The indigenous people of the Sierra Nevada de Santa Marta regard themselves as sister peoples who inhabit the heart of the world. This is the traditional image of their territory. Their mission in life, according to their original laws, is to contribute to caring for the balance of nature. This is accomplished by rituals known as *pagamentos* (sacrifices) in which Mother Nature in her different manifestations is given back that which has been received. *Pagamento* sites are found in different locations throughout the Sierra, many of them in urban areas or in private lands, which makes access difficult, thus creating a situation of continued imbalance.

The legal organization of the indigenous communities, as understood under European-based law, began in 1890, with a decree issued through Law 89 that established indigenous *resguardos* or reserves, given to missionaries and white or mestizo wealthy sectors. The indigenous governing bodies of these *resguardos*, also established by this law, were called *Cabildos* or Indian Councils. Their authorities use names borrowed from the Spanish Conquest such as "Governor," "Bailiff," etc. Today these governing bodies have been adopted and have become an integral part of the institutions of the indigenous peoples themselves, recognized as both civil and indigenous authorities.



Despite advanced state legislation enshrined by the Constitution of 1991, that include progressive measures and law geared towards recognizing the autonomy of indigenous peoples and to provide for their development and strengthening in terms of government, territory, identity and special jurisdiction, there are important limitations. Regarding the issues of government and territory, while indigenous authorities are recognized as natural stakeholders for the needs of their respective *resguardos*, they do not enjoy the same status municipal mayors have.

Attempts to remedy this have not made headway as a result of the regions' political and economic interests which oppose such recognition. As a result, indigenous authorities and the funds they receive from the government (under the Land Act, Law 60) must go through the local mayors of the respective municipalities where the *resguardos* or reserves are located. This gives rise to relations that are not always respectful; instead they are characterized by the subordination of the Indigenous Authority to the majority non-indigenous public servants, thereby undermining indigenous autonomy. The creation, legal recognition and extension of indigenous territories are dependent on the vicissitudes of land interests in each area.

Further, legal traditional practice, although recognized, has not been internally adopted with all its potential among indigenous peoples.

While the five indigenous peoples which are the focus of this study, the Iku (or Arhuaco), Kankuamu, Kogui, Wiwa, and Yukpa, share common cultural roots and similarities in terms of the conflicts they face, they speak different languages and have significant differences in terms of their historical responses to conflict and development of capacity to struggle for their rights. The following is a brief description of their historical background:

1. The Arhuaco people are perhaps the best known of the five, due to their leadership at the national level on struggles for rights, and the international exposure they have had as a result. Numbering some 18,000, they have lost a great portion of their territory. Having fled the highlands seeking refuge from settlers and evangelists, their *resguardo* was established relatively recently, in 1983, as a response to their demands for legal protection of their territory in the face of encroaching colonization. However, this process was not perfect: when the reserve was created, numerous sites of great spiritual significance to the community were left outside the boundaries, while several hundred peasant families were included. This has created problems.

The Arhuaco are mountain farmers whose production system requires cultivation areas, fallow areas and pastures. The lands they currently hold are not appropriate for their production system with the few fertile areas located in narrow riverbanks and on slopes. Just as with the other peoples from the Sierra, agricultural production is mainly for self-subsistence. The Arhuaco grow coffee and avocado as income-generating crops, but a fungus disease that killed 90% of the avocado plantations in the Sierra recently struck the latter. The whole area was subject to aerial spraying with Paraquat, a well known pesticide to kill marijuana plantations in the 1970s. Later, the same populations were fumigated with Glyphosate, a defoliator aimed at ending the coca plantations that appeared in the late 80s due to mestizo settlers. Serious health problems, including tuberculosis and a rising rate of cancer, are only one of the adverse impacts of the Arhuaco's overall situation.

2. The Wiwa and Kogi people share many of the problems faced by the Arhuaco. These two peoples share their *resguardo* and together number approximately 6,000 individuals. Just like the Arhuaco of the Ika People, the Wiwa and the Kogi maintain their traditions and face serious land problems.

3. The Kankuamu indigenous people have some differences



from the first three. Numbering some 16,000 inhabitants, they have experienced a major loss of cultural identity, mostly their native language, due to incursions from the West, evangelization processes and the impact of foreign forms of production. The Kankuamu have established a strong organization which is active in strengthening their cultural identity, unity and autonomy as a people. However, this has been affected by the armed conflict which is particularly acute in the area where the Kankuamu live. Their situation is made more difficult by the fact that they lack legal recognition of the status of their territory as a *resguardo*. This bars them from access to funds from the government and increases difficulties in strengthening their autonomous processes.

In contrast with the other indigenous groups, the Kankuamu are characterized by their interest and skills in trading. While agriculture is their main occupation, trade is their second most important source of income. Due to the loss of cultural identity and their fame as merchants throughout the region, relations between the Kankuamu and the other indigenous groups have not been easy. However, this is changing and recently, they have been engaged in developing and strengthening their contacts with other indigenous peoples.

4. The Yukpa, numbering some 7,000 people, live in four *resguardos* in Serranía del Perijá on the border with Venezuela, where they live adjacent to the Venezuelan Yukpa peoples. While the total area currently occupied by their *resguardos* is 25,000 hectares, only 2,000 hectares are in their possession and under cultivation. The remainder of their lands is either in the hands of settlers and peasants who hold title, or unsuitable for cultivation as they are located on the hills and crests of the Sierra or located within watersheds and forests.

The Yukpa have a semi-nomadic economy, moving in accordance to their hunting, fishing, gathering and cultivation seasons. This mode of survival has been seriously threatened due to the lack of land and appropriate habitat to such degree that the Yukpa have abandoned their traditional areas and migrated to urban areas where they live in poor conditions seeking some kind of solutions to their current plight. The lack of land and the devastation of their subsistence crops by indiscriminate spraying by the authorities in their campaign to eradicate opium production in the Serranía have led to severe malnourishment of the entire population. The Yukpa are on the verge of extinction, but the State has not displayed much concern for their situation. If urgent measures are not undertaken to

remedy their situation, it can worsen and lead to open confrontation between the peasant population and the indigenous peoples.

## A PROCESS OF EMPOWERMENT

### Indigenous Organizations and Non-Governmental Organizations (NGOs)

The indigenous peoples of the area have been key actors in searching for solutions to their conflicts. Four organizations are noticeable in this regard: the Tayrona Indigenous Confederation (CIT) of the Arhuaco peoples; the Kankuamu Indigenous Organization (OIK); the Wiwa-Kogui Indigenous Organization; and the *Cabildos* or Councils of the Yukpa People. These organizations in turn have created the Association of Indigenous *Cabildos* of Cesar.

Although at times their activities have varied in intensity, these organizations are engaged in a continuous struggle to secure recognition and respect of their socio-cultural autonomy. Clear examples include land recovery, establishment of *resguardos*, and autonomy in education and health care, among others. Some of their recent achievements include the creation of a company that administers health care resources, and another which provides regional health care services, the Dusawaki Company.

The indigenous peoples are highly recognized nationally, especially for their cultural strength. They are in close contact and cooperate with indigenous peoples' organizations in Colombia including the National Indigenous Organization of Colombia (ONIC), the Cauca Regional Indigenous Council (CRIC), the Tolima Regional Indigenous Council (CRIT), and the Indigenous Organization of Antioquia (OIA). In addition, they have strong linkages with wider networks of civil society that include non-indigenous groups, such as the Civil Society Permanent Assembly for Peace; the Human Rights, Democracy and Development Platform and the recently created network of Paz Colombia.

The Association for Interdisciplinary Work (ATI) has been supporting many of these processes over the last 15 years. The ATI has based its work on a comprehensive conception of human rights which recognizes and applies the principles and guidelines of international human rights standards including those of the International Labour Organization (ILO). The ATI and the indigenous peoples have also promoted and drawn on the Constitution of 1991, which affirms the ethnic and cultural diversity of the nation, and

recognizes the territory, government and judicial systems of the indigenous peoples in the country.

As a result of its close cooperation and assistance, the ATI has gained the trust of the indigenous peoples and their authorities. It was at their request that the ATI embarked on the facilitation of a process directed towards preventing and resolving the conflicts and violence suffered by the Indigenous Peoples of the Cesar and Magdalena Provinces.

### **Analysis, Strategy Development and Inter-Institutional Coordination**

The process of conflict prevention and resolution started out as a series of workshops that analyzed the regional and national contexts regarding the status and degradation of the armed conflict. Indigenous authorities and leaders and the ATI team participated in these workshops. A joint strategy was formulated in the hope of minimizing the impact of the conflict in these territories.

The first step in this strategy was the formation of an Inter-Institutional Humanitarian Mission to research the nature of the conflicts, and to begin a process of engagement of the various actors in dialogue on how to prevent and solve these conflicts. This basic concept drew on several processes promoted by a variety of organizations in different parts of Colombia including: (i) the process developed by the Indigenous Organization of Antioquia (OIA); (ii) the social and political experience of La María, a space for social, civic and grassroots organizations to collectively consider constructive solutions to the serious humanitarian crisis and to the deterioration in the quality of life that took place in Cauca Province in 2001; (iii) the experience of other indigenous organisations such as the Tolima Regional Indigenous Council (CRIT); and (iv) human rights and international human rights practices and law. Reference was also made to the Inter-Institutional Humanitarian Mission to the Cauca Valley region.

The strategy developed during the workshops called for a second step of work focusing on the youth, strengthening local authorities and governance, application of the traditional justice system of the indigenous peoples, institutional capacity-building, national and international visibility of the problems, a policy for relationships with other civil society actors and organizations, and unilateral dialogue with the armed parties. While the intention was not to prevent conflict in the strict sense of the word, since there already

was conflict in the area, the Inter-Institutional Humanitarian Mission did seek to prevent escalation of the conflict, and to attenuate the impact of violence on indigenous peoples. The long term goal is to contribute to the consolidation of peace in Colombia, recognizing the diversity and autonomy of indigenous peoples.

The process for the formation of the inter-institutional mission from its inception was at three levels and included the following:

- i. At the international level – there was the involvement of several UN Agencies, such as the Office of the UN High Commissioner for Human Rights which offered its support, and the UN High Commissioner for Refugees (UNHCR), as well as the International Organisation for Migrations (IMO);
- ii. At the national level, government offices such as the Defensoría del Pueblo (Ombudsman’s Office) and the Office of the Section on Ethnic Groups of the Attorney’s General were invited and participated, as did government agencies like the Office of the Vice President, the Human Rights Office of the Interior Ministry, its Office on Ethnic Affairs, the Social Solidarity Network (responsible for humanitarian assistance to Internally Displaced Peoples), and the liaison office between the Solidarity Network and UNHCR. NGOs were also key players, and included the Jesuit-run research centre, CINEP, which played a particularly active role, and other NGOs such as CODHES (on displacement), and ILSA (on legal support), as well as networks such as the Civil Society Permanent Assembly for Peace, Redepaz, and the National Women’s Network (all active in peace building);
- iii. At the local level, although these indigenous peoples share territory with Magdalena, the focus was on Cesar Province. The office of the Governor of Cesar, municipal mayors’ offices and, of course, indigenous organizations were crucial participants.

The different parties who were asked to participate in the process initially agreed without hesitation, given the situation in the region. This required efforts on the part of facilitators, in terms of locating and providing a context to the problem. This was done through a series of preparatory meetings. The methodology was the

identification of objectives, commitments, main issues and field work. The intention was to have a long-term process to which the participants were committed.

There were certain key factors that led to the participation of the various actors in the initial stages and in clarifying the goals of the process. A major element was the cultural cohesion of the indigenous peoples, their clear intention of not participating and being neutral in the armed conflict, their specific vision of peace and harmony, and the defence of their autonomy and sovereignty. Another factor was the national and international recognition these communities enjoy, their own self-perception and the fact of having the Sierra Nevada recognized as a site of Heritage of Humanity by UNESCO (1979) on the basis of its cultural and biological diversity.

The incorporation of government actors capable of making policy decisions was important, yet had certain limitations. At that time several governmental institutions faced criticism due to the high number of urgent actions they had not responded to. Among these, the problem of the armed conflict, its escalation, and the loss of legitimacy brought about by the government's limited results in the struggle against the paramilitary issue were all constraints in its effectiveness to resolve internal problems; all these problems influenced the expected results the government actors could deliver in this process. Despite these limitations, the Office of the Ethnic Prosecutor and the Interior Ministry were particularly active in the implementation of this initiative.

## **Implementation and Achievements**

Once the inter-institutional team was defined, preparatory meetings were agreed upon with indigenous authorities. The first joint field visit was started as the initial step in the agreed strategy. Field work was conducted among the different indigenous communities during this visit, as well as with local government bodies and the official armed forces, both army and police. The result was a preliminary assessment report of the situation which included a series of recommendations addressed to different government bodies at the national, departmental and local levels.

This report and its recommendations were delivered directly to each one of these bodies and also reported in various media e.g. press conferences, the Internet, television, radio, etc. Meetings were held with the indigenous communities to officially present the results of this first step, and the process was evaluated.

Funding was provided mainly by the indigenous communities and by ATI. Funding was also sought from the Interior Ministry, the World Bank, UNHCR and from the European cooperation agencies. However, each institution took care of its own expenses, except for the Office of the Vice President of the Republic, whose expenses were contradictorily subsidized by the indigenous communities.

The following achievements are initial successes of the process, and provide a base from which to continue implementing the strategy with good hope for further improvements in building a culture of peace based on inter-ethnic and inter-cultural understanding:

- Reactivating the National Commission for Human Rights for Indigenous Peoples, which consists of the Vice Minister of the Interior, the Office of Indian Affairs of the Ministry of the Interior, the Ethnic Prosecutor's Office, the Ombudsman's Office (Defensoría del Pueblo), the indigenous organizations OPIAC, CIT and ONIC, the Human Rights Office of the Interior Ministry, and the Office of the Vice President of the Republic;
- Initial agreement with the ELN regarding respect for the autonomy of the indigenous peoples explicitly included in the Costa Rica meeting document;
- Inclusion of indigenous issues and problems in the report of the UN High Commissioner for Human Rights;
- Commitment on the part of Ms. Mary Robinson, the then High Commissioner for Human Rights, to the assignment of resources to follow up on the situation of indigenous peoples, and support research on such;
- A special study on the topic of indigenous displacement and its distinguishing characteristics with respect to the rest of the rural population;
- Assignment of resources for human rights and international human rights law training for indigenous peoples and for the municipalities adjacent to the Sierra Nevada and the Serranía del Perijá;
- Establishment of Displaced Population Services offices in the municipalities of Pueblo Bello, Codazzi and

Valledupar, by the Social Solidarity Network and a commitment to provide services with the full participation of the indigenous peoples;

- Resources to prepare a code for relations between the IKU people and the armed actors, with a gender perspective;
- Revision by the Ombudsman's Office of the sentence in the municipality of Pueblo Bello, which affects the autonomy of the Arhuaco people;
- Commitment by INCORA, the Colombian Land Reform Institute (today called INCODER), regarding the purchase of seven plots of land for indigenous peoples;
- Discussion of an initial document on an inter-cultural humanitarian agreement;
- The possibility of holding an international meeting in the area, in support of indigenous peoples;
- National and international dissemination of information regarding the situation of the indigenous peoples of the Sierra Nevada de Santa Marta and the Serranía del Perijá caught in the crossfire;
- Appropriation of the national and local contexts by indigenous community authorities and indigenous peoples in general and greater knowledge of these contexts. One of the proposals made by the indigenous peoples in order to deal with the situation is their Life Plans. These Life Plans reveal their own initiatives on the management of their resources, government, territory, etc. Life Plans are fundamental to the autonomy process and to the growth of these communities, as well as a tool that shows armed parties that there is a clearly conceived project for the future, one that is different in terms of cultural recognition. Financial as well as political support for these plans and for the strategy developed to consolidate a global humanitarian agreement would significantly contribute to the survival of the native peoples;
- The formation of an inter-institutional Permanent Working Table to accompany the process and as a space for continued follow up of the recommendations prepared.

This process has also already been useful as a referent to the construction of similar scenarios in the nation. The international meeting initially conceived for the indigenous communities of the Sierra Nevada de Santa Marta and the Serranía del Perijá is now seen as a forum for all indigenous peoples in similar situations. On the other hand, this represents an entirely different approach to the Colombian conflict, not focused on drug trafficking or traditional politics, but on the survival of a group of peoples who are part of the heritage of humanity. If a humanitarian agreement is reached in the area, an important signal would be delivered to other indigenous peoples and eventually to other sectors as well.<sup>2</sup>

### LESSONS LEARNED

Engaging in conflict prevention and conflict resolution in social and geographical spaces that are in the midst of armed conflicts and have a tendency to escalate has a series of methodological and approach implications which assistance-oriented actions, whether specific or ad hoc, must overcome. The challenge consists in building a social infrastructure for peace during times of war. For this reason a holistic view of the elements which characterize the conflict situation was used from the outset, one that is based on the interests, needs, values and culture of the indigenous peoples and focuses on the responsibility of the state and the specific strengths of civil society organizations participating in the working table.

Several elements jump out of this experience:

- The political and social sustainability and the levels of inter-institutional coordination it has achieved, with an understanding of the complexity implied by thematic agreements between spaces and spheres that are diverse in nature. This indicates that it is possible for a variety of organizations and entities, local, state, NGOs, national civil society organizations, international organizations and the UN to work together despite differences in interpretation and viewpoint. The strengths of the different partners to this joint initiative relied on the fact that several participants were deeply knowledgeable about indigenous issues and related to the peace process through civil society organizations. The



other participants were deeply knowledgeable about international human rights law and human rights, and all of this contributed to empower an inter-cultural and cross-referenced approach to the situation.

- Institutional participation at each instance of its specific mission and the inclusion of its commitment in its internal activities plan.
- Shared responsibility in the development of actions, with an understanding that each intervention is adjusted to a process, a strategic plan and consultation of the indigenous peoples.
- Recognition and empowerment of the specific features of the cultural, social, political and organizational configuration of indigenous peoples. In particular, the role played by culture in dealing with conflict on the part of indigenous peoples according to their original laws and conception of peace and equilibrium.  
Transfer of knowledge and socialization of information on a two-way street (internal-external) in a way that used communications and the media to disseminate information and garnered crucial international support for these peace-building processes.
- The active role of organizations directly affected by the conflict, with an understanding of the need to strengthen their organization, capacity for interlocution, positioning and levels of autonomy. In this, the conception of the construction of peace as a process where the principal actors are precisely those who are involved in it, both indigenous and other, pushed the importance of the inter-ethnic and cultural approach.

*Challenges:*

- Having the inter-institutional team continue working with the same intensity, contributing from their institutional missions, in a context of generalized conflict.
- Specifying the next steps in the strategy towards a humanitarian agreement.
- Recognition of an inter-cultural perception of international human rights law and establishment of better

alliances with Human Rights NGOs to overcome the serious human rights violations and International Humanitarian Law abuses.

- Reducing tensions and lowering fears of indigenous organizations and support networks regarding armed actions.
- Recognition of the cultural diversity and autonomy of indigenous peoples by all the parties, in particular the armed payers.

### **RECOMMENDATIONS TO THE UNDP**

- The intervention by the United Nations system in the follow-up of agreements signed by Member-States involving the protection of the specific rights of indigenous peoples implies a level of coordination of its various offices and agencies: UNHRC, UNDP, ILO. In the Colombian case, there is an urgent need to identify actions that seek to materialize a Global Humanitarian Agreement that may ensure the cultural survival of 85 indigenous peoples in the midst of armed conflicts and abandonment and non-recognition of their rights by the state.
- In this sense, the creation of the Permanent Forum for Indigenous Peoples within the UN system without a doubt will permit the global visibility of indigenous issues and problems and the search for alternative solutions that favour and protect cultural pluralism in nation-states.
- Support for and guarantees for the strengthening of the territorial autonomy of indigenous peoples is at the core of the resolution of a high percentage of regional and local conflicts in Colombia. Loss of their lands implies ethnocide for indigenous communities, given the significance of land not only as a productive resource, but also in terms of its symbolic and religious collective referents it represents existentially.
- The promotion, dissemination and political stance of Economic, Social and Cultural Rights (ESCR) contents, agreements, the responsibility of the state vis-à-vis same, and mechanisms of accountability, are doubt-

less needs that must urgently be met;

- Latin America and Colombia as a part of it are first and foremost American Indians, diverse and multicultural, and this is an element of self-affirmation that needs to be strengthened in light of the current situation of indigenous peoples. This requires campaigns that promote knowledge, respect, valuation and recognition of these cultures as living, interacting elements in our current reality. They are in our past, they are part of the present and they must be part of the future.

### **Construction of an Infrastructure for Peace**

To be able to deal with the armed players and the general war context Colombians are experiencing, indigenous peoples need to become more organized and empowered, with clear bets on the future where culture and identity are clearly expressed from an institutional development wager that is consistent with these cultural views. From this approach, the construction of a social infrastructure for peace is a condition for the defence of the basis of autonomy from which it is possible to determine fields with the armed actors in the war and demand that the State fulfil its obligations. This implies several levels of internal and external social and political expressions on the part of indigenous peoples, ranging from general legislative developments to more specific regulatory agreements and actions in which the UNDP can play a role as catalyst, in relation to political positioning, logistical and financial accompaniment and dissemination of information, etc., as follows:

- While it is true that the Special Indigenous Jurisdiction in Colombia considers the creation of ETIS (Indigenous Territorial Entities), at this time it is necessary to seek the regulation of the Law such that this project gains practical viability and becomes irreversible politically.
- The Special Indigenous Jurisdiction likewise recognizes the administration of justice by traditional authorities based on their own uses and customs in their own territories. However, at this time there is no Coordinating Law to govern the relationship between in-

indigenous system and the ordinary of the Colombian state. This gives rise to multiple interpretations, defects and abuse on the part of government officials and is equally used as an instrument and excuse by armed parties in applying their own notions of justice regarding the indigenous population.

- The UNDP can provide urgently needed support for the preparation and implementation of the 'Life Plans or the Cultural Permanence of Indigenous Peoples,' as this would allow for coexistence of diverse conceptions of 'development' and also a more fluid interlocution of the valuable contributions made by indigenous peoples in this respect to the Colombian nation and the world community. From this perspective it is possible to strengthen the social infrastructure of each specific culture. This includes the following aspects:
  - Organizational strengthening as well as greater governability to ensure unified actions with respect to the outside and to maintain internal cohesion. This is a condition to face the armed actors and external interventions that affect life and cultural permanence. Based on organization and governability it is possible to build joint proposals with other peoples, respond to government consultations, plans and projects, and maintain the principle of autonomy.
  - Institutional development and improvement of management capabilities in support of diverse strategies and bets.
  - Guaranteeing food supply and security in terms of recovering and improving systems of production, to ensure that the levels of malnutrition and tuberculosis affecting the indigenous peoples can be overcome.
  - New social agents in the communities such as women and youth should be viewed as potentially providing cultural support as those who most suffer the impact of war, by becoming widows or being recruited for the war. Today these actors are beginning to emerge with

their own claims and their own proposals and they must have a place to search for constructive alternatives to the current situation;

- While it is true that many indigenous peoples require tutelage and accompaniment to become strengthened, it is also true that that direct agreements regarding their actions must be reached within their own organizations and authorities, so that their role in directing social and cultural management may be empowered on the basis of the principle of autonomy.

### Endnotes:

<sup>1</sup> Association for Interdisciplinary Work (ATI), Bogotá, April 2001

<sup>2</sup> Global Internal Displacement Project, Norwegian Refugee Council, "Colombia: 'Democratic security' policy fails to improve protection of IDPs," (February 2004) <[www.idpproject.org](http://www.idpproject.org)>.

<sup>3</sup>By the end of the Andrés Pastrana's government (2002), the Indigenous Peoples stopped participating in this Permanent Working Table due to the lack of clear political will on the governmental side, expressed in the increase and continuation of human rights abuses against indigenous leaders and members. The 2004 visit to Colombia by the UN Special Rapporteur on Indigenous Peoples' Rights and his recommendations to the government and the armed parties represent a new light in this process, to resume the Working Group.

*Chapter 4*

**Codes of Conduct as Mechanisms of  
Conflict Prevention and Resolution:  
The Secoya-Occidental Negotiations  
in Ecuador**

*Paulina Garzón\**



*This case study constitutes an effort to document a complex negotiation process engaged in by the indigenous Secoya peoples of the Ecuadorian Amazon with a large multinational petroleum company operating on their territory. The code of conduct which resulted as an outcome of this process is an important tool to confront the asymmetrical balance and differences existing between the two parties when facing each other at the negotiating table.*

This case study looks at the negotiation of a Code of Conduct between the Secoya people in Ecuador and Occidental Petroleum's Exploration and Production Company (OEP) to regulate the company's oil exploration activities on Secoya lands.

With the support of the Centre for Economic and Social Rights (CDES) and other non-governmental organizations (NGOs), the Secoya Indigenous Organization of Ecuador (OISE) insisted on negotiating a code of conduct prior to engaging in negotiations with the oil company, OEP. This was to enable the Secoya to deal with the OEP in a systematic manner following their past experiences with the Company which had left them feeling threatened and frustrated.

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\* Centre for Economic and Social Rights (CDES), 2001.

The focus is on the process of negotiation of the Code of Conduct and its results. The core of the material for this case study comes from field research done in Secoya territory. This consisted primarily of interviews with community representatives regarding the process of negotiating the Code and its results. However, the CDES also drew heavily on the experience of several of its members who served as key advisors to the OISE in preparing the Code of Conduct and accompanying and supporting the Secoyas in preparing their proposals, analyzing the counterparts' proposals, and in negotiating. In addition, the case study draws on the extensive documentation and correspondence on this topic that is on record in CDES' files. However, the case study does not address the outcome of the later negotiations around the oil exploration activities and respective compensations, which is really the fundamental issue in the OEPC-Secoyas conflict.

## BACKGROUND

### The Secoyas

The Secoyas call themselves the *Pai*, which in their language, *paicoca* means people. The Secoyas, together with the Sionas, belong to the linguistic group known as Western Tukano. The Western Tukanos – whom the first chroniclers called the 'long-haired' – were a large group inhabiting a vast territory that included parts of what are now Ecuador and Peru. Living in traditionally egalitarian and politically independent communities and led by an *iti pa'iquë* – chief, powerful shaman, spiritual leader and healer – or a *yage ucuquë* – drinker of yagé,<sup>1</sup> the Secoyas have a spiritual relationship with the Earth which they regard as sacred and the source of life.

Since colonial times, attempts were made to conquer the Secoyas in the northeastern part of Ecuador, under siege by travellers, missionaries, rubber tappers, slave traders, gold and oil extractors, colonists and land grabbers. The modern history of the Secoyas begins in 1942, when a war divided their people between Ecuador and Peru. With the closing of the border, there was little contact between those living in Ecuadorean territory with those in Peru. This had the traumatic effect of interrupting the traditional flows of cultural, commercial and family exchange and produced a weakening of their cultural identity as a people.

This war also resulted in more governmental interest in the border zone. Military presence intensified, with projects to encour-

age settlement in order to create 'living borders' i.e., buffer zones, and the promotion of evangelizing processes to 'incorporate the Amazonian indigenous peoples into society'. The presence of missionaries, especially from the Summer Institute of Linguistics, had detrimental impacts on the Secoya culture. People whose cultural identity was linked to the yagé (banisteriopsis) ceremony had to adjust to religious discourse that prohibited and vilified their rituals. When the SIL departed in the nineties, a slow, difficult process of cultural reconstitution began, which continues to this day.

The continuing loss of land has also deeply affected the practices and culture of the Secoyas. New stakeholders invading their lands drove the Secoyas into a corner of the western end of their ancestral territory. Dependent on subsistence economy which combined slash and burn agriculture with hunting and fishing, the Secoyas lost more and more of their lands and became more sedentary. They also began to protest:

*We must understand, in any event, that their horticulture is complemented by access to wild resources from hunting and fishing. So, all imbalances in their habitat will inevitably affect the very survival of the indigenous groups, and this has been expressed in their rebellion, as an ongoing negotiation between humans and spiritual beings, chiefs and custodians of natural resources. (Moya: 1992)*

The 300 or so Secoyas in Ecuador today live in three communities along the banks of the Aguarico, Cuyabeño and San Miguel rivers, with 42,000 hectares of their land legally recognized by the Ecuadorian government as theirs.<sup>2</sup> The legally granted land contains the last resources on which the Secoyas and Sionas depend for their economic and cultural survival, including gardens, plant resources, fishing, wild game and water. The conflicts over land continue as settlers/*colonos*, African palm plantation businesses, and oil companies seek to usurp what remains of the traditional land of the Secoyas and Sionas and destroy their resources.

### **Institutional and Legal Context**

This includes the following:

#### *Indigenous Organization and Civil Society*

In 1977, the Siona and Secoya peoples created the Siona and Secoya Indigenous Organization of Ecuador (OISSE). However, both peoples





decided that they should organize independently, and the three Secoya communities formed the Secoya Indigenous Organization of Ecuador (OISE). Relationships between the OISE and the national indigenous confederation of Ecuador, CONAIE, and the regional network of indigenous organizations CONFENAIE, have been irregular, with little support for the Secoya for these bodies.

Since its inception the OISE has been very active in developing relationships and working with a variety of NGOs including Acción Ecológica for petroleum activities; ISIS in petroleum extraction and water sanitation, and the Centre for Economic and Social Rights which advises them in safeguarding their rights. In the field of development, OISE has coordinated with the Ecuadorian Fund for People's Progress (FEPP) with regard to production-related projects and deep-water wells, with a Catholic mission for a health care program among others. In addition, as mentioned earlier, the Secoyas were strongly influenced by the Summer Institute of Linguistics, of Protestant denomination, which began working in Ecuador in 1979.

OISE has also collaborated with the Amazon Defence Front (FDA), formed in 1994 to support the lawsuit brought against Texaco in New York and has taken part in FDA training courses for the socio-environmental supervision of oil companies. OISE, along with the Cofán, Siona and FDA, belong to the Plaintiffs' Committee formed to sue Texaco.

### *Constitution and Government*

The relations of the Secoya with the government have been mainly with the National Institute of Agrarian Reform and Settlement/ Instituto Nacional de Reforma Agraria y Colonización (IERAC) - now Agrarian Development Institute/ Instituto de Desarrollo Agrario (INDA) to legalize their territory, and with the Ministry of Education's Bilingual Education Programme. Nevertheless, the Secoya work within a national legal framework that gives them substantial rights.

The Constitution (1998) defines Ecuador as a 'social state of law,' a state that is responsible for guaranteeing the people's right to participate in political power and the distribution of the wealth that society has produced (Article 1). The effective enforcement of human rights, including the international conventions to which Ecuador is a party, are also a primary responsibility (Article 163). The indigenous peoples have specially recognized 'collective' rights: rights to land, culture, education, and participation by virtue of Article 84. These rights include the right not to be displaced from their land; the inalienability, non-attachment, and indivisibility of land i.e. it cannot be lost, seized for debts, or subdivided into plots; and the right to be consulted, to share in benefits, and to be indemnified for any prospecting or exploitation of non-renewable resources on their lands. Nevertheless, the state always retains the right to declare any lands of public utility and to expropriate them (Article 88 (2)).

These indigenous rights,<sup>3</sup> however, are in the context of a constitutional philosophy that features development as its foremost objective (Art. 243 (1)). In keeping with its philosophy of a 'social state,' the Constitution links this concept of development with equity. Economic and social policy, therefore, has to be directed at the equitable distribution of the benefits and costs of development projects and policies among the various sectors of civil society, the different regions, and present and future generations.

In the push for development, the Constitution outlines the concepts of environmental sustainability, preservation, and democratic participation by the communities affected by development projects - 'socially equitable, regionally balanced, environmentally sustainable and democratically participatory.' It further stresses the need for community participation in decision-making and specifies that all governmental decisions that could affect the environment must first elicit the community's criteria, for which reason the community must be fully informed (Article 88). The absence of consultation with the community before the government signs contracts for develop-



ment projects that have an environmental impact 'makes the respective contracts null and void.' (Article 28: Environmental Management Law).

#### *Business*

The state owns all non-renewable natural resources and, in general, this includes those found underground i.e. sub-surface such as minerals and other substances. This ownership is also of an inalienable nature, thus the State cannot transfer or lose it. However, the state can explore and exploit non-renewable natural resources through public, private or combined public and private companies (Articles 244:7, 247:2).

Private companies also have rights regarding non-renewable natural resources. They are entitled to participate with the state in exploring for and exploiting such resources. These rights are specified by the Law on Hydrocarbons, which stipulates that the state will explore for and exploit hydrocarbon reservoirs and associated substances through the state agency ETROECUADOR, which in turn may contract with private companies (Article 2).

## Oil Exploration

The first activities related to petroleum activity in Ecuador date back to 1964, involving national and foreign companies. In 1967, Texaco drilled the first commercial well in the Amazon region. Exploration soared from 1985 to 1996 when 3.6 million hectares in Ecuador's Amazon region were turned over to petroleum extraction.

In 1985, PETROECUADOR signed a contract with Occidental Petroleum's Occidental Exploration and Production Company (OEPC). This contract granted an exploration concession of 200,000 hectares, including the territory of the Secoyas and Sionas, in what was geographically denominated 'Block 15' of the Amazon region of Ecuador. This contract was amended in December 1995 and then again in 1999, changing the status of OEPC's relationship with PETROECUADOR from that of 'service' to that of 'participation.' These contractual instruments are the grounds for the right and corresponding obligation of the company to perform petroleum exploration and exploitation activities in Block No. 15, subordinated, of course, to the indigenous rights guaranteed by the Constitution.

When OEPC was ready to begin prospecting in Secoya lands, it was warned in advance of the problems it would create and conflicts it would face. A socio-environmental impact study on the Secoya and Siona lands within Block 15, commissioned by Occidental with Walsh Environmental Scientists and Engineers Inc., stated:

*[The] evaluation of socioeconomic and cultural impacts of the next phase of seismic exploration in Block 15 [shows that]...most of the area directly affected by the proposed activities is tropical rain forest, very undisturbed and with great biodiversity of flora and fauna...The proposed geophysical prospecting activities will have a very serious impact for the Sionas and Secoyas, and should not be implemented in their territory or so close to the boundaries of their territory that it will be affected.<sup>4</sup>*

Andy Drumm, the ecologist in charge of the study, also reiterated the problems if Occidental continued with its plans to explore on Secoya lands: "In the past, these people's reaction to the proposed type of activity [petroleum extraction] would have been to move to some other undisturbed area. Now, there is no longer anywhere else to go."

## NEGOTIATING THE CONFLICT

*Then Baina began pulling people up (out of the Earth). A hikomo bai (a person with a tail) was cutting vines. Baina followed him and stood on the vine he was dragging. When the man saw him, Baina asked, 'What are you going to do with that vine?' and the man answered, 'I'm going to smoke some chontaduros'. Baina asked him to bring him some of that fruit, to try it. The person ducked into a hole in the ground and pulled out a bit of red clay. When Baina saw the clay, he said, 'This is not chontaduro!' and tossed it on the ground. Baina gave him some of the real fruit to eat, and told him to take some of the fruit for his people...<sup>5</sup>*

### Preliminary Discussions

The Occidental Exploration and Production Company began activities in the Secoya region in 1995, after several years of exploration in lands of Block 15 belonging to Quichua communities. In the words of the Secoya themselves, 'At the beginning, we didn't know that Secoya territory was in Block 15, belonging to the Occidental oil company. One day OXY [Occidental] called us to a meeting about seismic prospecting and, without knowing how, we negotiated the first step of seismic studies in our territory. Neither did we know what would happen in the future with the Secoya nation.'<sup>6</sup>

The first agreements negotiated between the Secoyas and OEPC were very limited in the definition of their scope. These agreements were the outgrowth of processes in which the information available to the Secoyas for their decision-making was extremely limited. Consequently, the Secoyas were placed in a position of weakness compared to the company, which manipulated the flow of information. This made negotiations unfair, leaving the Secoyas vulnerable to manipulation and open to granting far-reaching authorizations in exchange for limited compensations by the company. This generated fragile and short-lasting agreements:

- i. The first agreement, signed in July 1996, established a blanket authorization by the Secoyas for Occidental and its contractors to pursue hydrocarbon-related activities. In exchange, the company had to provide only a few items for community use: five water pumps driven by solar panels and the offer of indemnity for the opening of a road;

- ii. That agreement was renegotiated, and the new version signed on October 7, 1996. Its scope was exclusive to the 'seismic prospecting stage'. It left the door open for a new agreement 'if seismic interpretation proves positive.' In exchange for this agreement, the Secoya received: three water pumps, three medicine chests, an outboard motor, three industrial cooking stoves and ten million sucres as indemnity;
- iii. A third agreement, negotiated on May 16, 1997, authorized both exploration and exploitation, for which the Secoyas were given 'immediate/urgent' materials such as roofing sheets, sets of cooking pots, rolls of wire mesh, and barbed wire to be delivered on the signing of the agreement, and the promise of other compensation such as ponds for fish-raising, a sports field, a dock, study grants, and a motor to be delivered upon declaration of a commercial petroleum deposit;
- iv. Finally, an agreement signed in June 1998 gave restricted authorization for topography activities, and described and listed the activities covered. The Secoya received US \$95,000 from the company. The agreement was valid for a fixed period of one year, and there were causes for early termination, including non-payment and performance of unauthorized work.

During this process, the OEPC was dealing with the OISE (Secoya Indigenous Organization of Ecuador) as representative of the Secoya people. As can be seen from the above, the Secoyas learned from the negotiating process, with each agreement more favourable than the last. However, there were problems. There was no internal agreement within the OISE about what position to take in dealing with the company. Moreover, the company was skilled at making contacts and promises with specific communities - without OISE's knowledge. In practice the agreements were not enforced and promises were not kept.

The attempt by OEPC to go behind the OISE and engage in independent deal-making with one of the Secoya communities had a particularly important effect on the Secoyas' approach to Occidental. In the words of the Secoya:

*OXY wanted to negotiate directly with the Secoya Remolino community, saying that they were more affected than the rest. After so many meetings with the organization, they saw that it*

*would be difficult to talk about business for the drilling stage amidst the problems we had in our organization, so OXY gave part of the money to the Secoya Remolino community.<sup>7</sup>*

The purpose of this agreement, signed with the community on September 24, 1996, was authorization to build an access road and the platform for Cocaya North-1 oil well in the community's territory, selling the affected land to PETROECUADOR. In exchange, the company would pay 85,000 dollars, according to a disbursement schedule. The company went ahead and disbursed a first payment of \$20,000 to the community, believing that it had accomplished its objective.

However, this attempt at subverting the OISE backfired on OEPC, and instead initiated a process of solidarity of the OISE and a search for a mechanism to ensure that they could deal with the OEPC from a position of increased strength. As the Secoya explain:<sup>8</sup> After they gave S.R. [Secoya Remolino] the money, we saw that this was really to divide our territory, and the great trap of undermining our OISE organization. Instead of dividing, we built union, strength, culture, and keeping our customs. We agreed to return the money to OXY and we did. This was to find a better way to negotiate or have a dialogue. We had to contact the NGOs and internationally, through the NGOs, we found the tool to arrange for the Dialogue Working Group among OXY-OISE-and NGOs for the Code of Conduct. This idea came from the Secoya nation and the NGOs.

### **Negotiating the Code of Conduct**

In early 1999, CDES was consulted by OISE leaders about the negotiations with Occidental, and how this was creating problems within their organization. The Secoyas also believed that Occidental had manipulated them. CDES prepared a document for OISE which conceptualized some basic ideas for rules and procedures to orient their dealings with the oil company such as guarantees that the community would be informed, time for discussions, advisory support etc. This would help the community make decisions within a framework in which the company would be obliged to respect the Secoyas' rights.

This document provided a basis for discussions within the OISE, and the outcome of their deliberations was submitted to the XI OISE Congress in May 1999. A preliminary version of the Code of Conduct was discussed at the XI Congress. A decision was taken to create a commission of four persons for the dialogue process with



the Occidental company, with the presidents of the Secoya, San Pablo and Sicoya Remolino Centres, and the president of the OISE.

A copy of the resolutions was sent to Occidental. This launched the process of negotiation with OEPC over the Code of Conduct. The Secoya believed this to be a good beginning and would lay the basis for working together to prepare a Code that will satisfy both parties and help develop long-term relations. Occidental also stressed that the obligations of ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989, ratified by Ecuador in 1998, and the Constitution are binding on the Ecuadorian government, thus the State should also take part in the process.<sup>9</sup> They also reiterated their interest in drilling three wells in Secoya territory, and appointed three delegates for the negotiating meeting. The OISE conditioned any negotiation with the company upon approval of the Code, and asked the company to send their proposals for amendments to the Code, with reasons justifying such changes.

Occidental presented its comments on the Code, and proposed a revised version. The parties agreed to meet 10-11 July, with the intervention of the Latin American Future Foundation (FFLA). OISE notified the company in writing of their decision to bring two attorneys as legal advisors. The Occidental delegates had, on previous occasions, attended meetings accompanied by the company's attorneys. In the meantime, both OISE and Occidental approved the participation of three observers for the dialogue process, all of them from the USA - Jim Oldham, of the ISIS Foundation; Bill Vickers, anthropologist; and Ted Macdonald, of Harvard University. However, at the 10-11 July meeting, the parties agreed to change Jim Oldham's role from observer to advisor, another member of the ISIS Foundation was included, and Luis Yanza, President of the Amazon Defence Front, also joined as an observer.

This meeting did not reach agreement incorporating OEPC's comments into OISE's proposal, and another meeting was scheduled for 14-15 August 1999. At this meeting, the company insisted the pace of the negotiations should accelerate to enable them to meet the exploration program deadline stipulated in their agreement with PETROECUADOR, and proposed negotiating and discussing the Code of Conduct at the same time. OISE however insisted on the need to first establish the Code of Conduct to 'avoid the bad experiences that have happened before...' It was agreed to set a timetable for September and October, including preparation, approval and dissemination of the last version of the Code.

On 7 September 1999 the parties agreed on a document, and in October 1999, the OISE put out a press release inviting the public to



the signing of the 'Code of Conduct for a dialogue process between Occidental Petroleum and Production Company (OPEC) and the Secoya Indigenous Organization of Ecuador (OISE).' The press release read as follows:

*The Secoya Nationality understands the signing of this Code of Conduct as the beginning of a dialogue process with OPEC. The Secoya Nationality, through our delegates, is willing to engage in a dialogue process that will call for a constant struggle to defend our interests and rights. We would like to emphasize that this signing does not by any means signify our approval of the petroleum activities proposed by OPEC in Secoya territory, or acceptance of any commitment regarding that company.'*

OISE made the commitment to consult with its constituency regarding the date for a future meeting, and suggested the first negotiation meeting be a dialogue on technical information regarding development plans in Block 15, so the Secoyas could ask questions and hear Occidental's statements regarding the proposed operation.

### **The Code of Conduct<sup>10</sup>**

The first draft of the Code of Conduct proposed by the OISE Congress was quite explicit regarding indigenous rights. During the negotiations, this emphasis was toned down in favour of 'reciprocity' in recognition of the rights of both parties.

The final version of the Code of Conduct stresses that it arose as an idea to guarantee conditions of transparency and balance in discussions, and to make it possible to build solid agreements. It seeks to regulate the dialogue process, understood as discussions and negotiations between the parties regarding the issue of OXY's petroleum activities in Secoya territory. It emphasizes that it is an attempt to attain a consensus-based set of principles, procedures, requirements, responsibilities and obligations that the parties must observe during the dialogue process. The principles set forth are few in number, but with enormous practical application:

1. Mutual respect for each other's rights, namely, the right to participation, to consultation and to self-determination for the Secoya Nation and the express recognition by the latter that the underground resources belong to the State;

2. The principle of Transparency and Honesty were to govern the dialogue process and to be implemented in the negotiations and agreements among the parties, their contractors, employees, advisors and observers;
- 3, The OISE was recognized as the only representative of the Secoyas and the company is obliged to provide all information the OISE requires regarding operations in Block 15;
4. The Code established a Dialogue Working Group, its participants and observers, and assigned State representatives the opportunity to intervene;
5. It incorporates the possibility for each party to have advisors and appoints a group of independent observers;
6. The Latin American Future Foundation (FFLA) had the task of coordinating and facilitating the dialogue;
7. It established a follow-up commission, composed of representatives of both the parties, with the powers to coordinate, regulate and resolve problems regarding relations with neighbours, and any complaints and conflicts that may arise during the process. In case this mechanism was inadequate, the issue was to be discussed at a meeting of the parties, and if not resolved, could lead to suspension of the process.

## ANALYSIS

### **Stakeholders: Their Roles and Motivations**

This section of the case study looks at the roles and motivations of the five stakeholders in the process: (i) the Secoya Indigenous Organization of Ecuador; (ii) the Occidental Ecuadorian Petroleum Company; (iii) the Ecuadorian Government; (iv) the Latin American Future Foundation as facilitator; and (v) the two international observers William Vickers and Ted Macdonald.

#### *The Secoya Indigenous Organization of Ecuador*

On behalf of OISE, the delegates were the Organization's President, Humberto Payaguaje, and the Presidents of the Secoya Remolino, Secoya Eno and Secoya San Pablo de Catetsiaya Centres. The Presidents of the OISE and the Secoya Centres were responsible for representing the Secoya People, but there was an internal agreement not

to make decisions without internal consultation meetings with the community. As advisors the OISE chose attorneys Tamara Jezic and Bolívar Beltrán, and the ISIS Foundation, represented initially by Jim Oldham, and later on by Sonia Lindop. Subsequently, OISE invited the Amazon Defence Front to take part as well.

Some of the reasons for the OISE to adopt a Code of Conduct for the Dialogue are:

- Unsatisfactory results in previous negotiations;
- Obtaining information and advisory support before making decisions;
- Aspiration for greater equity in the relationship;
- To prevent the company from undermining the Organization's unity.

The expectations of OISE at the 11-12 July 1999 workshop were the following:

- To reach an agreement on the dialogue process;
- For agreements between the parties to be consistent with the Secoya community's interests;
- Not to have contradictions (conflicts) with the laws of the State;
- To have clear rules and norms for the process, and to be respectful;
- Rules to help the process rather than interfere or impede it;
- A process respecting people's human rights.

#### *The Occidental Ecuadorian Petroleum Company*

The delegates for Occidental were Carlos D'Arlach, who chaired the Commission, Javier Jiménez and Alberto Gómez de la Torre, attorneys for the company, and María Elena Hurtado and Wilson Gallegos, of the Community Relations Department. Motivations for OEPC to adopt a Code of Conduct for the Dialogue included the following:

- To legitimize their presence;
- To obtain greater security for their investments;

- To improve their international image.

The expectations of OEPC at the 11-12 July workshop were the following:

- To discuss without any need for third-party participants;
- To find out the Secoyas' interests, what they really think;
- For Occidental's good intentions to be clearly perceived;
- For the Secoyas and, in general, all participants, to have more confidence in each other. To listen and learn more about the others' needs.

#### *The Ecuadorian Government*

The Under-Secretary of the Environment with the Ministry of Energy and Mining took part in the process on the initiative of FFLA and Occidental. His role was as a liaison between the Dialogue Working Group and PETROECUADOR. His aim was to ensure there was enough time for OISE and Occidental to pursue their discussions about the Code of Conduct for the Dialogue Process. Motivations for the State to adopt a Code of Conduct for Dialogue, among others, were: (i) To see how this worked out as an 'experimental' experience; and (ii) to lower the level of confrontation and ensure that activities can continue etc.

#### *Facilitators: The Latin America Future Foundation*

The FFLA stressed that its participation would be neutral and its role would be to enable an environment where the parties listened to each other. They would not be mediators but facilitators, and not be involved in the issues being discussed but in the way the discussion was carried out. The tasks of the facilitators were defined as:

- Facilitating dialogue;
- Facilitating parties' participation (OXY and OISE, especially);
- Not proposing solutions;
- Controlling the use of time in speaking (allowing interruptions);

- Attempting to keep ideas focused;
- Drafting minutes and reports;
- Continuity, by asking for action plans for the next meeting.

#### *International Observers*

As international observers, OISE invited anthropologist William Vickers, and Occidental invited Ted Macdonald, both participating on a personal basis. Their role in the process was to ensure an atmosphere of mutual respect, that agreements were implemented, and to offer comments regarding subjects being discussed for all members of the Dialogue Working Group. They could also recommend technical advisors for OISE.

#### **Pivotal Points of Discussion**

In such a complex negotiation process, each agreement was the result of intense work. It is therefore difficult to pinpoint any one or two 'main' issues. Nevertheless, there were two main issues that were outstanding during the negotiations:

1. A common point of agreement: the need to agree on a Code of Conduct that would make possible transparent, effective dialogue on fundamental issues. OISE's proposal was accepted by the company, and seen as a way out of the series of conflicts deriving from the agreements that had been negotiated previously. The contents of the Code were not so readily agreed on. At least four draft versions were discussed during the negotiation process.
2. The second point was the issue of time: OEPC pressured for quick agreements, based on the time pressure of the timetable they had agreed with PETROECUADOR. However, the quicker they could negotiate, the less time OISE would have to prepare adequately for the issues to be discussed. Thus time became a determining factor to tip the scales in favour of the company. The Code of Conduct sought to guarantee the Secoyas' right to adequate preparation time for decision-making during the negotiations.

## Lessons Learned

The negotiation process was fraught with contradictions and gaps. For example, OEPC proposed the Secoyas sign a 'Letter of Intent' to authorize some work in Secoya territory, when the subject of negotiations was precisely to set mechanisms and rules to ensure the Secoyas would be able to engage in the process of informed dialogue with the company prior to making a decision to accept or reject petroleum-related activities. This fundamental principle did not seem to be very clear either for some members of the Secoya communities, where there were different positions about negotiation and resistance.

There is a great lack of experience in this field the world over and in Ecuador the situation is even more marked. Many essential issues were not foreseen or planned for in advance, and were discussed and decided on a day to day basis. This practice was worse for the weaker of the two negotiating groups, i.e. the Secoyas. However, despite these critical flaws, the process led by OISE and OEPC paved the way for developing equitable and democratic processes in dealings between indigenous communities and oil companies, and provided a concrete experience to evaluate all aspects of the process. There are several concrete lessons and points of pressure that can be gleaned from this example:

1. *Throughout the process, the aim of the exercise must be clear for all participants: to establish rules for dialogue or to negotiate* - Ted Macdonald pointed out the importance of keeping this difference in his report of July 1999:

*It would seem that some, including OISE, OEPC and Ministry of Mining and Energy delegates, understand the Code as a preparatory step for a new agreement to continue with petroleum extraction. For others, especially the advisors, it would seem that there is still some question as to whether the oil company should be present at all or not. What they understand as the next phase must be clarified, to negotiate the code/procedure. In brief, what does each group expect to negotiate about in the future?'*

2. *Not to be afraid of the process to create a Code of Conduct* - Although initially OEPC had congratulated OISE for the proposal to discuss a Code with the company, at the first meeting to discuss this subject (early June, company headquarters), OEPC's representatives

claimed that a Code was a long, complex document, and that they would have to work for months and months to reach an agreement. However, the Secoyas held their ground, forcing the company to agree to their proposal, and finally the company made the commitment to send comments in writing and to set a date for the next meeting.

3. *The stronger party at the table will always try to wield that power by bringing pressure* - Throughout the process, both before and during negotiation of the Code, the company tried to exert pressure on its counterpart. The Code itself is a mechanism to withstand such pressure. Some issues illustrate how the company used such pressure:

4. *Changes in the places set for meetings* - Occidental tried to make sudden changes for the meetings, and tried to consult each member of the Commission appointed by OISE separately rather than with the OISE as a whole. These changes negatively affected the OISE Negotiating Commission.

5. *Questioning of the role of the OISE advisors by OEPC* - During Dialogue Working Group meetings, OEPC insisted that the 'two parties to the dialogue were OISE and OEPC', implying that OISE's advisors should not interfere. However, all OEPC representatives were not company shareholders either, but its attorneys, engineers, anthropologists, etc. The OISE President responded to these pressures by reaffirming the advisors' role as an integral part of the Secoya Commission.

6. *Threats that the State would expropriate Secoya territory* - This threat was not new, having appeared during negotiations of previous agreements, but it cropped up again in the Dialogue Working Group. The possibility of expropriation was proposed by OEPC as a mechanism the State might use to ensure meeting the deadlines for activities that OEPC had to conduct according to its contract.

7. *The company's pressure to accelerate the process* - Occidental tried to rush the decision-making process. For instance, they asked for authorization to start work before signing the Code; for the parties' attorneys to meet separately from the Dialogue Working Group in order to draft new versions of the Code; unilaterally set the date when the negotiations for the Code of Conduct would have to end, etc. All these pressures seriously affected not only the process of participation and analysis in the Dialogue Working Group, but also the internal process within the Secoya people, who were denied the time they needed to meet and internally discuss the different issues.

8. *Conditions set by Occidental on use of funds allocated to facilitate*

*OISE participation* - In their letter of July 28, 1999, Occidental re-neged on their commitments regarding provision and use of funds allocated to facilitate participation by the Secoyas, their advisors and observers at the Dialogue Working Group. They used the funds as a mechanism to demand certain conditions, e.g. 'OISE must duly accredit the legal status and stability of the participants in the workshop scheduled for 8-12 August;' 'from the standpoint of transparency and trust, we feel it is indispensable for the workshop set for next 8-12 August to be attended by an OEPC representative and another for the Under-Secretariat of Environmental Protection, and to invite observers William Vickers and Ted Macdonald.' The workshop was an internal OISE event to define their interests and priorities for the Dialogue Working Group, regarding Occidental's petroleum activities in their territory.

9. *It is necessary to continually evaluate the workshop process and facilitation* - During the several months when the meetings were held, until the Code of Conduct was signed for the dialogue process, the different participants' observations and questions were mostly discussed between a few of them in writing. This made it hard to solve these problems. Evaluation of the process and facilitation should be mandatory at each meeting of a Dialogue Working Group.

The OISE Dialogue Commission also complained about the lack of definition of a methodology by the FFLA '... sometimes the dialogue would jump from one topic to another, and ideas would be noted down in the order that they came up. For example, this meant that sometimes the order of the negotiation phases proposed by the Secoyas would be changed. Since the Working Group would work on the basis of what was written in front of everyone, what was written was as if it had already been approved, and actually the ones who decided what to put and in what order were the facilitators.' The OISE Dialogue Commission proposed that 'when the facilitators failed to perform the roles of facilitation... the dialogue should be suspended until the dialogue facilitation has been clarified and straightened out.' However, William Vickers, international observer, felt that FFLA's performance was '95% good.'

### **Evaluation of the Performance of Each Stakeholder**

It is difficult to assess the role that the stakeholders played in such a recent negotiation process which is not yet completed, but continuing with the OISE-OEPC Dialogue Working Group. The following are some reflections on the conduct of the three main stakeholders:



- *OISE* - OISE hoped to agree to a Code of Conduct which would lay the groundwork for a transparent dialogue process which would include some balance of power among the parties. At the initial stage of the Code negotiation process the OISE was at a point of organizational weakness, and the possibility of direct negotiations between the company and isolated communities was minimal. Thus, the OISE negotiators may be considered to have played their role satisfactorily by having achieved their goal with an agreed Code of Conduct and an agreement on the negotiation process.
- *OEPC* - The company sought to consolidate its presence in Block 15, guarantee security in performance of agreements reached with the Secoyas, prevent a deterioration of the conflict as this might impede their work in the area as well as try and avoid a repetition of the bad experiences they had in other places, such as with the U'wa in Colombia. Signing of the Code made it possible to substantially improve the environment of dialogue and to negotiate the Agreement that enabled them to work in the Secoya territory, as well as provide guarantees for their investment. Consequently, an evaluation of the company's role in the negotiation, in terms of results, has to be positive.
- *GoE* - It is more complex to evaluate the Government of Ecuador's role in the negotiations. On the one hand, the results would seem to meet its objectives of providing security for the company's investment, without much cost in governability for the region, and in setting a precedent of a negotiated solution to conflicts between oil companies and indigenous peoples. However, the actions of government representatives, which were marginal and not proactive during the entire process, have to be evaluated as limited. Surrendering initiative in dialogue to companies could be a risky strategy in future situations.

## **PARTICIPATORY EVALUATION OF THE CODE OF CONDUCT**

Evaluating the Code of Conduct implies an exercise of reflection on two levels regarding the results of applying the Code: (i) the degree of effectiveness of its mechanisms in managing and preventing con-

flicts during the negotiations; and (ii) the political level involving impacts of the negotiation process and its subsequent signing and application on the Secoyas as a people.

The Secoyas' perspective was gathered from their correspondences with the company, the government and their advisors, and a workshop held in the Community of San Pablo, which was attended by community representatives - without the presence of members of the Dialogue Working Group and Follow-up Commission. Since they were not involved in the process as negotiators, they were able to share a different perspective, from outside the negotiation process, but as members of the community concerned.

### **What Works in the Code of Conduct**

1. *Operational mechanisms* - The Dialogue Working Group, the Follow-up Committee and the Monitoring Commission are all perceived as mechanisms that work as provided for in the Code. They proved their effectiveness in building agreements, detecting and solving conflicts as they emerged in a timely fashion. Although their operation was not free of difficulties and mistrust, these were resolved.

2. *Compensations* - The funds received, cash, from the company, and investment in health care, education, water, sanitation, training, etc. were perceived as direct effects of the Code, which provided the framework for negotiating and signing the Agreement and the means for follow-up and external supervision of compliance by the company. The Code has had very positive results in improving the Secoyas' living conditions.

3. *Environmental management* - The good environmental practices of the company in its activities within Secoya territory may be attributed both to its own internal policy and to the fact that the work was at its preliminary phase during this time. The Code of Conduct undeniably contributed significantly to establishing control mechanisms and community participation in impact monitoring.

### **What has not Worked in Regard to the Code**

Some problems that arose were regarded as negative. For example, problems with subcontractors who did not take the same care or apply the same environmental practices as OXY and were not as committed to the process. However, the mechanisms of the Code

were put into action, and resolved. There is confidence that problems can be solved through this mechanism. Thus the dialogue and negotiation mechanisms in the Code are trustworthy and effective in problem-solving.

Another less serious issue in the short term, but which could become worse if it persists, is non-attendance by international observers at the Dialogue Working Group meetings. This could be a symptom of burnout. The negotiation process took several years, and demanded great effort from all parties involved. International observers and advisors to the Secoya people played their role as a commitment of solidarity, but a fading away process may have begun, as is natural in such circumstances.

### **The Political Dimension**

The impact that the implementation of the Code of Conduct and its negotiation mechanisms have had in strengthening the Secoya people is visible when arriving in San Pablo in March 2001. One finds a community that exudes prosperity and people discuss ambitious plans for the future such as negotiating a new territorial award in Aguas Negras, downstream by the Aguarico river, in a zone of untouched forest; ecotourism; delimiting their current territory with the help of a surveyor, etc. There are also efforts to strengthen their cultural identity such as the use of the cushma, their traditional robe, and re-introducing the traditional cuisine.

A superficial analysis might attribute these good times simply to the availability of money as the agreement with OXY brought unprecedented volumes of money into this jungle village. However, there is another dimension. 'The money has been important, but it's not everything. The respect we have gained as a people is more important...' For a nearly extinct indigenous people, with a lengthy history of disastrous contacts with the modern world, this process, in which they found strength in their weakness and faced up to the government's and a transnational petroleum company's power together, sitting at a negotiating table under equal conditions, and having had their say, is definitely a meaningful triumph.

## **FINAL REFLECTIONS**

### **Importance of the Role of Organizations and Capacity-Building**

In a field such as oil and gas, where the government's evident inter-

est is to expand the extractive frontier at any cost, granting concessions for blocks and promoting activities, even within indigenous territories and protected areas, the attitude of potentially affected organizations must be to maintain active watchfulness over such development, sharing their concerns with their constituencies, and preparing strategies for quick response.

The case of the Secoyas indicates that organizations which invest time, money and efforts in preparing for potential problems and conflicts are in the best position to effectively defend their rights and interests. The role of non-governmental organizations supporting indigenous organizations is significant in this field. Any effort to provide them with accurate, up-to-date information on petroleum policy and to enable training, dissemination of information and strategy-definition may be crucial in these circumstances.

Ecuadorian law has evolved, guaranteeing territorial rights and consultation with the people. The 1998 Constitution, as discussed above, creates a framework of respect for rights and the need to inform and consult with affected parties.

### **Value of Partnerships**

The role of NGOs and scientists working with the Secoyas has proven fundamental in the conflict with OEPC, whether by providing technical advisory assistance for negotiations, or by alerting national and world public opinion through information campaigns. The proposal of the Code came out of CDES technical advisory support. With the Code in effect, allied organizations and friends became OISE advisors and international observers, continuing the momentum to guarantee the Secoya people's rights. Without these important alliances, the process would have been even harsher for the Secoyas, and the results would surely have been substantially worse.

Unstable relations within the regional indigenous movement (CONFENIAE) and the national CONAIE before, during and after negotiating the Code of Conduct and the Agreement restricted OISE's possibilities of support from these organizations. The Secoyas were even criticized by national and international indigenous organizations for the way they faced up to OXY. Although such criticism often reflects misinformation about the process, a policy of alliances to ensure the broadest possible basis for support is very important to secure the best possible results in conflict management.

## **Macroeconomic Pressures**

Although the Constitution very clearly states the State is the primary guarantor of people's rights, their chronic fiscal deficit drives Latin American governments to extract their non-renewable natural resources, regardless of the costs. In Ecuador, the government expects to finance future development by expanding the petroleum frontier in the central and south-eastern Amazon region: protected areas and indigenous territories. However, the role of the government in the Secoyas-OXY conflict ranged from openly supporting the company when push came to shove, to passively observing the negotiations of the Code of Conduct and the Agreement. The Ministry of Energy authorities allowed the company to control the process although they had the primary responsibility to guarantee the rights of the indigenous peoples.

## **Importance of Organized Resistance with Dignity**

The Code of Conduct and subsequent Agreement were signed only because the people asserted their rights, with the active support of NGOs and public opinion mobilization through advocacy campaigns. As Occidental was facing a socio-environmental conflict of ethnocidal dimensions with the U'wa people in Colombia, a new case could prove very expensive for them in the stock market and this was a decisive element in its negotiations with the Secoya.

The main lesson for us from the Secoyas' case is about dignity. Having made strength out of their weakness to confront such powerful adversaries face to face, earning their respect, is doubtlessly worthy of acclaim. Such a complex, intense negotiation process was a learning experience for the Secoya leaders, organization and people. They have learned to value themselves as a people and an organization. They have learned that their rights are valid and enforceable.

The process of negotiating and eventually signing the Code of Conduct led to an increase in bargaining power by the Secoya and increased the chances for a more equitable negotiation for subsequent oil exploration activities by the OIEPC. The implementation of the Code up to this date has also led to improved living conditions as a result of the concessions negotiated with the company, and a quick resolution of conflicts that have occurred. Finally, the process as a whole strengthened the Secoya Indigenous Organization of Ecuador (OISE) and gave the Secoya a new sense of self-respect and confidence.

### **Reflections on the Role of Multilateral Institutions, including the UNDP**

The Secoyas' case illustrates the impacts of petroleum policy on Amazon indigenous peoples. International financing institutions have played and continue to play a major role in setting such policy.

The governments in the Amazon region and multilateral banks have expressed interest in expanding the petroleum industry. These banks have developed a strategy to confront the conflicts originated by petroleum activities in indigenous territories which is based on the design and implementation of training programs for indigenous peoples, but involving companies, the government and the banks, and preparing and improving laws and regulations for consultation.

There are currently five initiatives under way:

- The Energy, Population and Environment Program sponsored by the World Bank and the Organización Latino-Americana de Energía - OLADE (Energy Organization of Latin American);
- The Project on "New Environmental and Social Standards in the Amazon Region: New ways toward Tripartite Cooperation in the Hydrocarbons Sector" implemented by the Harvard University Programme of Non-Violent Sanctions and Survivals (PONSACS), and the Latin American Future Foundation;
- Energy Management Assistance Program (ESMAP) projects for Bolivia, Peru and Ecuador, financed by the World Bank;
- World Bank-financed proposal for petroleum activity;
- The program to support the Inter-American Development Bank in designing and implementing consultation processes with the indigenous peoples regarding expansion of petroleum activity into their territories.

The Energy Management Assistance Program is a shared initiative by the United Nations Development Program (UNDP), 16 industrialized countries, international institutions related to energy, and petroleum companies. It aims to promote reforms in the energy sector (electricity, oil and gas) in Latin America and the Caribbean. Its areas of interest are: (i) to promote legal, political and institu-

tional reforms; (ii) to promote the global oil market; (iii) to improve energy efficiency; and (iv) to improve industry's environmental and social practices.

In Ecuador, ESMAP is financing the program to train indigenous peoples in environmental and social impacts of hydrocarbons projects. The national counterpart is the Council of Nationalities and Peoples of Ecuador (CODEMPE), a governmental agency for indigenous promotion. The scope of this project is to train indigenous representatives in hydrocarbon operations, laws, regulations, governmental responsibilities, environmental risks and economic benefits expected. The project aims ultimately to accelerate the new regulations for operations in indigenous peoples' territories, and to facilitate the process of consultation and participation for specific projects in the region.

Of concern in this program are: a) oil company involvement in discussions about the terms of reference, selection of consultants and indigenous participants, and review of dissemination materials; b) no room for refusal of petroleum development as an option to be considered by indigenous peoples; c) indigenous peoples are not invited to take part in policy-making for governmental development of the Amazon region. The initiative seeks to establish relations conducive to promoting negotiation between companies and the government with indigenous peoples, with an eye to expanding the petroleum frontier in their territories. The plan is to preclude the possibility of saying "no."

## CONCLUSION<sup>11</sup>

On looking back at this process over the past three years (2001-2004), it is apparent that this process of negotiation of the Code of Conduct provided an opportunity for empowerment of the Secoyas, to exercise and demand their rights. This is the example of dignity for peoples that we wish to highlight from our Secoya brethren. Beyond the outcomes with the Code of Conduct, the important thing is that the Secoyas did not negotiate on their knees.

Prior to the Code, the format of relations between the Secoya community and Occidental was paternalistic, asymmetrical and unequal, determined by 'negotiated' agreements within which framework the company obtained permission to work in Secoya territory. The Code balanced the relationship between the negotiators to a greater level of balance and equity. The result was a radical change in the manner and methodology of the negotiated agreements. On



13 March 2000, an agreement was entered into between OISE and OIEP for Petroleum Exploration on the territory of the Secoya Nation for the sum of US \$700,000. In addition, Occidental also included a family fund of US \$100,000 to be distributed among the Secoya community; US \$280,000 for investments in community projects and US \$320,000 for a community investment fund.

To receive and manage such funds is a challenge for the community. The sum of US\$100,000 to be divided among thirty families may not amount to much in the industrialized world, but in the Amazon rainforest, such sums have the potential to change the lives of many people. With these funds, the Secoya community which was once very egalitarian, will never be the same again. Some families have renovated and improved their houses; others have invested in tourism, shops, restaurants etc. with varying results. Yet others have simply spent their money. With the passage of time, some have improved their income substantially while others have become insolvent. Whereas they had earlier lived in a society where there was a general absence of funds, now there was circulation of funds and those who did not have any felt marginalized and poor. Thus, in conclusion, the Secoya who had been successful in their investments began to employ those who were not so fortunate. Too many changes in too short a space of time.

Regarding the community investment fund, the story is as follows: Although in the initial period a local NGO had been responsible for administering the funds and had invested well, the Secoya had decided to manage the fund themselves. However, the first semester of 2004 the Secoya organization began a process of internal restructuring. Many of those who had played a crucial role during the negotiation of the Code of Conduct and the subsequent agreements with Occidental, were currently detached from the executive board - the reason being accusations of corruption and irresponsibility in managing the fund. The new directive has announced that it will liquidate the fund. Again, too many changes in too short a time.

In conclusion, reflecting on the Code of Conduct, it is without doubt an invaluable tool to enable the Secoya to exercise their rights for the impact of activities of a powerful transnational petroleum company. But it is not a panacea. It serves a specific purpose, to reduce the differences existing in the asymmetrical relationship between two negotiating parties. The Secoyas feel like winners. They don't perceive the resources they receive as a handout; on the contrary, they claim them as an entitlement that has cost them great



effort to win. Their group self-esteem has a basis, and is expressed in a general feeling of pride in being Secoyas. It remains to be seen whether this is a passing thrill, a mirage fuelled by cash or whether, on the contrary, it marks a landmark in the process of rebuilding the Secoya culture.

It is important to point out that where the indigenous or other peoples wish to say no to oil exploration, negotiating a Code of Conduct may or may not be the best solution. Additional research, and experience, on these types of situations, is necessary to identify the full potential and limits to Codes of Conduct as effective mechanisms of conflict resolution and prevention. Nevertheless, the successful negotiation of a Code of Conduct by the Secoya has set a precedent that can be applied not only in Ecuador but also anywhere in the world for negotiations between companies, indigenous peoples, and governments.

### Endnotes:

<sup>1</sup> As recounted by Humberto Payaguaje, President of the Secoya Indigenous Organizations of Ecuador (OISE), 1990.

<sup>2</sup> William T. Vickers, "Traditional Concepts of Power among the Siona-Secoya and the Advent of the Nation-State," *Latin American Anthropology Review* 1, no. 2, (1989): 55-60.

<sup>3</sup> These rights also pertain to those peoples of Afro-Latin American descent denominated as 'blacks' in Ecuador.

<sup>4</sup> OEPC, Walsh Environmental Scientists And Engineers Inc., "Estudio de impacto y plan de manejo ambiental para el programa de perforación los pozos exploratorios Cocaya Norte-1, Cocaya-1 y Cocaya Centro-1," *Addenda A*, (29 June 1999): 52-118.

<sup>5</sup> Vickers, 1989.

<sup>6</sup> Based on interviews conducted by CDES among the Secoyas during field visits.

<sup>7</sup> From CDES research documents, on file.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.* Following up on this, later on in the process, Occidental unilaterally invited PETROECUADOR to participate in the Dialogue Working Group.

<sup>10</sup> OISE (Organización de los Indígenas Secoya del Ecuador), OEPC (Occidental Exploration Petroleum Company), 07/05/1999: Código de conducta para un proceso de diálogo entre la compañía Occidental y la Organización Indígena secoya del Ecuador, documento aprobado por el XI congreso de la OISE, mimeo.

<sup>11</sup> This update was written by Mario Melo of the CDES, Quito: 2004.

## Chapter 5

### The Guatemala Peace Agreements of 1996: A Case Study

*Eleanor Dictaan-Bang-oa & Jack G. L. Medrana\**



*This case study presents an analysis of the processes and substantive issues in resolving the conflict between indigenous peoples and the state of Guatemala. The study was a joint initiative of the Tebtebba Foundation in line with its thrust of promoting indigenous peoples' concerns through research and policy advocacy, and the Defensoria Maya in Guatemala with support from the United Nations Development Programme.*

'Ethnic conflicts,' 'ethnic cleansing' and 'tribal wars' are some of the popular catch phrases used to magnify the extent of indigenous peoples' concerns that need to be addressed at all levels of governance today. Whether these conflicts are between indigenous peoples, or between indigenous peoples and non-indigenous peoples, nation-states or companies/private entities, ethnicity and ethnic conflicts have always been regarded as a regressive tendency among indigenous peoples vis-à-vis the modern era.

The escalation of so-called 'ethnic conflicts' and resurgence of militant indigenous movements today signals an exigent examination of the matter by nation-states, especially in relation to nation-building. A deeper understanding of the 'ethnic phenomena'<sup>2</sup> would not only help explain but more importantly facilitate redress in the light of peace and sustainable development. Post-colonial and post-world war national reconstruction worldwide has been impaired by a lot of factors one of which is the ethnic phenomena. This is

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\*Tebtebba (Indigenous Peoples International Centre for Policy Research and Education), Baguio City, Philippines, 2004.

generally entrenched in the indigenous peoples' progressive marginalization which began at the time of their colonization. There is thus a need to recognize and address the historical errors and legitimate grievances of indigenous peoples.

Guatemala has been in an appalling state of poverty and repression caused by unequal development, low wages, export oriented agricultural industry and an absence of agrarian reform.<sup>3</sup> The internal conflict has magnified these conditions resulting in an appalling human rights situation which places indigenous peoples in a vulnerable position. It has further deprived the indigenous peoples of their freedom to a secure life on their lands with access to basic services and development - a process which was started during the colonization period. Consequently, Guatemala's indigenous peoples have been in the forefront of the rebel opposition groups as well as become victims caught in the crossfire.

The 1996 Peace Agreements moderated by the United Nations Secretary General between the Guatemala Government and the Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Unity, URNG) have brought an end to thirty-six years of violent internal conflict. Despite their limitations, the Agreements provide for democratic governance which will address peoples' concerns and advance a durable peace and sustainable nation-building. Particularly interesting is its recognition and provisions for the identity and rights of indigenous peoples.

This case study is an analysis of the processes and substantive issues in resolving the conflict between indigenous peoples and the state of Guatemala. The first part situates the indigenous peoples in Guatemala, their traditional concepts of conflict and peace and their responses to their situation. The second part presents the peace initiatives and a chronicle of events during the negotiation process and salient points of the thirteen separate agreements with particular focus on indigenous peoples' concerns. The last part is an analysis of the whole process and agreements from an indigenous peoples' perspective.

## **THE INDIGENOUS PEOPLES OF GUATEMALA AND THE PROBLEM OF PEACE**

### **The Mayan Realm**

Guatemala is one of the two countries in Latin America where indigenous peoples comprise a majority of the over-all population.

The figure is believed to be somewhere between 42.7% to a high of 65% of the national total. Collectively termed as 'Maya,' the indigenous peoples of Guatemala present a great diversity of cultures among themselves. Twenty-one ethno-linguistic groups have been identified as Maya by the 1995 Accord on Identity and Rights of Indigenous Peoples; in addition there are the *Xinca* and *Garifuna* peoples.<sup>4</sup>

A great portion of the Mayan peoples, over one million, are of *K'iche* origin, and live mostly in the western highlands in the area of Santa Cruz and Chichicastenango towns. The *Mam* and *Kaqchikel* are between 600,000 to one million each, the former occupying the northwest part of the country near the Mexican border. The *Q'eqchi*, found mainly in the northeastern province of Alta Verapaz number more than 400,000. Smaller ethnic groups, possibly numbering less than ten thousand, include the *Tektiteko*, *Mopan*, *Itza* and *Sipakapense*. Other Mayan groups are the *Achi*, *Akateko*, *Awakateko*, *Chorti*, *Cluj*, *Ixil*, *Jakalteco*, *Kanjob'al*, *Poqomam*, *Pocomchi*, *Sakapulteko*, *Tz'utuhil* and *Uspanteco*.<sup>5</sup> The *Garifuna* meanwhile are estimated at 10,000 and the *Xinca* at less than a thousand.

Guatemala has made use of cheap indigenous labour for the development of its export-oriented cash crop industry, beginning with coffee after the 19<sup>th</sup> century liberal reform (1871). Coffee was grown primarily in the piedmont areas. Sugar, cotton, cardamom and rubber were cultivated during the mid-20<sup>th</sup> century along the Pacific coast. Most of the indigenous peoples live in the Western Highlands, where they earn a living from small farms supplemented by migrant labour earnings. Some have become regular farm workers, the so-called *mozos colonos*.

As patterns in labour demand changed, indigenous peoples became entangled in the web of feudal relations. Communities were utilized to meet the increased demand for labour; during the harvest season, coercive recruitment systems were employed. Forced labour was the norm during the expansion of the coffee economy up to the 1940s. This system not only exploited indigenous peoples as a cheap source of labour, but also impinged on the availability of indigenous lands.

During the past two decades, demographic changes have occurred due to a number of factors. The civil conflict taking place in the countryside has wrought havoc in indigenous lands, and caused the massive displacement of indigenous peoples. Other reasons include changes in labour migration patterns, partly due to diversification of cash crops and the availability of a year-round labour force.



Such events have caused a shift in the indigenous economy of regions. In the western highlands for instance, fewer households obtain their income from agricultural activity. The trend has been on the trade of non-farm commodities, with each household specializing in the manufacture of a particular product. Peasant economy based on grain production has given way to small-scale commercial agriculture, and livelihoods dependent on services, transport and extractive activities.

During the 1980s about a million indigenous peoples were displaced from their mountainous homelands during the height of the internal conflict and the counter-insurgency policies of the government. While others relocated to more isolated areas, several thousands fled across the border into Mexico. Many flocked to the towns and cities, swelling the urban population. It was these migrations that are said to have increased the indigenous presence in Guatemala City, the nation's capital. Close to a million Mayans are estimated to be living in the city, doing business in the trade of agricultural and handicraft products, or employed as labourers.

### **Indigenous Perceptions of Peace and Conflict**

Many of the Maya groups have a system of writing. They also transmit their culture from one generation to the next through oral tradi-

tion. The content and manner in which it is transmitted are regarded as a sacred duty by the indigenous peoples, fully acknowledged by their fellow human beings, by God and by Nature.

The juridical system of the Maya is different from that followed by the Guatemalan state. It is practiced in indigenous communities including in conflict resolution. The 'social balance' of the community is taken into consideration as it maintains respect, order and harmony, and institutes compensation within the society.<sup>6</sup> The arbiter presiding over the resolution of conflicts is an elder of the community called *K'amalbe* (social-juridical authority) or *Aj quijab* (spiritual guide), honoured and trusted for his integrity and wisdom. The Government does not recognize the indigenous system.

A structural approach was used by Ochoa-Garcia<sup>7</sup> to present the K'iche'-Mayan concept of conflict. In the Mayan world, animals communicate with people. The mouse was used as a central figure in this etymology as it is associated with disorder. In its traditional context, the rat represents progressive ruin, impoverishment and affliction; it is associated with poverty because they destroy things. Mice make noise, and the idea of noise relates to problems in communication, a manifestation of conflict. However a K'iche' term that refers to the noise of mice fighting is also the root word of a term that refers to an agreement through dialogue.

### **Armed Confrontation in Guatemala: Half a Century of Mayan Oppression**

Since the creation of the independent Guatemalan state in 1821, the concentration of wealth has been in the hands of a privileged minority. In the years that followed, the absence of an effective state social policy aggravated this problem of exclusion. The inability of the state to act as mediator between groups of divergent and social economic interests greatly polarized Guatemalan society.

Militarization was caused by an oppressive government together with its corrupt legislative branch and ineffective judicial system, together with the political dynamics of the Cold War. In response, a Guatemalan insurgency movement emerged, with a Marxist doctrine that believed the only solution for a new order was to seize power through armed struggle. During the last quarter of the 20<sup>th</sup> century, the Mayans were eventually declared to be allies of the guerrillas on suspicions of providing a support base for the insurgents; the basis for treating them as 'internal enemies' of the state. This resulted in outright aggression directed against Mayan



communities:

Relations between the State and the indigenous peoples of Guatemala, especially the Mayan people, have occurred under conditions of racism, inequality and exclusion, and these conditions constituted one of the historical causes of the armed confrontation. The undeniable reality of racism as a doctrine of superiority expressed permanently by the State constitutes a fundamental factor for explaining the particular viciousness and indiscriminate approach with which the military operations were carried out against hundreds of Maya communities in the west and northwest of the country, in particular between 1981 and 1983, when more than half of the massacres and scorched earth operations were concentrated against them.<sup>8</sup>

There were many atrocities committed by the government forces against the indigenous peoples including massacres, 'scorched earth' operations, disappearance and execution of Mayan authorities. The state forces also destroyed sacred places, monuments, and artifacts vital to the life of the Maya.<sup>9</sup> To avoid discrimination and persecution by the government, the Maya peoples concealed their



ethnic identity. The relentless destruction of human lives and properties by the state agents on the Mayan people has been judged as acts of genocide by the Commission for Historical Clarification.<sup>10</sup>

Acts of violence were likewise committed by the guerrillas. Although lesser in number and intensity compared to those by the state army, these atrocities were directed against the government soldiers, the civilian population, and also fellow insurgents.

The Maya's rights to their land was ignored by the Guatemalan Government when it granted land titles to the *mestizos* who occupied Mayan lands - in order to legalize their ownership. With government support, these settlers drove the indigenous peoples from their lands and territories in order to exploit the rich mineral resources and agricultural potential of these areas. The indigenous peoples organized a march to protest against this injustice to the town of Panzos in 1978. This resulted in the death through gunfire of a large number of protesters.

Guatemala's oppressive regimes have also supported the projects of enterprising multilateral development banks. Forced eviction and harassment by state forces in the World Bank-funded Chixoy Dam project in 1982 culminated in a series of atrocities to the indigenous people of the area.<sup>11</sup>

Even before the civil wars of the 1970s-80s, some groups committed to the Mayan cause had already emerged. In the late 1980s, indigenous movements began to focus on the cultural rights and political status of Guatemala's indigenous peoples. The Council of Mayan Organizations of Guatemala (COMG), an umbrella group formed by several indigenous peoples' organizations each having different concerns in Mayan development, released a booklet that presents the demands for political power and self-determination of the Maya.

## THE GUATEMALA PEACE AGREEMENTS

### Initiatives to Peace

The story of the unfulfilled dream of lasting peace has gone a long way, starting with the opposition groups that emerged during the troubled years of the nation's history. The formation in the 1970s of the Guatemalan National Revolutionary Unity (UNRG) can be considered as one of its major starting points. The UNRG was composed of various peasant, trade union, religious, students and intellectual groups that resorted to arms in response to the gross socio-



economic inequalities and political repression.<sup>12</sup>

In 1985 when a new national Constitution was approved, it included the establishment of a Human Rights Ombudsman and a Constitutional Court. A year afterwards the Academy of Maya Languages of Guatemala (ALMG) was founded. The same year, in 1986, a comprehensive regional peace plan was drafted after a consultation in Guatemala. In October of that year President Cerezo initiated a resumption of the peace negotiations but because of the alleged torture of military men by the URNG during that time, their request that different embassies also attend the talk was rejected by President Cerezo.

The URNG offered to dialogue with the Cerezo government in February 1987 with a six-point plan which included the building up of democracy in Guatemala, social reforms, ending of human rights violations, and upholding the Geneva Conventions on war. This was rejected by the government who stood firm in its demand for the URNG to disarm before any talks could proceed.<sup>13</sup> The Esquipulas II Agreement or the 'Procedure for the establishment of a Firm and Lasting Peace in Central America' resulted from the summit of Central American presidents held in Guatemala in August 1987.

In March 1990 Guatemala's National Reconciliation Commission, in accordance with the Esquipulas II Agreement and the URNG, signed the agreement for the initiation of a peace process identifying the UN Secretary General as moderator. By April 1991 both parties agreed to hold a meeting that would include the UN to define the negotiation agenda, but this meeting was suspended.

During the last decade of the 20<sup>th</sup> century, the synergy of the Mayan political movement was reinvigorated by a re-writing of their indigenous history and the awarding of the Nobel Peace Prize in 1992 to Rigoberta Menchu Tum, a Quiche Maya. The Council of Mayan Organizations of Guatemala (COMG) placed the autonomy issue firmly on the Mayan agenda<sup>14</sup> and the Agreement on Resettlement of Population Groups Uprooted by the Armed Conflict (ARPD) providing for the collective return of indigenous refugees into their homelands was signed. The growing political assertiveness of the Mayan movement was shown by the candidacy of an indigenous representative at the vice-presidency level.<sup>15</sup>

Among the features that make the Guatemalan Peace Agreements unique was the signing of The Framework Agreement for the Resumption of the Negotiating Process at the time of the resumption of the dialogue in January 1994. It provided the format for the peace

negotiations and stipulated the role of the UN Secretary General as Moderator and of the UN for the verification of the implementation of the agreements.

In 1994 the Assembly of Civil Society was formed on the basis of eleven different sectoral groups including the Mayan sectors. It was established to help gather the viewpoints of various civil society sectors and develop it into a consensus for presentation at the Peace Talks. The same year Mayan organizations created the Coordination of Organizations of the Mayan People of Guatemala (COPMAGUA) as their representative in the Assembly of Civil Society.

At the Assembly of Civil Society, the indigenous people's concerns were presented by the COPMAGUA. COPMAGUA drew up a set of proposals and this document served as the framework for the negotiations. The Indigenous Peoples' agenda was not welcomed by either the government or the URNG during the talks. Both parties refused to allow any indigenous representatives to attend. And the documents prepared by the ASC that contained provisions on the identity and rights of Indigenous Peoples were also rejected.<sup>16</sup>

The UN presented an alternative proposal which both parties agreed to, and in March 1995 the Agreement on the Identity and Rights of Indigenous Peoples was signed. The indigenous peoples barely participated however in the 1995 Indigenous Agreement which was negotiated mainly between the Peace Commission of the government and key persons in the URNG.<sup>17</sup>

Another issue during the talks was regarding ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989. According to the government Convention No. 169 was not in accordance to the constitution, while the URNG had earlier rejected the Convention, but now saw it as a possible strategy in their political advancement.

The UN convened negotiations with the newly elected Guatemalan government head and the URNG on 22-23 February 1996. Ceasefires between the two opposing camps were declared and agreements like those on the agrarian situation, civilian power, and role of the Armed Forces were put into effect.

The dialogue culminated finally in the signing of the Agreement on Firm and Lasting Peace in Guatemala and all other agreements on December 29, 1996. The Guatemala Peace Agreements are a product of 13 years of complex negotiations between the Guatemala Government's National Commission for Reconciliation and the URNG.

## The Salient Points of the Guatemala Peace Agreements

The Guatemalan Peace Agreements are composed of thirteen separate agreements which were defined and approved by the parties. They are as follows:

- The 1<sup>st</sup> agreement is on the resumption of the negotiations which recognized UN representatives as moderator and verification body of the talks;
- The 2<sup>nd</sup> agreement set the timetable for the targeted culmination of the agreements;
- The 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> agreements dealt with the issue on human rights, with a specific focus on the rights and identity of indigenous peoples;
- The 4<sup>th</sup> agreement was on the resettlement of groups uprooted by the armed conflict;
- The 7<sup>th</sup> on the social, economic and agrarian situations highlights the strengthening of public participation and legislative measures to development. It is worth noting that support to indigenous peoples rights to their lands and territories is not mentioned, except through facilitating in the acquisition of land titles under the agrarian reform programme;
- The 8<sup>th</sup> agreement relates to strengthening of civilian power and the role of the Armed Forces;
- The 9<sup>th</sup> deals with the ceasefire declaration;
- The 10<sup>th</sup> agreement is on constitutional reforms - it recognizes the existence of various indigenous peoples within the state and their cultural systems, and attempts to redefine Guatemala as a multi-ethnic state;
- The 11<sup>th</sup> agreement relates to the re-integration of the URNG members into civil and national society;
- The 12<sup>th</sup> agreement sets a timetable and the mechanisms for the implementation of the peace agreements; and
- The 13<sup>th</sup> is on the signing of the whole set of terms for a 'firm and lasting peace.'

## INDIGENOUS PERSPECTIVES ON THE PEACE ACCORDS

The Peace Agreements have not been complied with and have only been implemented superficially. Juan Leon Alvarado, the executive director of the Defensoria Maya, concludes that the accord is not a perfect embodiment of the Maya vision although it can be used as a spring board in furthering indigenous concerns.

Based on an analysis of the peace process and the involvement of the civil society and indigenous peoples in the negotiations, Alvarado describes the process and the lessons learned. He also recommends specific measures to achieve the just and lasting peace that has been eluding the indigenous peoples of Guatemala since colonization.<sup>18</sup>

### The Role of Civil Society Organizations in the Dialogue

During the 1990s, the majority of the organizations had much political power and a large number of members, which obliged the Government to take them into consideration. Moreover, it was also a political strategy to give credibility to the negotiations, since negotiations conducted without the direct or indirect participation of civil organizations would reflect on their legitimacy.

The mechanism for the participation of civil society in the negotiation was an element for much discussion since, unlike the Government and army, the URNG wanted the social sectors to wield more influence. In the end it was decided that a civil society body be created, and in May 1994, the Assembly of Civil Associations (ASC) was established.

During the process of negotiations, the civil organizations were grouped by sectors, interests, and objectives so they could prepare for specific agenda items. Only the organizations of the Maya planned to directly participate in the negotiations with the government. It was difficult arriving at a consensus on all the subjects presented, but the major difficulty was on the subject of the Identity and Rights of Indigenous People. It was the first time a debate was held on the discrimination and racism in the country. Issues such as self-determination, territory, and the recovery of land and natural resources were discussed extensively.

### Agenda of the Negotiations

The main agenda identified for the peace negotiations revolved around human rights, communities displaced by the armed con-

flict, identity and rights of indigenous people, the establishment of the Commission for Historical Clarification (CEH), socio-economic and agrarian situations, and the strengthening of civil society, together with the function of the Army in a democratic society.

Demobilization of the guerrilla forces and the reduction of the military presence in indigenous territories were supposed to be discussed later. In the short run, the army had to accept the principal themes for discussions, which seemed a political victory for the URNG. In the long term, the army won since the URNG was demobilized, and civil society organizations were neutralized.

### **Strategic Visions of the Peace Process**

Indigenous peoples have a distinct way of defining a conflict. In the case of the Mayas, a conflict is perceived as an imbalance or disagreement in the relationships between individuals and societies. In order to bring back harmony, there should not be any competition instead the focus should be on re-establishing the balance. There were different visions arising throughout the whole process of the dialogue and negotiation: that of the government, the URNG, and the Maya movement and civil society:

- a. The government and the ruling classes, including the army, planned the negotiations as the culmination of an armed conflict i.e. the end of war and the neutralization of the social movement;
- b. The URNG wanted to negotiate for political gains such as legitimacy since they were losing social influence. They had no other way out but to settle and to take advantage of what the global community was offering. They intended to make changes after the agreements were made, in their case, minimal structural reforms. At present they do not have the consistency or the interest to defend or demand the implementation of the agreements they themselves signed. Although they accepted certain proposed agreements, in reality this will not change the situation of the people such as socio-economic and agrarian problems, human rights violations committed during the conflict etc.;
- c. The Maya and civil movements affirmed that peace was not only the non-existence of armed conflict but also the change in structures which caused it. They

therefore need to look into finding concrete solutions to poverty, discrimination, and repression. Peace means the construction of processes which permit the participation and decision of all social sectors. In the Mayan philosophy, peace means good life, which means living well without worry of any kind, and having the basic necessities. The participation of the indigenous peoples and civil society in the negotiations was minimal.

### **Participation of the Maya in the Negotiations**

The Peace Process opened a lot of opportunities for the participation of Maya organizations. Initially, the subject of indigenous peoples was not included in the peace negotiations, and since 1989, different Maya organizations struggled to have it included.

It was vital for the Maya people to break out of the vicious cycle of discrimination and racism whereby Maya had become synonymous with inferiority, uselessness, ignorance, laziness, being dirty, and a drunkard etc. The Maya people had to overcome centuries of mental colonialism which has been passed from generation to generation. In the process, the Maya people both as individuals and collectively had to deal with their conscience and certain internal questions relating to their identity, origin, culture, historical roots, and at the same time raise their self-esteem and confidence in themselves. These issues contributed enormously to strengthening the identity and culture of the indigenous people of Guatemala.

The next step for political advancement was to demand the participation of the Maya in the negotiations. Both the URNG and the government could have modified the Marco Agreement taking into consideration that the greater part of the population of Guatemala is indigenous; they did not do so. The indigenous peoples formulated a proposal conceptualizing their demands. This had to be agreed among the various Maya organizations, and once consensus was reached, negotiated with the Civil Society Assembly.

After long discussions, analysis and reflections, it was agreed to put forward a proposal to create a pluri-cultural and multi-lingual State in order to truly reflect the ethnic diversity of the country and to provide a space for the indigenous peoples of Guatemala. The document agreed on by the Maya organizations was submitted to the Civil Society Assembly (ASC) for discussion, and a commission of Maya negotiators formed to negotiate the proposals.

## **Creation of a Maya Political Body**

Since its creation in 1994, COPMAGUA has launched many activities to advocate the cause of the indigenous peoples. It was also able to stop, through political pressure, the break up of negotiations between the parties in conflict on the subject on The Agreement on the Identity and Rights of Indigenous People. Thus COPMAGUA has developed into an organization that served as a direct intermediary between Mayas and the Guatemalan State and worked for the advancement of the Mayan political agenda.

It was decided that COPMAGUA would not accept any financial assistance, other than for international representation i.e. airfare, accommodation etc. as to do otherwise might implicate the independence of the organization. Direct contributions to the individual member organizations were acceptable.

## **Signing of the Agreement on the Identity and Rights of Indigenous People**

For purposes of transparency and the credibility of COPMAGUA, a general assembly was called on 8 May 1995 to evaluate the contents of the agreements during the negotiations. The assembly concluded that the Agreement does reflect all the aspirations of the indigenous peoples but provide a good framework to motivate the struggle for indigenous rights.

The negotiating parties were criticized for not establishing mechanisms to solve the problems facing indigenous peoples. They recognized a series of inalienable rights but a declaration of principles was not enough. Mechanisms to concretize these principles should have been created. The URNG, as well as the government, decided to establish a Comisiones Paritarias wherein representatives of indigenous people and the government would discuss, negotiate, and establish juridical, legal, and constitutional mechanisms to make the Agreement a reality.

## **Schedule for implementation of the Agreement on Indigenous People**

In the working up of a schedule for compliance and implementation of the Agreement, the Maya organizations were not consulted. The parties in conflict established a calendar of implementation according to their personal interests and that did not coincide with the



time and political processes of the Mayas. This imposed problems on COPMAGUA and Mayan organizations, and placed them in technical, political, and professional disadvantages in consulting and generating proposals for implementation. However, the challenge of implementing the Agreement was accepted despite all the disadvantages.

The last government, whose term ended in 2000, played a more active role than the present government in the implementation of the Peace Agreements, including in terms of discussions. It was during the past administration when the *Comisiones Paritarias* of the Indigenous Agreement was launched. However, they have had little success since the majority of the negotiators were not willing to advance much on this topic.

### **Signing of the Peace Agreement (1996)**

The Peace Agreement was finally signed on 29 December 1996 in the city of Guatemala, ending 36 years of armed conflict. The emotions and hopes of a lot of people could not be hidden. Finally, their hopes for a long time were concretized: that there would be no armed conflict nor violations of human rights; that there would be no injustice, poverty, discrimination, racism and other structural elements that persecute the people. There was also uncertainty for the immediate future, but the emotion was such that this unforgettable day was celebrated.

### **Integration of the URNG into Civil Society**

As part of the operational agreements, the URNG started to dismantle and surrender its arms. The government complied with some conditions for the reintegration of ex-combatants, but did not extend aid to all and many URNG members - composed mostly of Mayans - found themselves in the same conditions, if not worse, than before their disarmament. The government did not totally dismantle military detachments, nor did it reduce the military budget or remove the *Estado Mayor Presidencial* which was the main organ of repression of the State.

Partly for the survival and security of its members, the URNG has meanwhile adopted a passive and cautious attitude regarding the unfulfilled aspects of the agreements by the Government. The issue on rights seems to have been abandoned. For this reason the general populace claim the URNG has become 'part of the govern-



ment' since it appears to prioritize its own interests above those of the people.

### **Political Difficulties within COPMAGUA**

The political events totally went beyond the capacity and vision of the directors of the Coordinating Body, who have continued in their positions from 1996 to the present. The principles of balance in making decisions, consultations, and consensus were broken. This caused discontent among the individual organizations, some of which began to withdraw from COPMAGUA as of 1997 onwards. This debilitated its structure, credibility, and legitimacy. Adding to these are the crisis in leadership, the lack of political vision, and the acceptance of operational funds despite the initial decision not to do so. This resulted in competition for jobs and positions.

The mistake of the COPMAGUA leadership was to submit the organization to the political decisions of the URNG. It lost its autonomy and the strategic vision of planning for the interests of the Maya People. In 2003, the National Council of Indigenous Peoples (Consejo Nacional de Pueblos Indígenas) was created by grassroots organizations from 20 indigenous communities.<sup>19</sup>

### **Redefining the Politics of the Maya Movement**

In the year 2000, several Maya leaders as well as organizations exchanged ideas and made agreements on continuing the process of creating a space for discussions and political decisions for the Maya People.

At present there is a committee analyzing the limitations and achievements of the permanent national commissions, the Comisiones Paritarias, and the leadership of the COPMAGUA, as well as other elements to prevent repeating their mistakes in the future.

It is imperative that there should be the creation of ample and participative political spaces with a profound political vision in order to construct the State they have defined.

## **CONCLUSIONS**

In his campaign for the 2003 elections, President Oscar Berger undertook to implement the Agreement on the Identity and Rights of Indigenous People, and also made a number of commitments to

strengthen and promote the rights of indigenous peoples in Guatemala. In this context it is relevant to note that 'The area of the Peace Accords that has been least implemented is that of the identity and rights of indigenous peoples.'<sup>20</sup>

However, the experience of the indigenous peoples of Guatemala in the peace process and the lessons learned can help guide similar processes in other parts of the world. In this respect the following elements are relevant:

### **Main Achievements from the Peace Process**

- The distrust in the communities and families caused by the internal armed conflict is starting to disappear;
- Community ties are reborn;
- There is now a process of meeting again between families;
- The justification for military control and the abuse of human rights no longer exists; the conflict and the guerrillas have disappeared;
- The people feel free to move around their communities and towns although fear persists due to common crimes and the rise of kidnappings and murders committed by paramilitary groups;
- Even with all the mistakes in this short process, the treatment of the subject on indigenous peoples is irreversible. There is reaffirmation of identity, self-esteem, and value;
- Maya authorities, who were displaced by militarization and the Civil Self-Defence Patrol, have re-established themselves;
- Although extreme poverty exists, the people are mobilized to implement small businesses;
- The organization and association for production and commerce grew;
- The rights of indigenous peoples are taught in primary and secondary schools as well as universities;
- The Commission on Historical Clarification (CEH) launched an information drive and its conclusions can be implemented;

- There is now a Maya political vision on the New State;
- Women have a major participation in the gender struggle;
- Mayan organizations are more politically specialized;
- The Foreign Affairs Department of the Government is more positive towards indigenous rights.

### **Further Action: Tasks and Responsibilities**

- Political reactivation of the Social Movement in Guatemala which is now in a state of transition;
- To define a national strategy on economic development;
- To continue the construction of the Peace Process and fulfil the Peace Agreements;
- To dismantle existing repressive bodies like the Estado Mayor Presidencial and military detachments in strategically situated places;
- The present government should be more transparent and open in its policies and programmes.

### **Lessons Learned from the Peace Process**

- Indigenous peoples need to have strong organizations with a clear political vision to be able to negotiate;
- Indigenous peoples should negotiate directly for their aims and aspirations. There should not be any intermediaries;
- The indigenous peoples should ask for help when needed, and be committed to achieving specific functions;
- Extensive political alliances are indispensable in gaining the objectives of the indigenous peoples;
- Dialogue and sensitizing the ruling elite are fundamental in changing perceptions and eliminating discrimination and intolerance;
- Unity is important but the establishment of a consen-

sus is indispensable so as not to weaken proposals and plans of action;

- Indigenous peoples should remember historical principles and bases from which their past developed. These provide the basis for their differences and are major instruments in building strength in diversity;
- Indigenous peoples' right to self-determination should be recognized and practiced.

### **Other Recommendations**

*For the Governments:*

- Not to distrust the plans of indigenous peoples;
- The best way to consolidate democratic processes is to be open to dialogue and create spaces for the active and decisive participation of indigenous peoples;
- Implement required substantial juridical, economic, legal, and constitutional changes in order to avoid conflicts;
- Invest in the development of indigenous peoples based on consultations and their direct participation;
- Develop the public policies of the State in such a way that indigenous peoples benefit directly.

*For the Assisting Agencies:*

- Economically assist indigenous organizations and communities without imposing conditions of any kind;
- Review and establish political assistance to indigenous peoples;
- Monitor all investments and funds given to governments for indigenous peoples.

*For civil society in general:*

- Unconditionally help and advance the plans of indigenous peoples;
- Contribute in facilitating the access of indigenous representatives to decision-taking positions.

**Endnotes:**

<sup>1</sup> The Tebtebba Foundation, Inc., Indigenous Peoples International Centre For Policy Research and Education, P.O Box 1993, 2600 Baguio City, Philippines.

<sup>2</sup> Jack David Eller: *From Culture to Ethnicity to Conflict: An Anthropological Perspective on International Ethnic Conflict* (USA: University of Michigan Press, 1999).

<sup>3</sup> James Painter, *Guatemala: False Hope, False Freedom*, (England; The Russell Press Ltd., 1989).

<sup>4</sup> Roger Plant, "Lessons from the Guatemala Peace Accords," in *The Challenge of Diversity* (The Netherlands: THELA THESIS, 1998), 10.

<sup>5</sup> Also see Romeo Tiu, "Mayan Spirituality and Lands in Guatemala," in *Defending Diversity* (Utsjoki: The Saami Council, 2004)

<sup>6</sup> C. Chocooj, "Resolution of Conflicts and Indigenous People," paper presented at the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples, (Manila: Tebtebba Foundation, 2000).

<sup>7</sup> O.C. Garcia, "K'iche'-Maya Concepts of Conflict," paper presented at the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples, (Manila: Tebtebba Foundation, 2000).

<sup>8</sup> Report of the Commission for Historical Clarification of Human Rights Violations and Violent Acts which have Caused Suffering to the Guatemalan Populations (CEH): *Guatemala, Memory of Silence (Tz'inil Na 'Tab'al)*, 1999. See also UN Verification Mission in Guatemala (MINUGUA) Verification Report: "The Indigenous Peoples of Guatemala: Overcoming Discrimination in the Framework of the Peace Agreements" (September 2001), 4.

<sup>9</sup> *Ibid.*, 34-35.

<sup>10</sup> *Ibid.*, 39-41.

<sup>11</sup> M. Pacenza: "A People Dammed: The Chixoy Dam, Guatemalan Massacres and the World Bank" in *Multinational Monitor* (July - August 1996), 8-11.

<sup>12</sup> Painter 1989.

<sup>13</sup> *Ibid.*

<sup>14</sup> Plant 1998.

<sup>15</sup> Estuardo Zapeta, "Guatemala: Maya Movement at The Political Crossroads," *Abya Yala News* VIII, no. 3, (1994).

<sup>16</sup> Zapeta 1994.

<sup>17</sup> Plant., 13-14.

<sup>18</sup> Juan Leon Alvarado, "The Peace Process in Guatemala and Indigenous Peoples," paper presented to the International Conference on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples, (Manila: 2000).

<sup>19</sup> *The Indigenous World 2004* (Copenhagen: International Work Group for Indigenous Affairs, IWGIA 2004), 99.

<sup>20</sup> *Ibid.*, 96-100.

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## Chapter 6

### **Conflict Resolution and Gender in Mexico: The Role of Women in Achieving Autonomy**

*Nellys Palomo Sánchez,\* Eleanor Dictaan-Bang-oa  
& Jack G. L. Medrana\*\**



*This case study focuses on the conflict in Chiapas and highlights the linkage between oppression and marginalization with demands for autonomy. It also presents the situation and participation of women in the present quest for self-determination of the indigenous peoples of Mexico.*

Cultural plurality has brought several challenges to the nation-state in its attempts towards unity, integrity and peace. Internal conflicts emerge with the inclusion of the element of ethnic differences in the state's consolidation of power, centralization of economy, and restructuring of society. Each individual group that is part of the bigger nation-state demands space for self-expression and continued existence. This is linked to the struggle for human rights, and individual and social freedoms, and the right to self-determination. Demands for autonomy are most likely to arise from oppressed groups marginalized from various aspects of national life.

In the quest for autonomy, there are four fundamental issues that should be discussed: (i) the identity of the subjects of autonomy; (ii) the scope and limits of autonomy; (iii) the responsibilities which

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will be devolved to the autonomous entity; and (iv) the legal framework on which the relationship between the state and autonomous units is based. Existing autonomous entities around the world have shown what aspects of culture are most relevant in the issue of autonomy. Of these, one of the most important is the right of the community to use its own language, and linked to this, how to set up an education system which meets the needs of the community. Other aspects include jurisdiction over a particular territory, control of the resources within it, and a right to a political system appropriate for the indigenous group (Stavenhagen 2000:10-21).

The autonomy issue has resurfaced in Mexico since the Zapatista National Liberation Army (EZLN) uprising in 1994. The string of events following this has persistently fuelled the struggle concerning this issue. The signing of the 1996 San Andrés Accords brought false hopes; the government afterwards rejected the legislative proposal to guide the possibility of indigenous autonomy. Meanwhile, ongoing work is focused on consolidating the struggle with the communities uniting together, either through their own initiative or through the Zapatista movement. And this has significantly advanced the banner of indigenous peoples' autonomy.

Within this context, women have initiated the demand for their rights and are also beginning to play a greater role in the peace-building process. Women oppose their defined roles and question certain customs. This highlights the asymmetry which exists in the balance of power and gender within their communities, as women search for new imagery and relations to construct their own dignity.

## HISTORY OF THE INDIGENOUS MOVEMENT

The relationship between the Mexican state and its indigenous peoples can be described as two conceptual categories:

1. *Indigenismo* which is characterized by guardianship and paternalism, and is welfare-oriented. The protection of the indigenous culture system is the responsibility of the National Indigenous Institute (Instituto Nacional Indigenista, INI), which is the government's highest-ranking agency for indigenous affairs. The approach to cultural protection was folklore-oriented, with policies aimed to advance state interests;
2. *Indianismo* is both a defence and a response to





*indigenismo*. It is an expression of the indigenous world view that accommodates the indigenous peoples' harmonious relationship with nature and a search and identification with their past. But the autonomy of this paradigm has been limited since its conception, as its actions have been motivated in large part by official actions contrary to the interests of the indigenous peoples. Political actions have been channelled to other forms of social protests which have relegated indigenous issues under the more popular broader themes of the socialist rubric.

The dawn of Mexican Independence did not see the alleviation of the indigenous peoples' misery. The independent government promoted an economic system based on the capitalist configuration. Legislation became impartial to the indigenous peoples and functioned to expedite the expropriation of their communal lands.

Essentially, land became the property of those who made the law. Its confiscation was justified by a constitution that made reference to the European ideological positivist framework. A great percentage of the land was owned by foreigners, with investors from the United States staking a claim on railroads and mining, and those from the United Kingdom doing likewise in the oil industry.

### **The Mexican Revolution (1910)**

Among the prominent figures of the Mexican Revolution was Emiliano Zapata. He first became council president in 1909 in a village in the state of Morelos. As a leader committed to defend his community against land grabbing, he ardently supported Francisco Madero, who promised to return stolen lands if installed as president. The *campesinos* (peasants) who joined with Zapata armed themselves to defend their community's land and water resources. Another revolutionary figure, Francisco Villa, also mobilized forces, but he lacked Zapata's vision of a clear and precise agrarian and political platform.

When Madero became president, in terms of the land problem, he proposed legislative initiatives that would prevent land-grabbing, but rejected Zapata's strategy for an extensive agrarian reform programme. The programme that Zapata designed for the villages in Morelos called for local self-government and land reform. This was later brought to the national level as the radical *Plan of Ayala* (Barry 1995:18-19).

In 1914 General Venustiano Carranza gained control of the state and reinstated a bourgeois-oriented government. He declared a land distribution programme that promised to return lands confiscated during the Porfiriato regime. But this was cancelled a year and a half afterwards, as it was said to be threatening private property rights through the reconstitution of indigenous lands and promoting the agrarian demands of the masses.

The support and active participation of indigenous peoples was an integral element in the Mexican Revolution. Initially it appeared flexible enough to accommodate their vision of recognition of indigenous culture and rights, but this failed to materialize. The Indigenous Peoples remained marginalized from policies which were created from the old foundation on which the Mexican state had been built.

### **Assimilation of Indigenous Peoples into the Nation-State**

During the first quarter of the twentieth century the government embarked on a policy of assimilation through the triad of education, culture and integration. The indigenous agenda was restrained as the state outlawed religious- and ethnic-based organizations. A nationalist policy was put in place during the term of President General Lazaro Cardenas (1934-1940) wherein workers, peasants

and indigenous peoples played a prominent role. This was however founded on centralism and capitalist development, and while it subscribed to the interests of these groups, it also effectively separated the groups from each other. This was one of the President's projects to realize the 'Mexicanization' of the Indigenous Peoples.

But the Cardenas regime was different from the former administrations in that to some extent it considered the indigenous agenda within the state programmes. The voice of indigenous protest was not silenced with crude methods but politically channelled, modulated and toned down through the strategies of the government's programme of *indigenismo*.

After the Cardenas regime a more capitalist economic policy gradually dominated Mexican agriculture, when the pilfering of lands by ranchers and land-grabbers made life more difficult for the peasants and indigenous communities. The prevailing condition of the times effected a change in the orientation of indigenous organizing efforts, relocating the focus of their demands more in the political arena than in socio-cultural issues. The national organizations aimed to have greater participation in the decision-making process as related to the *indigenista* policy, while community groups shifted their emphasis to demands for land, fair pay, natural resources and the right to self-determination.

The mandate of the National Indigenous Institute, which was created in 1948, was carried out in four main areas: (i) production; (ii) social welfare, (iii) training and advisory services, and (iv) fostering of cultural heritage. At this time however, the state policy of *indigenismo* was faced with a more radical form of *indianismo* by the indigenous peoples' organizations. In contrast to the former, which used education to achieve its ultimate objective of assimilating indigenous culture, the latter focused on economic and political demands in the form of the recognition of indigenous peoples' rights to land and to self-determination.

### **Crisis in Agriculture and the Indigenous Movement**

During the early 1970s the Mexican agricultural situation was in crisis. This was a result of a series of uprisings and mass movements. The government responded by creating political spaces and adopting palliative economic policies, and in this way utilized the situation to advance its mainstream economic programme. The agrarian crisis was also used to mitigate the rural crisis and contain the general dissatisfaction prevailing among the population.

The Consejo Nacional de Pueblos Indígenas (CNPI) – National Council of Indigenous Peoples, was created during the time of President Luis Echeverría (1970-76) as a corporate structure of indigenous representatives at the national level.<sup>1</sup> It was a strong opponent of *indigenismo* and the Government's agrarian policy, and emerged as an avenue for reports on oppression and human rights abuses.

### THE INDIGENOUS MOVEMENT

The last two decades of the twentieth century saw the erosion of institutions created by the 1910 Mexican Revolution. From its interventionist, populist and nationalist approach, the state began to redefine its policies along the lines of laissez-faire, neo-liberalism, and internationalism. Agricultural modernization brought about by President Miguel de la Madrid's government (1982-88) gradually marginalized the indigenous producers, and many joined non-indigenous organizations that followed the framework of the *indianista* agenda. Faced with the difficulty of raising the indigenous issue at the national level, independent of state policy, indigenous peoples secured their place in politics through peasant organizations.

Simultaneously the state made some accommodation for indigenous peoples in what has been termed as 'participatory *indigenismo*' – an idea associated with the works of the 'critical anthropologists' in Mexico. Obscured behind this incentive was the ultimate objective of exploiting the labour and natural resources of the indigenous communities. The *indigenismo* programme has been described as a state apparatus designed to extend state hegemony over the peripheral areas of Mexico.

#### Amendments to the Constitution (1992)

The Government of President Salinas de Gortari (1988-94) hastened the integration of Mexico's economic and financial structures in response to the demands of international market forces. Amendments to the national constitution, including to Articles 4 and 27, were made in the context of these developments.

In January 1992, the Constitution was amended to represent a fundamental shift in Mexico's policy towards its indigenous peoples acknowledging the multi-ethnic composition of the country. However, these amendments are superficial, and no substantive advan-

tage to the indigenous peoples.

The amendments to Article 27 are part of a broader process of privatization of finance and industry and modernization of agriculture.<sup>2</sup> Article 27 sought to privatize the *ejidos*, the system of collective property of land prevalent in Mexico, in order to make agriculture more productive through commercialization. Most of the indigenous producers, who are small-time agriculturists, were left out of the process.

### **The Potential of *Indianismo***

Central to the policy of *Indianismo*, self-determination has assumed various ways of expression. It does not necessarily threaten the territorial integrity of the state. Indigenous peoples that call for their right of self-determination to be recognized are generally not aiming for secession; they demand greater participation in the political system, equality, and the right to decide their own priorities and paths for cultural preservation and development.

The state programme of *indigenismo* is perceived to be promoted by the Government-created organization, the Congreso Indio Permanente (Permanent Indian Congress, CIP), while the *Consejo Mexicano 500 Anos de Resistencia Indigena y Popular - Mexican Congress: 500 Years of Indigenous and Popular Resistance*, (CM-500) put forward an alternative framework of *indianismo*. CM-500 attempted to construct an indigenous movement that is independent and national in scale. During this process, it made efforts to integrate the various concepts linked to the indigenous agenda, an example of a multi-sectoral approach to problem-solving.

### **AN AVENUE FOR AUTONOMY: THE INDIGENOUS AGENDA RIDES THE EZLN PLATFORM**

The Zapatista National Liberation Army (*Ejército Zapatista de Liberación Nacional*, EZLN) claims to be the advocate of a new model for the transformation of society which is aimed towards a just economic system and the elimination of oppression. The EZLN sees itself as the successor of revolutionary organizations that built the old, faulty communist states, although in a dimension which is different from the others. Their campaign goes on to sow seeds in fertile ground around the world. Subcomandante Marcos, the main spokesperson for the Zapatistas, attributes the effective diffusion of the EZLN philosophy as follows:

*...(in) the lack of interest in power – that the word of the Zapatistas has been well-received in other countries across the globe, above all in Europe. It has not just been because it is new or novel, but rather because it is proposing this, which is to say, to separate the political problem of taking power, and take it to another terrain...Our work is going to end, if it ends, in the construction of this space for new political relationships. What follows is going to be a product of the efforts of other people, with another way of thinking and acting... (Chiapas Revealed 2001).*

On 1 January 1994, when the EZLN seized control of several towns in Chiapas, including the major town of San Cristobal de las Casas, many of the indigenous organizations joined in the uprising. As the predominant group in Mexico which is opposed to the national government, the indigenous movement considered it a good ally and sympathetic to its cause. However, the Zapatista agenda initially did not include the demand for indigenous rights, self-determination and autonomy. It was the indigenous movement that had to strive to have their agenda included within the EZLN platform. (Hernandez 2000:27-31)

Efforts of these organizations to press for their rights and agenda continued at the regional and national levels. In March 1994, the first National Electoral Convention of Indigenous Peoples (CNE) was organized, with the participation of different indigenous organizations and representatives. A decision was taken to include indigenous people's rights in the national constitution, and to place indigenous deputies in the political groups running candidates for the presidency. The National Electoral Convention was the first time indigenous supporters of the Institutional Revolutionary Party (PRI) - in power since 1929 - worked together with indigenous sympathisers from the opposition parties.

During this time Manuel Camacho Solis was appointed as the government representative responsible for resolving the Chiapas problem. The EZLN presented him with four points for negotiation covering economic, social, political and military demands. Solis however proposed for a peace negotiation through the regulation of Article 4 of the Constitution and the creation of indigenous offices. This proposal was rejected by the Assembly of the National Electoral Convention and the EZLN in June 1994.

The second session of the National Electoral Convention was held in November 1994, and mandated that at the National Indig-

enous Congress (CNI) to be held in December that year 'a point regarding women's participation in the process towards autonomy' was to be included in the agenda. (Gutierrez and Palomo, 2000)

### **The San Andrés Accords**

On the 9<sup>th</sup> of February 1995 the Zedillo administration (1994-2000) launched military attacks against the EZLN and the Catholic Church, as the latter was suspected of supporting the EZLN. Indigenous and peasant organizations began a march to Mexico City to protest the military operations in Chiapas, and to call on the government to address their demands. The Government's response was the creation of a cross-party group from the legislative body called the Commission for Reconciliation and Pacification (COCOPA) which was to facilitate the ensuing peace process. Four areas were identified as the main issues for dialogue: (1) Indigenous Rights and Culture, (2) Democracy and Justice, (3) Social Welfare and Development, and (4) the Rights of Women.

The Multi-National Indigenous Assembly for Autonomy (ANIPA) was organized by members of the Party of the Democratic Revolution (PRD) including indigenous deputies, senators, its Committee on Human Rights and Indigenous Peoples, and other non-governmental and indigenous organizations. The decisions taken by the ANIPA Assemblies were taken by an indigenous majority, unlike those in the talks between the EZLN and the Federal Government.

ANIPA's first assembly was convened in Mexico City in April 1995 where it defined policy changes specifically for Articles 4, 115 and 73 of the Constitution. The participants also proposed the recognition of regional autonomy. This was an extraordinary meeting, where the delegates met to conceptualize and draw up a legislative proposal as its sole objective. (Hernandez 2000:31)

In August 1995, ANIPA established the working group on women's rights after an analysis of indigenous women's problems vis-à-vis the proposed law on autonomy. The congress noted the exclusion of women in the ANIPA initiative for regional autonomy, and the result was a proposal for a national meeting of indigenous women to further discuss the proposed constitutional reform for regional autonomy. Gender rights and autonomy were reiterated in the 4<sup>th</sup> assembly in December.

From 3-8 January 1996, the National Indigenous Forum was convened at San Cristobal de las Casas, and the indigenous move-



ment informed EZLN on their expectations. The first phase of peace negotiations between the EZLN and the Government took place the same month, and on 16 February 1996, the San Andrés Accords were signed. Salient provisions of the Accords are as follows:

- Indigenous rights must be provided for by the Mexican Constitution;
- Indigenous political participation and representation should be broadened;
- Guarantee of justice to indigenous peoples;
- Support should be given for the creation of an indigenous educational system; and
- Rights of women to equality and equity recognized.<sup>3</sup>

During the talks, there were only six representatives from the indigenous movement out of the twenty advisors which represented the EZLN side. The outcome was not very positive for indigenous peoples as it gave recognition to the autonomy of indigenous peoples only at the community level.

Although the resolution at San Andrés was accepted by EZLN, the Accords did not encompass the fundamental demands of the indigenous peoples as expressed in the mandate at the Forum in January 1996. The Accords do not include a provision regarding the central issue of land and proposals for regional autonomy of indigenous peoples. Once again, the indigenous peoples of Mexico were thwarted of their opportunity to advance their right to self-determination.

The negotiations only covered the first item of the agenda. Both the EZLN and the Government went only as far as signing the agreement on Indigenous Rights and Culture, while the others which were on Democracy and Justice, Social Welfare and Development, Women's Rights, Reconciliation in Chiapas, and Cessation of Hostilities, were left out. Ultimately, the promise to ratify the accords on Indigenous Rights and Culture, scheduled to take place after March 1996, was also not kept. (Paulson 2001)

In August 1996, the EZLN and its supporters agreed to suspend their participation in the Peace Talks until five basic conditions were fulfilled: (i) the release of political prisoners; (ii) the creation of a government team that respected the Zapatista delegation, (iii) the installation of the Implementation and Verification Commission, (iv) proposals and commitment of the government on is-



sues of Democracy and Justice, and (v) an end to the militarization of Chiapas.

In October and November of that same year, the congressional peace commission, COCOPA was tasked to draft a series of legislative proposals on the basis of the San Andrés Accords. While the EZLN accepted this proposal with some reservations, the government's response was a plethora of major objections and modifications to the COCOPA initiative (Paulson 2001). Without the support of the executive, COCOPA refused to present the draft bill to Congress as approval would be highly unlikely given the circumstances.

Meanwhile, during the next two years (1997-99), throughout Chiapas, many communities initiated the creation of 'Autonomous Municipal Councils.' Indigenous traditions were followed in the appointment of leaders, judicial system and resource management; council decisions were agreed by consensus.

In January 1998 the Interior Minister submitted a counter-proposal of reforms on Indigenous Rights and Culture to Congress. This did not have the support of the EZLN or the other political parties, and was not approved. There were many who refused to accept proposals which were not derived from the COCOPA initiative (Paulson 2001). The difference between the Accords and the Government's proposal was that the first recognizes the right of indigenous peoples to self-determination and autonomy at many levels, while in the second this right is reduced to indigenous communities, the concept of which is still ill-defined.

In 1998 a series of military offensives were carried out in Chiapas by the Government where EZLN members, supporters and human rights advocates were either injured, detained, sexually harassed, expelled from the country, or killed. A new peace plan for Chiapas was introduced by the Federal Government, stating that the EZLN must surrender their weapons in the interests of personal security. This was rejected by the Zapatistas.

By the time of Vicente Fox Quesada's administration in the second half of 2000, the EZLN was again exploring possibilities for a resumption of negotiations and had reduced its former five demands to three, as stated in a press conference with the newly-elected president. As part of his promise to achieve the state of 'holy peace' in Chiapas proclaimed in 2001, Fox withdrew the Federal Army from some of its assignments in Chiapas, and introduced the proposal of COCOPA to the Senate as a presidential initiative. However, President Fox could not persuade his own party to support

this proposal; the PRI insists meanwhile that a new legislative draft should be made.

In March 2001 a protest march to Mexico City was held by the Zapatistas to lobby for the constitutional reforms in the proposed Law on Indigenous Rights and Culture. At the end of April 2001, Congress approved a watered down version which differed from the original. Indigenous peoples see this as a betrayal. They point out that the law does not grant full autonomy to indigenous peoples, and curtails their rights to the natural resources in their territories (Mexico Solidarity Network 2001).

The EZLN still hopes to carry out negotiations with the government regarding the implementation of the San Andrés Accords. Since 1996, a low intensity conflict has continued to ravage the countryside. Apart from the major actors mentioned earlier, paramilitary groups were also involved in the war. These groups have been engaged in attacking, robbing, killing etc. This strategy of low intensity conflict is the government's strategy to undermine the marginalized people. It is also a way of evading any attempts to mediate the conflict.<sup>4</sup>

[Editorial Note: In August 2003 the EZLN announced a response to the 2001 Constitutional Reform and failure of the Government to comply with the San Andrés Accords with the establishment of a new administrative body based in Los Caracoles. This will be done through the *Juntas de Buen Gobierno* which includes five Good Governance Committees, one in each of the autonomous regions - Selva Forenteriza, Tzots Choj, Selva Tzetzal, Zona Norte de Chiapas and Altos de Chiapas. The main objective of Los Caracoles is to strengthen regional autonomy.]<sup>5</sup>

## INDIGENOUS WOMEN IN THE PEACE BUILDING PROCESS

In the prevailing political and socio-economic crisis facing indigenous peoples in Mexico, indigenous women have shaken off the shackles of indigenous and mainstream tradition that has confined them to domesticity and a secondary role as 'shadows of men'. Under very critical conditions, women have challenged tradition not only to pursue their reproductive roles but also to take responsibility for food production and security of their families and communities. Women's participation has been very significant in the Zapatista movement and the ensuing peace negotiations.

### **Situation of Mexican Women**

Women in Mexico suffer from 'double subordination'. Based on a 1990 census conducted by the National Institute of Statistics, Geography and Information (INEGI) 45.8% of indigenous women in Mexico have no formal education. In the south-eastern region composed of the State of Chiapas, Guerrero and Oaxaca, all of which are predominantly indigenous regions, the illiteracy rate among women is even higher than the national average of 15%: Chiapas 37.5 %; Oaxaca 34.6%; and Guerrero 31.1%. (Palomo 2000)

The conflicts experienced by indigenous women in Mexico are rooted in two sources: (i) the militarization programme of the government; and (ii) gender-specific and inter-community relations. Indigenous Mexican communities are traditionally patriarchal. Women have no right to own land and are usually under the mercy and whims of their male relatives, namely their husbands and/or fathers and brothers. Women are forced to marry through parental arrangements and to obtain a dowry; they cannot even control the number of children they wish to have.

Indigenous women have also been greatly affected by the ongoing political conflict. This has aggravated not only poverty but also the violation of the basic rights of women. The Cuadernos Feministas report that every 15 days at least one woman is harassed, mutilated, tortured or assassinated by the government's paramilitary forces. From January 1993 it documented 133 women victims in Jaurez City (Palomo, 2000). Prostitution, alcoholism and drug abuse among women have also been noted in refugee camps, these are influences of the military presence in the area. (Nash 1995)

### **Women's Responses to Conflict Resolution**

Women, children and the elderly are the vulnerable sectors that suffer the most in times of conflict. In Mexico, the historical discrimination, pervasive poverty and unjust traditional practices among indigenous peoples vis-à-vis the conflict has exacerbated the burden of women as indicated by the hundreds of cases and stories both told (and those that remain hidden) behind the Chiapas uprising.

The Church and the Zapatista movement have stimulated greater interest in the cause of women in Mexico, and provided them with a space to discuss, address and redress their situation. The

'liberation theology' adopted by the Catholic Church in Mexico has been very effective in mobilizing Mexican society to pursue what is just and right. With the EZLN adopting the indigenous people's agenda, women had an opportunity to participate in the Peace Dialogues. During the ANIPA national women's conference (1995 - 1996), indigenous women representatives drew up a list of demands relating to gender discrimination, health, education, housing and recreation. They demanded that Convention No. 169 on Indigenous and Tribal Peoples of the International Labour Organization (ILO), which is an internationally recognized legal tool towards self-determination of indigenous peoples, be made legally effective (Santamaria 1996). They also discussed the renegotiation of the NAFTA and the reform of Article 27 of the Constitution.

The EZLN is one option among others that indigenous women have resorted to in response to the relentless conflict in Mexico. Some have sought solace in church while others have joined civil organizations. Many civil society groups have been actively involved in peaceful civil resistance such as the Peace, Justice and Dignity marches in 1994 (June Nash 1995). They have also played significant roles in the campaign for regional autonomy and gender equity as reflected in the various multi-level activities indigenous women have initiated and participated in.

Others enlisted in the EZLN as the last recourse after peaceful means have failed to make Government address their situation. Though the concept of armed movement is in itself violent, women who joined the insurgent army believe that fighting is not only through weapons, but also by way of organizing the community and through studying. As revolutionaries, indigenous women in the EZLN are categorized according to their main tasks as militia or insurgents:

- a. In the militia group, women live in villages and receive training for combat. In the communities, women are primarily involved in security work. During offensive operations, they are responsible for taking care of the children and the community as a whole. The militia including most of the non-combatant women are also engaged in sewing EZLN uniforms and in the manufacture of weaponry;
- b. The insurgents reside in camps and are assigned to different towns to instruct in politics and other basic skills and information. These women are free to get

married or live with their partners, after obtaining the permission of the superior officers of the EZLN. They practice family planning and are allowed to bear children but have to leave them under their parents' care while they continue in their struggle.

### **Autonomy in the Indigenous Women's Perspective**

The indigenous women of Mexico believe that autonomy begins with their liberation from the discriminatory gender status quo. It begins in the home, at work, organizations, the local community and general society. The polarization of work in terms of gender should instead be transformed into a complementary yet equitable assignment of responsibilities. Women want to be recognized as human beings the same way as the males are regarded. Only then can they take their place so that genuine autonomy at all levels can finally be advanced.

Autonomy is understood as the right to say things, not to be subordinate, silent and submissive. (Palomo 2000) If women today struggle and demand their rights as an integral part of the struggle of indigenous peoples, they can also raise their voices to struggle for their specific rights. There will be no full autonomy if women continue to be subordinated in their communities.

This autonomy also confronts power at different levels, from the local communities to the state, especially by questioning customs and practices that violate the rights of women and highlighting the existing asymmetry in gender relations and power. Women demand a right to their culture and customs, and are not afraid to make a critical appraisal of their own situation and status. On the contrary, they question and seek new ideas and relations in order to construct their own concept of nationality, with reference to the recognition of diversity, difference, tolerance and plurality. The autonomy of indigenous peoples is a proposal for self-determination. In the same manner, it is necessary to recognize and work for the internal liberalization of women, building new relationships between sexes and peoples that can lead to peace and harmony.

### **WORKING OUT SOLUTIONS TO THE PROBLEM**

The peace talks between the Government of Mexico and the EZLN are currently stalled. There has been no progress and the situation remains unresolved ten years after the uprising of 1 January 1994.

For the Peace Talks to be successful, both parties need to respect the original elements of the Accords. An environment conducive to the negotiations taking place is essential as are respect and adherence to the agreed terms and conditions. A durable solution to a crisis can be achieved when the decision-making process is inclusive of those most affected by the conflict. Thus, a constructive step would be to provide an opportunity for other people's voices to be heard, such as that of indigenous peoples and women.

Another important step is to engage in a healing process, with the involvement of indigenous peoples and women. This can be accomplished at a number of levels ranging from the local community level to the higher spheres of conflict resolution such as at national and international conferences. Such process would facilitate opening a greater space for participation, empowering Indigenous Peoples including indigenous women, and eventually meeting the goal of granting Indigenous Peoples the opportunity to exercise their rights.

### **First Aid to Chiapas**

The deteriorating situation in Chiapas and other indigenous regions in Mexico deserve immediate attention. The ravages of internal conflicts should be addressed by identifying the needs of those critical areas and mobilizing groups and individuals who can provide some assistance. Violations to human rights, particularly of women and children, should be dealt with by creating a place to receive reports and to submit them to relevant national and international organizations for due process of law.<sup>6</sup>

Basic necessities should be made available to the communities. Non-governmental organizations (NGOs) could establish a system for providing basic needs to the community, and at the same time training local people to make these resources more sustainable. Personnel should be mobilized to provide basic health services such as doctors, nurses and midwives for example. A cooperative can be one avenue for strengthening community self-reliance, but great care must be exercised to ensure it is culturally-appropriate and well-managed.

A network of organizations engaged in strengthening indigenous people's rights to lands and territories could provide an important support system, and disseminate the needs and concerns of indigenous peoples and women to mainstream society. It is also important to support the participation of women in the elaboration

of proposals that would improve conditions relating to legal, educational and health concerns.

### **Practicing Sustainable Development**

As the conflict between indigenous people and the state stems from the deepening integration of Mexico into the world market, promoting the self-reliance of indigenous peoples would ease the tension which results from their dependence on the outside world. Because Mexico is still a land of peasants, the promotion of sustainable agriculture will greatly benefit the economies of local communities, provided it is people-centred, respectful of the environment, and responsive to local needs. (Barry 1995:249)

Sustainable agriculture needs to be more concerned with the needs of smallholders. In this process, the diversity of indigenous farming communities, local land-use planning and indigenous concepts of economic development are taken into consideration. At the same time, the role of *campesino* communities in the preservation of bio-diversity and other natural resources has to be recognized. Rural communities actively participate in policymaking and planning; in the benefits of economic progress, there is equitable sharing even among those who are marginalized like women, children and farm workers. The rural-urban split is also minimized by carrying agricultural production, food processing, and small scale manufacturing to communities in the countryside.

### **Avenues for Furthering Women's Agenda**

With the reality of global ethnocide and a government like that of Mexico whose only way out is denial, women have developed the necessary tools for an effective confrontation with the problem at the community and global levels. One of the most important ways is through participation in the negotiations between the government and EZLN where the problems of indigenous women are being dealt with. The confrontation takes the form of analyzing the conflict, educating the community and organizing its members, and going back to the traditional forms of conflict resolution. (Palomo 2000)

Reiterating the need to liberate themselves as women in order to realize their full potential to struggle for indigenous peoples' rights, women representatives have drawn up a list of demands which is embodied in the Revolutionary Law of Zapatista Women. These include: the right to decide on the number of children they



want; to select their mate; to be respected by family members and others; and to occupy positions equal to men in the army, in this case, the revolutionary armed forces. In order to be able to gain a foothold in the decision-making process, it is imperative that women have the right to representation, eligibility and choice, the right to political equality with men, and to occupy positions of public responsibility. The fundamental demands of indigenous women in Mexico as pointed out by Palomo (2000) are as follows:

1. We demand a just and humane treatment for the women of Chiapas and especially those who were displaced;
2. As women, we are committed to the struggle for the rights of women and indigenous people. We seek new meaning for a dignified life and that the attitudes of warriors and violators of the human rights of women, men, children and indigenous people who live in this land be stopped;
3. We demand the Mexican government to stop extending the war into indigenous communities, and that it strengthen the social condition of right to be conceived as a principle and the defense of the fundamental rights of the populace;
4. We need to introduce actions that neutralize the effects of war over the civil population. It must be a collective and active action which will remove the fear that paralyzes us. It is not about summing up fears or indifferences, nor complicity of the wars and its warriors as it has been expressed by some sectors of indigenous people;
5. We propose non-violence as a compromise and as a way to recover respect for each other, recognizing difference as a dynamic element of society, which takes as a principle the respect for a dignified life and the right to live in a world where conflicts are resolved without recourse to arms but by the way of social pacts. (Ibid.)

There is new hope for indigenous peoples and indigenous women in particular. The challenge is in continuing to move forward and strengthening their indigenous and female identity. It is not enough to name and recognize the contribution of indigenous peoples in historical texts or museums, but to realize that indig-



enous peoples are capable of deciding what is best for her- or himself, and what is needed is the recognition of their rights. For a new generation to uphold this principle, the challenge now is to form new mindsets and attitudes in children since they will be the men and women of tomorrow.

Autonomy must guarantee a new relationship between the nation state and the indigenous peoples. It should be based on a just system of government where its citizens are granted the right to defend their interests and control their lives, their culture, and resources. But despite the fear that the rights of indigenous peoples may never be recognized under the Mexican constitution, in the long run this will influence the attitude of non-indigenous Mexicans to recognize the equal political rights of indigenous peoples.

### **Recommendations for International and Multilateral Bodies**

During the December 2000 Conference on Conflict Resolution held in Manila, the Philippines representatives of indigenous peoples from around the globe identified essential elements to assist UNDP and other multilateral entities in their work to support the realization of indigenous peoples' aspirations.

Conflict resolution begins with an increasing regard for the collective rights of indigenous peoples, and respect for the potential for indigenous juridical systems as instruments to resolve conflict in local communities. In principle, all conflicts emerging with indigenous peoples and communities are to be solved by their recognized authorities in accordance with their own juridical systems. Only in rare exceptions may outsiders, like intergovernmental organizations, intervene.

The United Nations and other international bodies can contribute to this process 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. Agencies of the UN such as UNITAR have training programmes for problem-solving approaches to negotiation. This can increase the skills and capacities of indigenous peoples, while at the same time promoting a constructive relationship between indigenous peoples and others.

For multilateral bodies such as banks, their programmes should recognize the needs of the indigenous peoples, and their interventions should be consistent, carefully crafted, planned and implemented. Their policies should be adapted to particular situations,

with a greater degree of transparency. Their development programmes must have the participation of indigenous peoples.

International bodies should remind and assist the Mexican Government in fulfilling the implementation of the San Andrés Accords. As a prerequisite for any peace negotiations with the indigenous peoples and the EZLN, an atmosphere conducive for such negotiations should be created. These conditions should be agreed upon by all the parties and based on a genuine desire for peace, good faith, openness, flexibility, and mutual respect. There should also be mechanisms for consensus-building and for dialogue. This should not be based on divide and rule tactics, and especially not on the state agenda requiring a surrender of arms.

In this context, there should also be recognition and respect for the rights of indigenous women. Their roles in the peace-building process should be enhanced in a number of ways: by documenting the peace-building efforts of indigenous women, and sharing this with other communities; securing the participation of women on the negotiating panels; encouraging women to seek decision-making positions and build mechanisms for access to governance systems; building their capacities through training and other forms of assistance; and by including gender in the analysis of conflicts and the assessment of the peace-building process.

### **CONCLUSION: A DECADE LATER (1994-2004)**

On 1 January 1994, the insurgent Zapatista movement, based in the Lacandona forest in Chiapas declared war on the Government of Mexico demanding the recognition and respect for the rights of indigenous peoples.

Ten years have passed since the indigenous movement in Mexico emerged as an obligatory reference point for the construction of alternative social movements. The indigenous peoples have initiated a number of important advances during this period including: armed struggle by the EZLN; the organizational processes stimulated at the community, national and regional levels; the negotiation with the Mexican Government and the San Andrés Accords; mobilization for agreements and pacts - which remain largely unimplemented by the government; and alliances with civil society, as expressed in the National Democratic Convention. Each and every one of these actions have contributed to the process of institutional development and led towards the creation of organizations such as the Plural National Indigenous Assembly for Autonomy

(Asamblea Nacional Indígena Plural por la Autonomía, ANIPA) and the National Indigenous Congress (CNI).

Despite these significant advances, and greater visibility of the indigenous peoples in Mexico, a decade later the situation remains the same as when the conflict first emerged. The disparities are evident, particularly with reference to the south-eastern region of Mexico where the majority of the indigenous peoples are concentrated (the states of Chiapas, Guerrero, Oaxaca, Veracruz, Tabasco, Campeche, Quintana Roo, Yucatán), as compared to the rest of the country, especially the central and northern zone.

The conditions of marginalization and poverty that exist in this region are endemic and indicate the complexity of social and historic factors. The population in the south-eastern region is mainly rural, with a population of some 2,500 inhabitants, lacking in social services and with no sanitation (42%), running water (32.8%) or electricity (15.2%) whereas in the rest of the country it is 7.2%. The level of illiteracy for the population (15 years + ) is 80.8%; while only 2.7% of those aged between 15-49 years can speak Spanish, as compared to 0.2% for the rest of the country. The fertility rate is 3.1 children per woman in this region, and 2.8% for the rest of the country.<sup>7</sup>

Thus, in this decade there have been little or no changes to improve the situation which was the main reason for the uprising. The originating causes remain latent, and have been aggravated in some sectors. Eighty percent of the population of Chiapas – a little more than 3 million people out of a total of 3,584,786 inhabitants – still lack access to social services, of which 450,000 do not have regular access to health services. The housing conditions have also deteriorated either as a result of the conflict, or natural disasters. A large number of indigenous peoples have been internally displaced as a result of the conflict. This is estimated at more than 12,000 in Chiapas alone.<sup>8</sup>

Another element related to the conflict which persists is the presence of paramilitary groups which has extended to other regions in the country. These groups have certain characteristics: they are present in indigenous areas; in marginalized and impoverished municipalities, and those governed by the official political party; concentrated to a large extent in police and military corps through camps and other installations; linked to ex-military and ex-police officials, or to others in positions of authority; in autonomous municipalities or where the Zapatistas have their bases; armed with high calibre weapons; and operating in those areas where there are strong economic interests in the land, production or investments.

These elements are responsible for murder, torture, abductions, displacement, robbery, theft, destruction of property, hostage-taking, death-threats and rape of indigenous women. 'The government denies the presence of para-military groups but the assessment indicates the contrary, noting their existence through interference in the region's conflicts, assassinating, displacing and "disappearing" indigenous people.'<sup>9</sup> In many of the places where these groups operate, they do so with the support, information and protection of the military and police corps. The justification is that Chiapas is on a drug trafficking route, there are a large number of migrants from Central America and the frontiers of the country must be protected.

In the last decade (1994-2004), Mexico has ratified a number of commercial agreements with the European Community, Central American countries and the North American Free Trade Agreement (NAFTA) - with the USA and Canada signed on 1 January 1994 - in order to actively incorporate into the dynamics of the new global economy. This has led to deterioration in the living conditions of the communities, aggravated by the Plan Puebla Panamá, which has caused emigration, displacement as well as confrontations between communities which receive agricultural subsidies and those that do not.<sup>10</sup> The indigenous territories in the region are rich in bio-diversity due to their sustainable management by the indigenous peoples, in contrast to other areas which have been environmentally devastated.

In Chiapas, a new form of exploitation and oppression has emerged with the indigenous women employed in the factories which have been established in the region in poor working conditions with low wages, long working hours and little or no social security. This is also the situation for migrant women, the majority of whom are indigenous, coming into the region from Guatemala, El Salvador, Honduras and other countries in Central America. These women are exploited and abused, in particular through prostitution. Perceived as objects and objectives of war, indigenous women are the main victims of terrorism:<sup>11</sup> physical and psychological torture, disappearances, rape and forced displacement are part of their daily lives with traumatic social and psychological consequences for the rest of their lives, especially for the young women and girls. It should be recalled that in Chiapas, as in other parts of the world, the majority of those displaced and impoverished are women. There is also a noticeable increase in domestic and sexual violence.<sup>12</sup>

The military presence, which has substantial economic, social and environmental costs, exacerbates, and does not resolve the pre-

dicament which gave rise to the conflict. This has also affected the family economy in the communities, and in the indigenous and marginalized communities, and had negative social consequences such as prostitution and other such problems. A related issue is that of impunity with few if any of those responsible for human rights abuses being brought to trial, such as the killings in Aguas Blancas and El Charco, Gro.; El Bosque y Acteal, Chiapas; and Agua Fría, Oaxaca where the majority were indigenous peoples.

In his report to the UN Commission on Human Rights in April 2004, following a fact-finding mission to Mexico in June 2003, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen states:

*The Acteal massacre*

*The slaughter of 46 unarmed civilians in Acteal in December 1997 by a group of individuals armed with high-powered weapons is probably the most serious and dramatic incident that has occurred in the conflict in Chiapas. The National Human Rights Commission established that various public officials in the State government were responsible by commission or omission. Many people in the municipality of Chenalhó were arrested, charged and tried for these murders. Although some were subsequently released for lack of evidence, it is reported that others remain unjustly imprisoned and regard themselves as victims of religious intolerance.*

*The human rights organizations assert that the individuals who masterminded the massacre are still free and unpunished. Six years after the events, the crime has not been fully clarified nor has justice been done, while the population affected continues to suffer the consequences.<sup>13</sup>*

Although President Fox has promised to renew dialogue with the EZLN and has taken some measures such as to order some troops out of Chiapas, and submitted a revised peace accords to Congress, Chiapas is described as having the largest military presence of any other state of the country. The peace dialogue has not resumed and there is currently a stalemate in the situation in Chiapas.

Another development has been the change in the name of the National Indigenous Institute (Instituto Nacional Indigenista, INI) to give it a new face as the National Commission for the Development of Indigenous Peoples (Comisión Nacional para el Desarrollo de los Pueblos Indígenas - CDI). However this change is superficial

and does not signify a modification of the indigenous policy orientation.

The August 2001 adoption of the peace accords as law (known as the Bartlett-Cevallos Law) has not met with approval from the EZLN as the law incorporates only some aspects of the demands of the indigenous peoples, while ignoring the central issue of autonomy and control of their lands and territories. The UN Special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous Peoples describes the situation as follows:

6. Despite the Mexican State's long history of pro-indigenous policy over the twentieth century, the accumulated setbacks suffered by the indigenous population have plainly put it at a disadvantage vis-à-vis the rest of the Mexican population, facing discrimination and social exclusion and with low social and human development indices. Up until a few years ago, the indigenous peoples were not acknowledged in Mexican legislation nor did they enjoy specific rights as such. Accordingly, their human rights in particular have been violated and ignored.
57. The constitutional reform of 2001, a late and adulterated product of the San Andrés Agreements between the Federal Government and EZLN, formally recognizes the right of the indigenous peoples to self-determination but hems it round with restrictions which make it difficult to implement it in practice. For this reason the reform has been challenged by the official indigenous movement which insists that it should be revised as a necessary condition for achieving peace in Mexico and ensuring the human rights of the indigenous peoples. Furthermore, the reform did not respect the principles of ILO Indigenous and Tribal Peoples Convention No. 169 (1989), ratified by Mexico, particularly as regards the obligation of consulting the indigenous peoples.<sup>14</sup>

Today, the emergence of the indigenous peoples as political actors demanding recognition of their rights as indigenous peoples and of indigenous women struggling to mark their presence calls for a new power structure in Mexico. This is essential for society to function, and unless this takes place, there can be no durable solu-

tion to the struggle of indigenous peoples for recognition of their right to self-determination.

### Endnotes:

<sup>1</sup> Antonio Hernández Cruz, "Tojolab'al Autonomy: The Genesis of a Process" in *Indigenous Autonomy in Mexico* (Copenhagen: IWGIA, 2000), 163.

<sup>2</sup> Editorial note: In order to provide land to landless *campesinos* (peasants), as a result of a process of agrarian reform (Reforma Agraria), land was distributed to the peasants as communal farms known as *ejidos*. The peasants had the right to cultivate and profit from the agricultural plot, with the Government retaining title.

<sup>3</sup> *Abya Yala News* no. 10 (1), 34.

<sup>4</sup> Editorial Note: The Chiapas conflict remains unresolved at the time of going to press (August 2004).

<sup>5</sup> For more details see "Mexico" in *The Indigenous World 2004* (Copenhagen: International Work Group for Indigenous Affairs, IWGIA), 86-93.

<sup>6</sup> In 2002, the Office of the UN High Commissioner for Human Rights established an office in Mexico. One of its main tasks is to assess the human rights situation in the country, and in 2003, a report was published: *Diagnóstico sobre la situación de los derechos humanos en México*, which includes a section on the rights of indigenous peoples. For more details see <[www.cinu.org.mx](http://www.cinu.org.mx)>.

<sup>7</sup> Datos del Censo de 1995 del INEGI.

<sup>8</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen: Mission to Mexico in UN Document No. E/CN.4/2004/80/Add. 2 of 23 December 2003.

<sup>9</sup> UN High Commissioner for Human Rights Report, (Mexico, 2003).

<sup>10</sup> Plan Puebla Panamá, ediciones Piratas, Chiapas, México, 2001.

<sup>11</sup> Of the 45 victims of Acteal, 21 were women (four were pregnant, 11 were girls), four boys and nine men.

<sup>12</sup> The percentage of reports of sexual aggression increased 5% from that registered in 1993, and 30% after 1994. These figures are from the Centro de Atención a Mujeres y Menores de COLEM (Centre of Attention to Women and Minors). Many of the victims were women activists of members of social organizations (60 cases of sexual aggression between 1994-1997).

<sup>13</sup> Report of the Special Rapporteur (Mission to Mexico, 2003), 15.

<sup>14</sup> *Ibid.*, 18-19.



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## Chapter 7

### The Question of Peace in Mindanao, Southern Philippines

*Eleanor Dictaan-Bang-oa\**



On the surface, the conflict in Mindanao seems like an ethno-religious war characterized by banditry and terrorism between the minority Muslim Moro peoples [Bangsamoro] versus the majority Christians. A closer look into the situation, however, reveals a long standing problem rooted in decades of the Bangsamoro's call for freedom and self-determination which have been complicated, sidetracked and ignored in the Philippine state's post-war initiatives for nation building.

Conflict resolution scholar William Zartman explains that internal conflicts are harder to solve than international conflicts because of the absence of a level playing field for parties to dialogue.<sup>1</sup> In the Mindanao case, the Government of the Republic of the Philippines (GRP) has the upper hand vis-à-vis the Moro National Liberation Front [MNLF] and later, the Moro Islamic Liberation Front [MILF]. This asymmetry, which is advantageous to the GRP, is a major factor in the continuing quest for the resolution of conflict in Mindanao.

To get a better grasp of this asymmetry and the evolution of the crisis, it is imperative to look into the beginning of Moro rebellion against the Philippine state. It is, however, beyond the scope of this paper to give a detailed historical background of the conflict. None-

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\*Tebtebba (Indigenous Peoples International Centre for Policy Research and Education), Baguio City, Philippines, 2004.

theless, a chronology of major events from 1968 to the early part of 2004 is presented as a brief background to the more than thirty years of conflict in Mindanao. This paper will deal more on the contemporary efforts at peacebuilding and sustainable development in Mindanao that commenced with the 1996 GRP-MNLF Peace Accord or the Final Agreement for the Full Implementation of the Tripoli Agreement, keeping in mind the historical grievances that remain unresolved.

### THE BIRTH OF A CONFLICT

Historical records reveal the existence of independent sultanates in Southern Philippines that had their own economic and political relations with other countries like Borneo, China and Malaysia. Like the Igorots in northern Philippines, these sultanates fiercely resisted Spanish colonization. Both the Spanish and American regimes used the divide and rule policy by exploiting the religious differences among the Islamized and non-Islam peoples in Mindanao to control and rule over the territory. The Americans, however, were more successful in setting foot in Mindanao. Corporate investments in agriculture, logging, mining and the production of export products gained headway within the second decade of American rule. As a result, migration of Luzon and Visayas settlers to Mindanao began around 1912 as more people arrived to work for American industries.

Corporate investments continued to pour into the region even in postcolonial Philippines. Industries took over vast tracts of land even as this disenfranchised the Moros and the non-Islamized peoples from their lands and resources. About that time, only 17 per cent of the total Moro land was left under the ownership of the Moro peoples, most of which were in interior and remote areas. Based on government statistics, the 98 per cent Muslim population in the region in 1913 became a mere 40 per cent by 1976. Between 1966 to 1976, some three million Christians settled in Mindanao.<sup>2</sup> A more recent report puts the Muslim population down from 70% in 1903 to 19% in 1999.<sup>3</sup> At present, 80 per cent of the Moro peoples are reportedly landless tenants. Consequently, settlers dominate not only in numbers but also in socio-economic development and power.<sup>4</sup>

The abundant resources of Mindanao and the open policy of the state has not only disenfranchised the Moros but has devastated millions of hectares of forest and agricultural lands. Corporations established in Mindanao before and after 1920 played key roles in



the early conflict situation in the south. Taking advantage of the clannish and family feuds among the Moro peoples and the politically marginalized and weaker indigenous communities, government and corporate interests further polarized the people and fostered conflict. This prevented people from uniting against their exploitative interests, and contributing to the climate of terrorism in the area. This was so pronounced in 1968 and 1969 at the height of the Ilaga attacks on Moro communities supported by logging companies seeking Muslim lands, the Philippine Constabulary and the Armed Forces of the Philippines [AFP].<sup>5</sup>

In the same period, the Jabidah massacre in 1968 (see Annex 1) saw the coming to head of the Moro movement for independence. The massacre clearly revealed the state's interests in the resources regardless of the costs in human lives and livelihood. The state had set its sight on the rich oil, mineral and forest resources of Sabah, a territory claimed by Malaysia which was then populated mostly by Moro peoples. The Jabidah massacre is a landmark in the Moro peoples' movement for self-determination through secession from the Philippine state. It led to the formation of the MNLF.

The declaration of Martial Law in 1972 only aggravated the volatile situation. On the other hand, four years of bloody aggression by the state's army and allied private armies served to consoli-

date the movement's military arm. It found support in the international Muslim community that later brokered the Tripoli Agreement in 1976.

### ELUSIVE PEACE: THE FAILED ATTEMPTS AT PEACE IN MINDANAO

#### **The Tripoli Agreement and Marcos Theatrics**

The ethno-religious character of the Mindanao war became pronounced in the 1970s as the Moro Muslims fought off the predominantly Christian state military, paramilitary elements, including members of the private armies employed by logging and plantation companies and politicians. Continuing the colonial tradition of divide and rule, the state found the ethno-religious dimension very convenient in its objective of asserting absolute power as Islam became the uniting factor among the Moros.

By 1976, the separatist war had cost around 120,000 lives and displaced more than 300,000 people in Mindanao. Aside from being financially draining, it also marred the country's image in the international community prompting the GRP to consider negotiations with the MNLF.<sup>6</sup> Ahmad and Noble, as cited by McKenna reported that from 1972 to 1975, approximately U\$325 million was already spent by the GRP for the Mindanao war.<sup>7</sup>

The first attempt for peace in Mindanao was the Tripoli Agreement between the MNLF and the GRP which was brokered by the Organization of Islamic Countries (OIC) through the Quadripartite Ministerial Commission and signed on December 23, 1976. The agreement, upon advice from the OIC, compromised the MNLF's call for an independent Bangsa Moro Homeland to regional autonomy covering 13 MNLF-identified provinces and cities in Mindanao.

With Martial Law imposed and with the Marcos' conditionality in Paragraph 16,<sup>8</sup> nothing was achieved by the Tripoli Agreement. The substantial issues identified for 'further discussion' in the agreement never took off. A plebiscite on the merger of the 13 provinces into one autonomous region was held in 1977 but was boycotted by the MNLF. Despite plebiscite result that showed an overwhelming rejection of the merger, Marcos proceeded to segregate seven out of the 13 provinces to compose Regions IX and XII.<sup>9</sup>



### Regional Autonomy

Corazon Aquino's presidency saw a constitutional amendment in 1987 recognizing regional autonomy for the indigenous peoples in the Cordillera (Cordillera Autonomous Region) in Northern Philippines and the Muslims (Autonomous Region for Muslim Mindanao, ARMM) in the south. While the MNLF called for a presidential decree for the ARMM, Aquino in 1989 signed Republic Act 6734 creating the ARMM. This paved the way for the creation of the Regional Consultative Commission [RCC] tasked to draft the Organic Act on Autonomy for Muslim Mindanao. Despite setbacks and difficulties from inherent problems, the RCC was able to submit the draft organic act to Congress. This was passed in a watered down version.

Meanwhile, a deadlock in the GRP-MNLF talks ensued, with the latter boycotting the 1989 plebiscite which resulted to only four provinces agreeing to be under the ARMM. By this time, the break-away MILF also came up with its own agenda for peace in Mindanao. The MILF, and the whole Mindanao peace issue, however, remained

in the backseat of state priorities. Undoubtedly, Aquino's presidency sparked hopes for a more democratic system of governance. It was during this time when MNLF leaders, including Nur Misuari himself, came home from exile to give another shot at the MNLF cause. He became the first ARMM governor. A number have also turned up from the field, battle-weary, looking towards finally living normal lives.

### **1996 GRP-MNLF Final Peace Agreement**

Despite its weakness, the Aquino government's effort on the Mindanao problem, which resulted in a relatively less violent period, paved the road for Ramos' social engineering which resulted in the 1996 GRP-MNLF Peace Accord, otherwise known as The Final Agreement for the Full Implementation of the Tripoli Agreement. This consists of two phases.

Phase 1 is a three-year transition period of confidence building in the 14 provinces and 10 cities comprising the Special Zone of Peace and Development (SZOPAD) created through Executive Order 371 issued in October, 1996. The SZOPAD is managed by the Southern Philippines Council for Peace and Development (SPCPD) and a Consultative Assembly. The SPCPD was headed by Nur Misuari who was then also the ARMM Governor. Large scale development projects in infrastructure, energy development, water works, livelihood credit, aquaculture, housing, skills training, education and health have been targeted for the SZOPAD. Some 8.9 billion pesos have been funneled to these initiatives through the UN Multi-Donor Assistance Program led by the UNDP.<sup>10</sup>

Phase II focuses on the creation of the Regional Autonomous Government after RA 6734 or the ARMM Organic Act should have been amended or repealed by Congress. This is also the time when the provinces and cities under the ARMM shall have been finally determined through a plebiscite at the end of 1999. This was postponed amidst sporadic armed confrontation between the MILF and government forces. The MILF has since been vocal on its non-agreement to regional autonomy and stands fast on its call for independence.

### **Estrada's All-Out War**

The short-lived Estrada administration did not do well to nurture the culture of peace initiated by President Aquino nor its develop-

ment under President Ramos. Estrada's negotiations were more focused on the MILF which was then flexing its muscles, demonstrating strength and influence to prove that they are a party to reckon with.

Despite earlier ceasefire pronouncements, the Estrada administration declared an all-out war policy against the MILF and the Abu Sayyaf Group (ASG), a terrorist group then popular for kidnap-for-ransom activities. President Estrada did not bother making the distinction between the two groups as the validity of his reasons in engaging in armed confrontation was questioned.

Based on reports from the Department of Social Welfare and Development, 123,758 individuals from a total of 23,031 families had been directly affected by the all-out-war as of May 2000. In terms of food requirements alone, this translated to a daily budget of 1.4 million pesos.<sup>11</sup> The fierce attacks by the government on MILF strongholds despite and between pronouncements of ceasefire put the government's sincerity and prospects for peace in question. Civil society, Muslim organizations and peace and justice advocates all over the country denounced the continuing violence in Mindanao. The Christian and Muslim constituencies, through the Bishops and Ulama Forum, issued a call for cessation of hostilities clarifying "that the war in Central Mindanao" is not a religious war between Christians and Muslims" but ... between the Philippine military and the MILF."<sup>12</sup>

### **The Kuala Lumpur Agreement – Arroyo's All-Out Peace Initiative**

In direct contrast to her deposed predecessor, President Gloria Macapagal Arroyo, through Executive Order Nos. 2 and 3, declared an all-out peace policy in Mindanao. This set the grounds for the resumption of the GRP-MILF talks stalled since the Ramos administration. Results of the negotiations was signed by both parties in Kuala Lumpur, Malaysia in June 2001 and dubbed the "The Tripoli Agreement" between the GRP and the MILF or the Kuala Lumpur Agreement.

Like its predecessors, the Kuala Lumpur Agreement is an attempt at negotiated political settlement of the Moro problem towards the attainment of enduring peace and stability in Mindanao. It provided for the cessation of hostilities to facilitate democratic consultation among Bangsamoro peoples. Venues opened up to explore new possibilities to address the peoples' aspirations and to show respect for international humanitarian law and human rights. It



also gave a lead role for the MILF to define and implement development projects in conflict-affected areas. The agreement includes a general provision and further discussion on ancestral domain of the Bangsamoro people. Another highlight of the agreement is its recognition of “other indigenous peoples”, which undoubtedly pertains to the Lumad – or the non-Islam indigenous peoples.

Peace advocate Soliman Santos notes that the agreement marked the “arrival of the MILF on the international diplomatic stage and is poised to gain recognition, *de facto* if not *de jure*, as a representative of the Bangsamoro people.” With MILF concerns presently contained under the said agreement, the Arroyo administration turned its attention to wiping out the ASG.

### RELIEF FROM WAR AND CONFIDENCE BUILDING

Peace building efforts in Mindanao commenced with the 1996 Peace Accord as all sectors in the country saw a window for overall reform and democratic atmosphere in the Aquino government. The confidence building measures of the 1996 Accord have no doubt delivered some relief to the poverty stricken communities albeit not rooted enough to sustain the peace. The euphoria caused by the 1996 Accord was doused by the slow pace of development initiatives and the government’s low absorptive capacity. These were coupled with the incoherence between national and local offices and corruption both in government and among the MNLF coordinators and leaders.

Despite the immediate humanitarian need, the government did not allocate sufficient resources for relief and rehabilitation as it had poured in so much resources into its all out war. This just goes to say that peace in Mindanao or humanitarian security is not the state’s priority.

A year after the Accord, development started with relief work directly managed by the UNDP and the MNLF costing P 28 million and benefiting some 7,500 MNLF members and their families. Livelihood assistance came after almost a year after a needs survey and analysis was conducted by the UNDP.

The World Bank in 1997, through its emergency assistance program, provided a \$10 million loan specifically for infrastructure development for 1998 – 2001. This came to be known as the SZOPAD Social Fund which never took off until 1999. In the latter part of 1998, an investment mission was organized by the Islamic Development Bank [IDB] which resulted to \$13.6 million worth of joint-ven-



ture initiatives on top of a \$16 million grant from the IDB itself. As of 2000, however, none of these have yet materialized.<sup>13</sup>

Another \$3.7 million emergency assistance called the Emergency Livelihood Assistance Program [ELAP] came from the USAID in 1997 primarily in the form of agricultural inputs, technology and technical assistance. An additional \$3.6 million was allocated for its one year extended and expanded program starting February 1999. The expanded program, now called the Support With Implementing Fast Transition or SWIFT- ELAP included functional literacy, micro infrastructure and capacity building.

Various intrinsic and extrinsic factors affected the implementation of these peace and development initiatives. Among the Moro people, a major offset was confidence. Trust was very hard to come by especially on the government which has not proven its sincerity in addressing their grievances. Project implementers cite the bureaucratic process, the lack of capacity among proponents and the inaccessibility of the project areas among others that have contributed to the delay in implementation. Aside from these was the change in administration in mid-1998. On top of the state's ambivalent strategy for peace, stories of corruption, fund reallocation, malversation, political maneuvering, clan and family feuds and personal economic gain by MNLF leaders have marred the reputation of the MNLF which was then obviously ill-equipped for effective governance in the ARMM.<sup>14</sup>

Nonetheless, success stories have also emerged among the more persevering and relatively skilled MNLF members. Among these are a seaweed farming and literacy projects under the ELAP in Sulu, the Taliawid Multi-Purpose Cooperative and the SPCPD-UN-NEDA Livelihood Assistance Project through the UNDP in Maguindanao, to name a few. Also, the laying down of arms, although not necessarily surrendering them by battle-weary MNLF members is one positive result of the peace accord. This bodes well for the quest for sustainable peace and development in Mindanao.

### **BLOWING AT THE FLICKERING HOPE**

That violence has become an end in itself is almost a good description of the present Mindanao crisis. The series of failed attempts at establishing peace in Mindanao reflects not only on the inherent weaknesses of the agreements *per se* but also of the implementing parties involved. Internal bickering within the MNLF which finally led to its split, corruption and incoherence in national and local

government policies and agencies characterize the different negotiations and implementation.

On top of this, the Mindanao Peace Talks has been a victim of the series of violence that erupted in Mindanao with the resurfacing of the Abu Sayyaf Group that staged the Sipadan and Basilan kidnappings in 2000. The Government, aided by US armed forces, employed military operations in pursuit of the ASG. In the ensuing armed encounters, a large number of civilians were caught in the crossfire. The number of displaced persons are placed at 300,000 (government estimate) to 600,000 (NGO estimate). Many civilians were arrested on suspicion of being members of the ASG. There has also been the MILF-declared *jihad* after the take-over of three of their camps by the national army (AFP) on 11 February 2003.

This situation has been frustrating for the peoples of Mindanao who were looking ahead to peace to finally come to Mindanao:

*The...exasperation is understandable. For so long, this part of the Philippines has been synonymous with strife, as a result of the struggle of liberation groups wanting to establish an independent Islamic state and a succession of governments responding to that clamor with force. The Abu Sayyaf, with its own brand of Islamic radicalism characterized by kidnappings for ransom and beheading, brought the violence one notch higher. The US has linked the ASG to Al-Qaeda, sending in more than a thousand troops this year to help fight the group...*<sup>15</sup>

The tension created by the counter-terrorism Balikatan Exercises which hosted the US Visiting Forces in the country further contributed to the internal war in Mindanao. More resources were spent on the Balikatan Exercises than on providing food, medical and housing needs to the civilians caught in the armed conflict. Civil society sectors have openly denounced the Government for this engagement saying that this is not the solution to terrorism as militarism is not the solution to the Mindanao crisis.

Today, while there is a cessation of hostilities between the armed groups and the government forces, it is still premature to say that peace has finally come to Mindanao. UNMDP<sup>16</sup> Area Coordinator Suharto Abbas succinctly warns that "the attitude of mistrust, suspicion, fear and hatred... is still in place specially in remote areas where dialogues and friendly interactions among Christians and Muslims are not facilitated. Though it is latent and not readily observable, it still poses danger and creates fragility to development initiatives in Mindanao."<sup>17</sup>

[Akin to substance and implementation is the position of the state as a party to the negotiations to the disadvantage of the other.] While Moro groups have been able to mobilize the support of the OIC as a pressure group and broker, it had to play by two rules – the OIC and the GRP. Without the OIC, the growth of Muslim rebel groups and the escalation of conflict could have reached a critical status and negotiations would have been impossible. It should be noted here that, internally, the MNLF, like the splinter group, MILF, held on to the option of independence despite complying with the OIC-advised local administrative autonomy provided by the Tripoli Agreement. Be it as it may, the GRP still has the upper hand. The GRP has its own rules to follow. It has the power, influence, legitimacy and resources at its command and this is true even in the present negotiations with the MILF.

But the Moro question is just one side of the coin. On the other side are the Lumads and the majority population. While the Mindanao issue started out on the Moro agenda for self-determination, other sectors in the region have been shut out or have taken the back seat in the peace and development agenda of the government. The processes since the Tripoli Agreement have been exclusively bilateral in nature, neglecting the emergent and equally pressing issues in the region, i.e prevailing poverty and underdevelopment. Other sectors have been marginalized and essentially excluded in peace-building efforts. Among these more significant sectors and their issues are the Lumads' and their similar call for self-determination, the MILF and civil society.

With its rich resources still intact, Mindanao has been referred to as the "land of promise." More than 30 years of violence, however, has opened Mindanao to war-related devastation, thus we see poverty on the one hand and plunder on the other. The latter is aided by government policy (i.e the land, mining and forestry codes) or its non-implementation of such, in favor of big business interests. This "structural violence,"<sup>18</sup> has further polarized the Moro, Lumad and Christian sectors as well as caused divisions and disunity within the sectors. Abbas defines structural violence as "a situation where a few control the means of production and take most of the benefit while the majority wallow in poverty and subhuman condition..."<sup>19</sup>

An ADB study in 2000 points out that about 31% of the country's total poverty incidence comes from Mindanao, the second biggest island and which comprises only 23% of the country's total population.<sup>20</sup> The Norwegian Refugee Council's Global IDP Project

documents note that Mindanao represents 48% of the country's gold production, 63% nickel and 18% charcoal in the country's total reserves.<sup>21</sup> This is the paradox of poverty in the "land of promise." This is also true in most indigenous peoples' territories which are the country's remaining natural resource base. To resolve this does not only shorten the rich and poor divide but will also respect the peoples' right to a dignified life. In this case, policy and structural reform should be undertaken.

### **Other Stakeholders in Mindanao**

#### *Moro Islamic Liberation Front (MILF)*

Since its split with the MNLF in 1977, the MILF has been working hard towards the formation of an Islamic movement in the Bangsamoro homeland through its well defined four point program.<sup>22</sup> Since then, it has increased in membership and influence, military, financial and organizational capability. It has also strengthened its religio-political ideology that was apparently lacking in the MNLF. The MILF has also been seeking the recognition of the OIC and the successive administrations of the GRP to participate in the peace negotiations between the government and the MNLF. The Tripoli Agreement, however, does not provide recognition for other parties except for the MNLF. Thus, the talks between the GRP and the MILF have always been under the "unofficial/informal" status and viewed only as secondary to the MNLF.

When President Corazon Aquino stepped into power, the MILF lost no time in projecting its agenda for peace in Mindanao. The MILF call during that time was "for the establishment of a strong and meaningful autonomy that includes the lawful return of Muslim ancestral and traditional lands to their legitimate owners, the use of traditional resources in their homeland for the benefit of the Moros and the restoration of peace and order in the area under the substantial control and supervision of the MILF army."<sup>23</sup> Hashim Salamat, then MILF head, further clarified that "the MILF concept of autonomy establishes a democratic system of government with equal representation in the executive, legislative and judicial departments following the principle of elections."<sup>24</sup>

While the Aquino government had an official policy to deal with the MILF and MNLF-Reformist groups after it dealt with the mainstream MNLF, it made superficial efforts to accommodate the MILF by extending it an invitation to dialogue with the government. The MILF agreed to a dialogue but set the following preconditions:

1. Place of meeting should either be in Camp Abubakar, the MILF stronghold, or in Governor Zacarias Candao's office in Cotabato City;
2. The MILF will join the GRP-MNLF talks as a separate entity;
3. The meeting in Cotabato City should be attended by the secretary general of the Muslim World League.

The stalled GRP-MNLF talks under President Aquino, however, did not yield anything substantial nor address the MILF concerns. With President Ramos, the MILF was invited by the National Unification Commission to participate in the peace negotiations but was again sidetracked by the MNLF and the ARMM elections. Armed encounter between MILF and government forces continued until 1996 when the Ramos government thought it was ready to talk with the MILF. With Ramos' executive secretary Ruben Torres as peace emissary, the MILF conceded to a ceasefire agreement towards further peace talks with the GRP.

In February 1997, the MILF came out with the following agenda for talks with the GRP: "ancestral domain, displaced and landless Bangsamoro, destruction of properties and war victims, human rights issues, social and cultural discrimination, corruption of the mind and the moral fiber, economic inequities and widespread poverty, exploitation of natural resources and agrarian related issues."<sup>25</sup> The talks, however, focused on the general provision for a cessation of hostilities throughout the Ramos administration.<sup>26</sup> Observers note the disturbing pattern of violent encounters between MILF and AFP forces in the four scheduled meetings between the two parties. The Basilan, Buldon and Kabulnan incidents all occurred within the defense perimeters of MILF camps.<sup>27</sup>

The Estrada administration made no effort to further the talks with the MILF, reflecting how little he regarded the Moro issue and the peace problem. However, the MILF gained the upper hand when the present Arroyo administration agreed to negotiate for a political settlement of the Mindanao crisis with the MILF through the Kuala Lumpur Agreement.

All through the years that it has been sidestepped from the peace table, the MILF has developed its vision for a Bangsamoro homeland and self-rule in accordance with their Islamic belief and culture. It stands firm in its assertion that the Bangsamoro homeland has been illegally annexed to the Philippine Republic. Moner Bajunaid echoes the MILF's appeal for a UN-supervised referen-

dum among the Bangsamoro people to decide for themselves whether to remain part and parcel of the GRP territory or become an independent sovereign state.<sup>28</sup> This, according to the MILF, “is the only way we can end these centuries of fighting and violence in this part of the world.”<sup>29</sup>

### *The Lumads*

Mindanao’s peoples have been categorized into the Moro, the Lumad and the Christian settlers. They are now being conveniently referred to us the tri-peoples with the first two categories serving to distinguish the Muslim (the Moros) and non-Muslim indigenous people – the Lumads.

The Lumads include the following 17 ethnolinguistic groups: Ata/Ataas, Bagobo and Guiangga, Mamanwa, Mangguangan, Mandaya/Mansaka, Banwaon, B’laan, Bukidnon, Higaonon, Dibabawon, Ubo, Manobo, Subanon, Tagabili, Tagakaolo, Talandig and Tiruray.<sup>30</sup> Like their Moro and other indigenous brothers in the country, the Lumad are also struggling for the recognition of their rights to self-determination and to their ancestral territories, natural resources and development.

The Tripoli and Jakarta Agreements very specifically applies to the Moro people, overlooking the existence and cause of other non-Muslim indigenous peoples and the majority settler population. Ramon Moaming,<sup>31</sup> a Teduray working for community development among the Lumad peoples expresses his sentiment as a Lumad: “There is a peace agreement with the MNLF and a ceasefire agreement with the MILF, but indigenous peoples are being exploited and disempowered just the same. They are still marginalised. There have been no changes, whatever the agreements with the Moro groups. The process the government is undertaking is not addressing the issue, which is the right to self-determination. It’s just political accommodation, not solving the problems... The indigenous peoples in the Zone of Peace and Development do not have a clear view of what SPCPD is, or of what the ARMM is. The Organic Act that created the ARMM in 1989 mentions that indigenous peoples shall have privileges and rights, for example, tribal courts, but there is no representation of indigenous peoples in the Regional Legislative Assembly. No indigenous people are employed in it.”<sup>32</sup>

Though there is a token provision for a Lumad representative in the ARMM structures, it was only recently with the Kuala Lumpur Agreement that Lumad concerns were raised, albeit in a very general manner. While the Lumad question needs its own process to be

able to interrelate with the peace talks, the Kuala Lumpur Agreement, according to Santos, "can still be developed to be the linchpin of a broader Mindanao peace process."<sup>33</sup>

During the Mindanao Indigenous Peoples Peace Forum in 2001, 67 representatives of 20 Lumad peoples expressed how their lives and culture have been continuously threatened by the persistent armed conflict and development aggression that has eventually contributed to the violation of ancient Moro-Lumad covenants defining territorial boundaries between the two peoples. [See Annex 2] They expressed their commitment to peace as they perceive it as a precondition for development in Mindanao while reiterating their call for self-determination as distinct peoples. They further called on the government to implement the Indigenous Peoples Rights Act that provides for the recognition of indigenous peoples' rights to ancestral lands and resource management.

In December 2002, the UN Special Rapporteur on Fundamental Freedoms and Human Rights of Indigenous People, Prof. Rodolfo Stavenhagen visited the Philippines. In his report, he cited the state of human rights among indigenous peoples in the Philippines, gravely affected and threatened by development aggression and militarization. He described the experiences of the Subanon people in Zambanga, the Mamanwa in Surigao del Norte, and the Blaans among other peoples in Mindanao who have been affected by mining companies. Violations of their human and collective rights occurred in the form of threats, physical and verbal assault and deception among others.

Mining and industrial tree plantation companies had also been reported to cause community division by enticement and setting up of pseudo-community organizations that will stand by them or sign community consent for their operations. The Special Rapporteur also received numerous cases of illegal arrest and detention, physical abuse, food blockades, divestment of property, forced evacuation and summary executions perpetrated by elements of the military and the military-organized and armed Citizens Armed Force Geographical Unit (CAFGU).<sup>34</sup> In one of his recommendations, he endorsed indigenous peoples'/communities' prior rights to land over commercial development and called for the demilitarization of indigenous territories and withdrawal of the CAFGUs from these areas.<sup>35</sup>

#### *Civil Society*

Another major sector left out of the peace process is civil society. As



expressed by Mucha Arquiza of the Bangsamoro Civil Society Solidarity Conference, "it is bad enough that the Bangsamoro communities are not consulted and are not part of the process of the 1996 agreement" and the way it is implementing its development intervention reflects its lack of understanding the Moro question. The GRP through its agencies continues to impose its own integrationist framework in its development interventions that "often run contrary to the Moro cultural traditions and identity." Initiatives focused on the MNLF or in predominantly Muslim areas have also been seen as "favoritism."<sup>36</sup>

Civil society at large, whether they be Muslims, Lumads or Christians, have equally been pressing for effective conflict resolution to enable full development in the region. It has to be noted that amidst and in spite of the fragile peace and order situation in Mindanao, the religious sector, academe, non-government sectors and peoples organizations, by themselves, have been involved in peace building initiatives in various forms and fora. The church for example has not been remiss in its mission to help the oppressed and the needy by providing emergency relief and assistance as well as refuge for conflict-affected communities regardless of their religious denomination. Community development projects have been implemented by non-government and peoples organizations that help alleviate the plight of the peoples in Mindanao.

Meanwhile, during the Mindanao Peace Summit in 2002 which was attended by the different peoples in conflict affected areas, participants noted the absence of women's perspectives in the peace process despite their recognized roles as mediators and negotiators in their local communities. The peace negotiations have been male-dominated characterized by 'legal rhetoric and diplomatic bullying that impedes genuine peace...Bring in the women and they will show you the human face of the conflict.'<sup>37</sup> Among the recommendations from the summit was the 'need to elevate the status of women as mediators and negotiators of conflict from the community level to the official peace negotiations and the institutionalization and support in the official peace talks of current women's initiatives like the zones of peace, spaces for peace in Pikit, Cotabato, the pilgrimage for peace in Kauswagan and Lanao and the Carmen peace dialogues.<sup>38</sup>

While the media had been effective in generating information and mobilizing public advocacy for the humanitarian conditions in the conflict-ridden areas, it has also been very misleading. This is a critical sector which needs support and reform. The media is a



powerful tool for influencing public opinion. Insensitive news reporting does no help in the healing process of post-conflict reconstruction. A content analysis of the news accounts about the Mindanao crisis during the late 1990s to the early 2000s reveal that the media has contributed to public ignorance of what is really happening in Mindanao by not providing an accurate depiction of the background and context of the conflict.

Newspaper articles written about the Mindanao hostilities use 'Moro', 'Muslims', 'MILF' and 'stragglers' interchangeably to refer to the MILF fighters. Media services do not distinguish between the MILF and the Abu Sayyaf ignoring their differences in goals and methods. The 'Christian' - 'Muslim' reference to victim and perpetrator/ bandit respectively, implies a religious dimension to the conflict which is not necessarily so. 'This attitude could be viewed as a manifestation of the bias against the MILF and the Moros. Or it could be a sign of plain and simple ignorance. Whatever it is, one thing is certain: a number of the people reporting and processing the news about Mindanao are as ignorant about or cavalier toward the island's complex history as many Filipinos are. But the ignorance about Mindanao that is prevalent among journalists is particularly worrisome because, as bearers of the news, what they tell the public is only as good or bad as their understanding of it... It is therefore possible that the ignorance of most Filipinos about Mindanao is the media's own doing.'<sup>39</sup>

Suffice it to say that the present crisis in Mindanao can no longer be solved solely by the Tripoli Agreement formula nor its Jakarta and Kuala Lumpur versions. A more holistic and pro-active approach to conflict resolution is imperative - one that can equally address not only Moro issues but of the other stakeholders, especially the Lumad peoples and the poor majority. Moreover, the context of the past negotiated agreements are relatively different from the situation today, such as the divided MNLF, dominant settler population in the whole of Mindanao and the emergence of several bandit/terrorist groups taking advantage of the conflict, like the Abu Sayyaf and Pentagon groups, on top of land and resource conflicts.

In the light of overlapping claims and interests on land and resources between indigenous peoples, settlers and industrial plantations, government use and corporate (mining, logging, oil and gas) interest, the question of ancestral domains and resource rights in relation to the Moro peoples is a complicated issue. Not identifying themselves as indigenous peoples despite the fact that they are

the Islamized sectors of indigenous peoples in Mindanao, both MNLF and MILF pose that R.A 8731 or the Indigenous Peoples Rights Act of 1997 should apply to the Moro peoples. Government, however, has still to study this.<sup>40</sup>

## RECOMMENDATIONS

With regards the peace process, several recommendations have already been forwarded from the different sectors inside and outside the Mindanao region. In the light of indigenous peoples' concerns, particularly those of the Moro and Lumad peoples of Mindanao, the following recommendations are as follows:

### **Recognition of Indigenous Peoples' Right to Self-Determination**

The right to self-determination is the central issue in the Mindanao crisis. This has not been addressed by any of the peace talks held so far. The call for self-determination among the Moro people has been compromised when the MNLF acceded to the OIC's proposal to scale down their demand to regional autonomous government. While the call for self-determination has been very clear even during the colonial periods, there is an emergent need for the Bangsamoro people to review and identify concrete mechanisms by which this can be achieved in the light of the present realities through democratic and participative consultations. With regards the different forms of self-determination under consideration i.e., secession, administrative autonomy, federalism or the creation of an Islamic state, the proposal for a UN-supervised referendum for the Moro peoples to decide for themselves is worth considering.

On the other hand, the Lumads have their own vision for self-determination that has to be equally addressed. Though they are not organized into an ethnic armed resistance, a considerable number of Lumads have joined the MNLF, MILF and the CPP-NPA (Communist Party of the Philippines-New People's Army) as an expression of demanding redress for their grievances. Like other indigenous peoples in the country, the Lumads have been calling for the state to give due recognition to their effective and viable indigenous socio-political systems and practices. In this light, the state, the non-government sector and international support agencies should:

- a. Recognize the pluricultural and pluriethnic nature of Philippine society;

- b. Recognize, enhance and strengthen viable traditional structures/ systems by providing technical, political and financial support;
- c. Review and repeal, as necessary, existing policies, structures and programs that negate the principles of the right to self-determination. Specifically, there is a need to challenge the limitations of the Philippine Constitution in the full recognition of this right.

### **Recognition of the Indigenous Peoples' Right to Own, Manage and Control their Lands and Resources**

That "land is life" is the basic principle behind indigenous peoples' affinity to their ancestral lands and territories. The core of self-determination, therefore is the recognition of their right to own, manage and control their ancestral lands/ territories and their resources based on indigenous knowledge and traditional practices. This has not been fully addressed by the past peace initiatives.

Statistics show that most of the indigenous territories of the Moro and Lumad peoples have been lost to war, migrant settlers, and to multinational companies in the name of development. Full indemnification or return of indigenous territories to their rightful owners is apparently impossible but the government should consult and dialogue with the peoples and sectors concerned to come up with acceptable solutions to the land question. In particular:

- a. The state should review and repeal unjust programs/ policies effecting development aggression and the peoples' full, free and prior informed consent should be sought by anybody or entity on all matters and intents affecting their land, resources and culture;
- b. The state should stop and cancel permits to all aggressive activities, land acquisition /resource extraction applications and project proposals in indigenous peoples' territories pending environmental impact assessment, social acceptability, consent of the peoples concerned and just compensation or indemnification of damages where necessary;
- c. The state, in coordination with other concerned sectors, should instead engage in capacity building to enable local regulation and administration by indigenous peoples of their land and resources;

- d. On their part, indigenous peoples should promote and strengthen their traditional land and resource management practices and innovations while remaining vigilant in the protection of their rights as indigenous peoples.

### **Mastering Political Will to Recognize and Address Grievances**

The state should genuinely commit itself to peace in its efforts at nation building instead of looking only at the income it can generate from Mindanao's resources. The political agreements achieved through the negotiations should now be paralleled with social and economic agenda not only for confidence building but also for the total reconstruction and sustainable development of the war-torn and conflict-ridden region. The GRP should:

- a. Institute necessary reforms in the bureaucracy including weeding out corrupt government officials and conducting an impartial investigation of their alleged involvement in criminal and terrorist activities that have worsened the conflict in Mindanao;
- b. Genuinely implement the provisions of the accords it signed with Moro groups while opening windows for possible solutions and facilitate further pursuit of peace without prejudice to the other sectors of society;
- c. In view of the failure and poor performance of both parties in the ARMM's Phase I implementation, the state should initiate a process of democratic consultation and dialogue with, among and between all sectors to define ways and means by which peace and development can be achieved based on the peoples' needs and aspirations;
- d. Provide political, social and economic support for capacity building among the Moro and Lumad peoples to enable them to sustain meaningful participation in matters and processes concerning them;
- e. Harness all peace building and reconstruction/development efforts in the region and subject them to the respect and recognition of indigenous peoples' rights to their land, resources and development;
- f. Give justice to victims of human rights violations by giving them access to due process. Moreover, the state

should conduct a full scale study on how to best address the plight of the displaced indigenous peoples vis-à-vis legal claims of migrants on the one hand and private corporate interest on the other; compensation for conflict/war and development related damages among others;

- g. Institute necessary reforms towards the respect and promotion of cultural diversity.

#### **4. For the international community**

The UN should intervene in the matters of promoting and protecting indigenous peoples' rights to self-determination. Specifically, it should:

1. Check and work prosecution of the innumerable violations of the individual and collective rights of Muslims, Christian and Lumad victims of war and development aggression taking into consideration the results and recommendations of the Special Rapporteur on the Fundamental Rights and Collective Freedoms of Indigenous People's country visit to the Philippine in December 2002;
2. Mobilize its agencies to provide not only financial but also technical support to the peace process under the framework of recognizing the peoples' rights to self-determination using more integrative and consultative strategies for development;
3. Strictly monitor the different initiatives and how they impact on the indigenous peoples in the region and the country;
4. Strictly enforce policy and structural reforms on the Philippine government to ensure the recognition of the rights of the people and effective redress for their grievances.

For multilateral agencies and financial institutions:

1. To be more sensitive and comprehensive in understanding local peoples' issues and problems through democratic multilevel and multi-sectoral dialogues or consultations;
2. To withdraw/cancel all projects or programs that run

contrary to the respect and recognition of indigenous peoples' rights to self-determination, their traditional territories and resources;

3. To institute genuine respect and recognition of indigenous peoples' rights in relation to their programs and policies;

*For the United Nations Development Program:*

1. Monitor and ensure strict compliance of the state with its development programs in Mindanao especially those related to peace building;
2. Facilitate a comprehensive healing process towards sustainable peace and development in Mindanao through a rights-based approach that gives justice to historical inequities but with due respect to other present and existing rights;
  - a. Sustainable peace and development is a function of confidence and people empowerment. The formula should be based on the respect, recognition and promotion of the Moro and Lumad rights to self-determination, their ancestral land and resources;
  - b. Mobilize national and international support for peoples' sustained and people-empowering peace building and development initiatives;
  - c. Open windows for the substantial discussion and study of the proposal for the Philippine state to shift into a federal government;
3. Ensure the free and prior informed consent of Moros and indigenous peoples in all policies and programs;
4. Provide services/expertise for the monitoring, review and reform of all policies and programs contrary to indigenous peoples' development agenda and rights.
5. Promote institutional and structural reforms to address government inefficiency, graft and corruption.

## Annexes:

### Annex 1: Chronology of Events

1967: The Marcos government through the Armed Forces of the Philippine (AFP) launches Project Merdeka – a covert operation to sow terror and destabilize Sabah and influence it to secede from Malaysia. To operationalize this, a commando group called the Jabidah is formed from about 200 Tausug and Sama recruits.<sup>41</sup>

1968: Project Merdeka gets bungled due to unrest among the Jabidah recruits who were not paid as they were promised and the dismal situation in the training camp in Corregidor. Afraid that the project will be exposed due to the increasing restlessness, a special task force under the AFP massacres the trainees. This is now known as the Jabidah Massacre.<sup>42</sup> Responding to this, the Moro National Liberation Front and the Bangsa Moro Army was organized and called for secession from the Philippine state. The Mindanao Independence Movement (MIM) is born. In retaliation for the Philippine government's bungled Project Merdeka, Malaysia provides the secessionist MNLF a base, military aid and training in Sabah.

1971: Muammar Qaddafi, head of the Organization of Islamic Countries (OIC), takes it upon himself to defend Muslims worldwide against oppression, and starts supporting the MNLF by providing its members shelter and training in Tripoli aside from bankrolling their arms.<sup>43</sup> Nur Misuari, one of the founding members of the MNLF, is elected its Chairman and splits from the MIM.

1972: The OIC starts taking up the Mindanao conflict in its annual conferences. The MNLF sets up its first logistics base in Cotabato; Marcos declares martial law.

1974: The MNLF identifies the Badjao, Iranun, Kalagan, Kalibugan, Jama Mapun, Maguindanao, Maranao, Molbog, Palawani, Samal, Sangil, Tausug and Yakan ethnolinguistic groups as the peoples of its declared Bangsa Moro Homeland. Meanwhile, in its annual conference, the OIC recommends for the GRP to negotiate with the MNLF "within the framework of national sovereignty and territorial integrity."<sup>44</sup>

1975: The OIC, based on the recommendations of the Committee of Four for Autonomy or Muslims in Mindanao and Palawan, urges the GRP and the MNLF for negotiations.

1976: The Tripoli Agreement is brokered by the OIC and signed between the GRP and the MNLF. The agreement compromises the MNLF's call for an independent Bangsa Moro homeland to regional autonomy for the MNLF-identified 13 provinces dominated by the Moro. The agreement also contains the major provisions for an au-

onomous region.

1977: The unilateral interpretation and implementation of the Tripoli Agreement by the Marcos government results to the return to arms by the MNLF and taking back the call for independence. The MNLF is granted an observer status in the OIC, giving them more access to the international Muslim community. Salamat Hashim breaks away from the MNLF over personal and ideological differences with Nur Misuari and forms the New MNLF.<sup>45</sup>

1980: In order not to weaken the MNLF position in the Tripoli Agreement, the OIC and the Muslim World League (MWL) try to bring Misuari and Salamat to talk and reunite in Jeddah but nothing comes of it.

1984: The New MNLF is formally formed into the Moro Islamic Liberation Front (MILF) under Islamic ideology and vigorously works to build up its forces and influence.

1986: The OIC and the MWL again try to bring Misuari and Salamat to reunite and negotiate with the new president of the state, Corazon Aquino.

1988: Jamal Mohammad Khalifa, brother-in-law of Osama bin Laden, sets up the International Islamic Relief Organization (IIRO) in Zamboanga City while sponsoring Manila-based humanitarian NGOs for Muslims.

1994 - 1995: Islamic terrorism rises with the arrival of Yousef who allegedly plans to assassinate the Pope during the latter's scheduled visit to the country. Yousef is reportedly in contact with the Abu Sayyaf Group.

1996: President Ramos pushes for a new round of peace negotiations with the MNLF. This is later signed by the GRP and the MNLF in Jakarta and is known as the Jakarta Agreement. This is supposed to be the final agreement on the full implementation of the Tripoli Agreement. This agreement provides for a 2-phased implementation. The first or so-called transition phase covering September 1996 - August 1999 is designed for the reintegration of the MNLF combatants into the AFP and confidence-building through peace and development efforts in the Special Zone of Peace and Development in Southern Philippines (SZOPAD) covering 14 provinces and 8 cities dominated by the Moro. These efforts will be coordinated by the Southern Philippines Council for Peace and Development headed by Nur Misuari (<http://milf.net>; 17 August, 2004). The second phase is the establishment of the autonomous regional government.

1997: The GRP-MILF peace talks begin with the latter presenting its nine-point agenda for negotiations. The talks, however, are only able to focus on a general cessation of hostilities with unde-



fined details.

2000: President Estrada declares an all-out war against the MILF.

2001: President Estrada is deposed with Gloria Macapagal Arroyo taking over the reins of the government; negotiations for peace with the MILF resumes and results to the "Agreement For Peace between the GRP and the MILF signed in Kuala Lumpur.<sup>46</sup> This is known as the Kuala Lumpur Agreement.

Included therein is a ceasefire agreement between the GRP and the MILF to pave the way for peace negotiations. Further talks however, are suspended but informal back-door channels are resorted to towards the resumption of formal negotiations. The Coordinating Committee for the Cessation of Hostilities (CCCH) meets to iron out problems with the ceasefire agreement.

2002: The counter-terrorism *Balikatan* exercises that hosted the US Visiting Forces in the country is launched amidst national protest.

2003: The Armed Forces of the Philippines attacks the MILF strongholds in Buliok, Maguindanao and Pikit, Cotabato.

## **Annex 2 : The Lumad Agenda for Peace in Mindanao**

*To live in peace within our ancestral territories – this is our sacred right as Lumad of Mindanao. No one can take this right from us. No one can trample upon it.*

This is how we express the collective position of 67 Lumad men and women leaders from twenty tribes, who attended the Mindanao Indigenous Peoples Peace Forum held on January 17 – 19, 2001 at the GSP Camp Alano in Davao City. This position was forged from the sharing and interactive exchange of stories – stories of hardship, conflict and confusion, as well as stories of struggle, patience and gathering of strength that we experience within our ancestral domain.

These experiences are related to the following:

1. The war between the Armed Forces of the Philippines (AFP), Moro Islamic Liberation Front (MILF) and the New Peoples Army (NPA), often waged within our ancestral territories, cost many lives and damaged many properties, livestock and farmlands. Because of unbearable fear, we were forced to evacuate and leave behind our sources of livelihood. But during evacuation, the government failed to provide our basic needs.

We experienced hunger, crisis and the rise of anxiety, especially among our young. Fear, hatred and confusion, beyond our understanding led us to join organizations with varying ideologies, including some whose methods were incompatible with our goals, dreams and hopes in accordance with our Lumad way of life. It is sad to say that joining these varied groups caused division among us.

2. One problem that we are facing now is the violation of the ancient covenants entered into by our Lumad ancestors and Moro elders. The *D'yandi* and *Pakang* rituals, made before the imposition of government systems in Mindanao, recognized the territorial boundaries of the indigenous peoples and Moros. These boundary agreements, however, are not being recognized and respected anymore. The indigenous peoples within the Autonomous Region of Muslim Mindanao (ARMM) for example, are not free to own their ancestral territory and to practice their culture and tradition.
3. We realize that the continuing threat against our ancestral domain and the withering of our culture is the root cause why we cannot enjoy peace. We cannot deny that most of our ancestral territories are now being leased to plantations, logging concessions, dams, geothermal plants, mining companies, ranches and ecotourism projects. We are always told that these are for the sake of development. In our serious analysis and reflection, however, these development projects simply disrupt our peaceful living within our ancestral lands and weaken our powers to govern our tribes. Taking us away from our lands not only affects our peace, it also destroys the Lumad way of life.

But we have the dignity and the capability to determine our destiny and to find solutions to these difficulties that we are encountering. We shall firmly be true to our promise that:

We are committed to be actively involved in the peace process. We are ready to sit and face with representatives of the MILF, NDF-CPP-NPA as well as the Government panel in order to discuss true and sustainable peace in Mindanao.

We will sustain peace for Mindanao and affirm it through dialogues, forums and other forms of information campaign through the leaders and elders, men and women and youth.

We will continue to protect and preserve our natural resources and guard the places recognized as sacred worship grounds of our

ancestors.

We will continue to strengthen our tribal political structure composed of leaders such as the *datu*, the *bagani* and the *baylan*. The *datu* ( or *timuay* and *matikadong* in some tribes) are the recognized, respected leaders and administrators of our tribal communities. The *bagani* is in charge of security, defense and peace and order of the territory. The *baylan* is our religious leader who is in charge of the spiritual and physical well-being of the tribal members.

We therefore wish to declare our vision for:

*The Ancestral Domain*

The Lumads are simply and peacefully living with their families, through traditional practices and beliefs within the lands of our ancestors.

*The Natural Resources*

We shall take care and defend the source of our life, faith, livelihood and herbal medicine and other natural wealth. These are surviving evidence of our history and culture.

*The Lumad's Desire for Peace*

We earnestly desire to review and revive the sacred agreements of old (D'yandi, Pakang and Bela) made by our ancestors in the context of peace and territory. When these agreements are violated, renewing them and living by their precepts are great obligations of the tribe.

*The Respect of the Lumads for Others*

We are peace-loving peoples who respect and honor the rights of others and all living creatures.

*Development and Peace*

We welcome forms of development that do not threaten our cultures and are sensitive to our economic, cultural, educational, environmental, political and spiritual needs. These forms of development shall lead to peace, provided that we are also made part of the whole process.

We now call on various agencies and groups - armed or not - to listen to our demands.

1. That the Lumad population be sufficiently represented in any peace negotiation in Mindanao, especially in negotiations with the MILF and NDF. The government, however, should give special support to local initiatives on conflict resolution and transformation, like the local declaration of Lumad territories as PEACE ZONES.
2. That the Senate and the House of Representatives should pass a law declaring the territories of the Lumads as autonomous. This should include the

Lumad territories within the Autonomous Region for Muslim Mindanao (ARMM).

3. That all concerned should recognize and respect the territories and boundaries established by the elders during the D'yandi and Pakang rituals. This includes territorial agreements among Lumads, between the Lumads and Moros and between Lumads and Christian settlers.
4. That all concerned should respect our beliefs and practices and our ways of modifying them in the face of Islamic and Christian doctrines and practices, as well as of the impact of globalization.
5. That the government should protect Lumad territories from the incursion of mining, plantations and other projects that threaten the people and their environment.
6. That the local government unit should pass ordinances and even release additional funds, if possible, to reinforce the provisions and full implementation of the Indigenous Peoples Rights Act (IPRA).
7. That the liberating provisions of IPRA against discrimination be reinforced through joint efforts of schools, churches, the media and other institutions.

We will always strive to live happily, in seriousness and true observance of our cultural heritage and customs, within our ancestral territories, with faith and belief in MAGBABAYA, who is the source of all life and the life of indigenous peoples.

*Signed on this day of 19<sup>th</sup> January 2001, Davao City, Philippines by the delegates of the Mindanao Indigenous Peoples Peace Forum. (Document consolidated by the PANAGTAGBO-MINDANAO, Mindanao Indigenous Peoples Consultative Council, Inc.*

### Endnotes:

<sup>1</sup> William Zartman, *Elusive Peace : Negotiating an End to Civil Wars*, (Washington DC : Brookings Institute Press, 1995).

<sup>2</sup> Mara Stankovitch, ed., *Accord: An International Review of Peace Initiatives* (London: Conciliation Resources, 1999).

<sup>3</sup> <[www.db.idprojects.org](http://www.db.idprojects.org)> (20 August 2004).

<sup>4</sup> Stankovitch.

<sup>5</sup> Ibid.

<sup>6</sup> Marites Vitug, and Glenda Gloria, *Under the Crescent Moon: Rebel-*

*lion in Mindanao* (Manila CSPPA-IPD, 2000).

<sup>7</sup> Thomas Mc Kenna, *Muslim Rulers and Rebels* (Manila Anvil Publishing, 1998).

<sup>8</sup> Paragraph 16 reads, "The Philippine government shall undertake all the necessary constitutional processes to implement the entire agreement."

<sup>9</sup> Eliseo Mercado, "Mindanao Peace Process" <[www.philippineupdate.com/frjun.htm](http://www.philippineupdate.com/frjun.htm)>

<sup>10</sup> UP-CSPEJ, "The Continuing Search for Sustainable Peace in Mindanao : A View From a Distance," 2000, (work in progress).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Vitug and Gloria, 248.

<sup>14</sup> Ibid.

<sup>15</sup> Carlos Conde, "Zambo Bombings Leave Hole in the Heart of People Tired of the Violence," *MindaNews*, (06 October 2002).

<sup>16</sup> Vitug and Gloria, 266.

<sup>17</sup> Suharto Abbas, "Factors of Underdevelopment: A Discourse on Mindanao Rehabilitation Initiatives," <[www://morojihad.com](http://www://morojihad.com)> (20 August 2004).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Vitug and Gloria, 248.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Stankovich.

<sup>28</sup> Bajunaid.

<sup>29</sup> Abbas.

<sup>30</sup> Gaspar, Karl, *The Lumad's Struggle in the Face of Globalization*, (Davao City: AFRIM, 2000).

<sup>31</sup> Ramon Moaming, Executive Director of the Lumad Development Center (LDC), is an indigenous Teduray. LDC is a non-governmental organisation based in Cotabato City which carries out social development work in Lumad communities giving technical and advocacy support to Lumad people's organisations. <<http://www.c-r.org/accord/min/accord6/moaming.shtml#top>> (19 August 2004).

<sup>32</sup> Ibid.

<sup>33</sup> Abbas.

<sup>34</sup> Civilian Armed Forces Geographic Unit.

<sup>35</sup> Stavenhagen, Rodolfo, "Debriefing for the Government of the Philippines by the UN Special Rapporteur on the Rights of Indigenous People" in *Engaging the Special Rapporteur on Indigenous Peoples: Opportunities and Challenges*, (Baguio City: Tebtebba Foundation, 2004), 189-196.

<sup>36</sup> Stankovitch.

<sup>37</sup> Mary Ann Arnado, *Initiative for International Dialogue*, (Mindanao Peoples' Caucus, 2002).

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<sup>39</sup> Hidalgo, C.C., *The Media Frenzy on Mindanao*.

<sup>40</sup> "GRP-MILF Peace Process," (April 2004).  
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<sup>41</sup> Vitug and Gloria.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Soliman Santos, *A Peace Advocate's Annotation of the Tripoli Peace Agreement*, (2001).

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*Chapter 8*

**Gold Mining and Indigenous Conflict in Peru:  
Lessons from the Amaraeri**

*Maria Bedoya\**



“Our land is not only soil,  
It is river, it is forest, it is earth,  
It is the sky where the guacamayos fly  
And tell us of another river, in another life.  
There lies the Huananay,  
Father of all ranges,  
If you can climb to the top, you will be happy;  
But climbing is difficult”

From the Harakmbut indigenous peoples

*This case study analyses the impact of mining on the Amaraeri people in the Department of Madre de Dios in Peru and draws lessons from their experience in conflict prevention and resolution. Since the case study was written in 2001, a number of developments have taken place including the establishment of an arbitration commission in 2002 to resolve disputes between the indigenous peoples and mining companies. These have centred on mining concessions which have been granted on areas within indigenous territories, and has generated conflicts. The situation has not yet been resolved.<sup>1</sup> The Amaraeri continue their struggle to have their land rights acknowledged and demand greater commitment from the State and the international community for a durable solution to their problems.*

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\*PCS, Project Counselling Services (PCS), Peru, 2001.



Mining in Peru is the mainstay of the country's economic production. Peru is one of the largest producers of gold in the world, and during the last decade the Peruvian state promoted an increase in mining activity. This led to a rekindling of conflicts between indigenous communities affected by the mining activities, the mining companies themselves, and the state.

A subset of the Harakmbut linguistic family, the AmaraKaeri have been particularly active in using representative organizations and in coordinating with civil society institutions to protect their rights and respond to the threats and challenges posed by the mining. This case study describes their experiences in conflict management in contexts influenced by a diversity of local, national, and international factors.

The Department<sup>2</sup> of Madre de Dios lies in the southeastern part of Peru. It shares boundaries with Bolivia (314.50 km.s) and Brazil (279.10 Km) in the east, the Department of Cuzco in the west, Ucayali to the north and Puno to the south. Madre de Dios has three provinces: Manu, Tambopata and Tahuamanu, and nine districts. The main towns are: Puerto Maldonado, Yñapati, Iberia, Mazuco, Laberinto and Salvación.

Its territory lies within the Amazon rainforest. The State promoted settlement in the area as a national security measure, given its frontiers with Brazil and Bolivia. The total population is 64,460 inhabitants in an area of 85,182.63 square kilometers; it is Peru's third largest district. The indigenous groups have a subsistence economy and survive by cultivating manioc, sugar cane, banana, maize, groundnut and pineapple; by fishing and gathering. They also carry out mining activities, and practice timber extraction and chestnut collection. Due to the mining activities, there is a great mobility of migrant populations.

Madre de Dios has a diverse variety of flora and fauna: 92 species of mammals, 570 bird species and 71 amphibian species, of which 14 had not been previously detected. Also identified are 763 species of fish, 500 species of beetles and 80 species of ants, to name a few. It has been described by scientists as 'a complete Amazon in miniature' because of its biodiversity and abundant plant and animal life.<sup>3</sup>

## MINING IN PERU

Mining has been a driving force during the conquest, colonization and subjugation of the Latin American peoples, as witnessed by the

number of chronicles, studies, researches and documentation on the topic. But, a less known tragedy is related to the impact of mining in the continent's eco-system.

Mining and trade of precious metals had no significant role in the Amerindian cultures. This was first developed at the beginning of the Spanish conquest, because it reinforced the monarchies as silver and gold represented new sources of wealth. The discovery of mercury in Huancavelica, Peru, was crucial for mineral processing and the expansion of mining activities. In the 17<sup>th</sup> century, mercury was precariously transported from Huancavelica to Potosi in Bolivia and to Northern Mexico. Since then, gold and silver mining have been associated to the aftermath of mercury poisoning.

During colonization, land use, deforestation and erosion destroyed vast areas in Peru. Entire communities disappeared, particularly in mining regions. The rivers were saturated with mercury, killing fish and poisoning soils even in areas far removed from the mines. The devastation caused by mining activities was even worse from the social point of view, with the indigenous peoples as the chief victims. Their lives, societies and cultures were destroyed by the creation of a gold and silver production modality that degraded the eco-system and devastated their waterways and agricultural terraces. Compared with mining in the 20<sup>th</sup> century, however, the ecological impact of the colonial mining system seems benign nowadays, because the only valued metals then were gold and silver, and the technology for their extraction was primitive.

In the period of the industrial revolution, there was a demand for other minerals in Western Europe and in the United States due to the mass production of machinery, weapons, trains, and vehicles. The technological innovations caused a revolution in the mining activities, leaving behind sub-soil mining techniques, nowadays considered relics from the past. The industry changed to open-pit extraction technology, in particular for copper, iron and bauxite. Mountains were moved and the valleys were destroyed. The landscape changed in entire regions.

The struggles for the minerals resulted in ferocious wars, for example, the Pacific War between Peru, Chile and Bolivia. These wars caused large numbers of human victims and their ecological consequences are little known. In the 20<sup>th</sup> century, the United States reasserted its domination on Latin America mining activities. Large investments were required and as a result, alliances were entered into.



## National Context

Mining in Peru is an important economic activity. The mining sector contributes nearly half of the total value of domestic exports. It has been estimated that between 1997 and 2007, investments destined for mining activities will be more than US\$ 10,000 million. With a production of 92.6 tons and an approximate export value of US\$ 850 million in 1998, gold is currently the most important Peruvian mining product and the main domestic export. The increase of the gold production in the last years has placed Peru as the first gold producer in Latin America, and the eighth amongst the world's most important producers.<sup>4</sup>

Thirty percent of the gold produced in Peru comes from gold panning and subterranean mines, with almost 100 thousand persons surviving by extracting and manually processing this product in deplorable conditions that pose high risks for their health and the environment. This activity is developed mainly in Madre de Dios, Ananea and Lampa in Puno, Pataz in Trujillo and Nazca-Ocoña between Ica, Ayacucho and Arequipa.

During President Fujimori's administration, mining investment was encouraged. Thus, from four million hectares ceded as mining concessions in 1992, the number of hectares comprising concessions reached more than 23 million in 1999. Of the 5,680 peasant communities registered in the Special Program for Land Titles (PETT), 3,200 coexist with mining companies. The different approach to the way the indigenous communities of the Amazon are treated is reflected in the fact that transnational oil companies have received 18 million hectares in concession, compared to less than three million hectares recognized for the 52 Amazon indigenous groups.

The historic conflict between the communities and the mining companies for the use of the land and the water has resumed, and so far, not enough efforts have been made to guarantee an equitable negotiation process. The government issued Supreme Decree No. DSN-017-96-AG that regulates Law No. 26570, whereby a regime of rights is established in favor of mining activities, placing all the indigenous communities at a disadvantaged and unfair situation. This norm establishes a term of 30 days for the communities to reach an agreement with the company, so that the company buys the land or pays compensation for eventual losses. Neither the mining company nor the state gives any information to the communities regarding this. If during this time period no agreement is reached, the matter goes to arbitration. The company chooses the expert, pays his



fees and the procedure is carried out in Lima.

The most frequent conflicts arise from water, soil and air pollution caused by mining exploitation. The legislation establishes the payment of a land tax by the exploitation company in compensation for the extraction of non-renewable resources, and its distribution among the local and regional governments of the zones of exploitation. This compensation is not working not only because the amount paid as income tax is very small due to the numerous incentives that reduce it, but also because the central government only distributes 35% of the total. One of the effects of this policy is that the mineral wealth of the country does not benefit the inhabitants of the territory from which the minerals are extracted.

### **Policies of the Mining Sector**

A mining bank was created at the beginning of the 20<sup>th</sup> century to stimulate the small mining production. However, proper prices were not paid and the production was not controlled. In addition, the bank maintained close relationships with large and medium-size

companies.

Decree No. 22178 for the Promotion of Gold established the obligation of the mining concessionary to commercialize all production through the Mining Bank while Law N° 109 identified the Mining Bank as representative of the State and the entity in charge of the commercialization of unrefined and semi-refined gold. Supreme Decree N° 05-91-EM/VMM issued during President Fujimori's government, decrees free commercialization for gold, and as a result the Mining Bank was liquidated. This Decree was confirmed through the Law N° 708.

Claims of mining may be made by a natural or legal person, defined as 'petitioner' as s/he reports to the mining authority of a discovery of a mineral deposit and asks the State to grant a land concession. The land claims are filed in the Regional Mining Offices in the relevant Departments. The State is the sole owner of the lands appropriate for mining and gives the petitioner a permit for exploitation. To be considered a petitioner, there must be a mining report. The State can give an authorization to grant the petitioner the status of owner of that land for a defined term, and sets conditions stipulated by law.

The mining claims must include: identification of the petitioner, exact location of the site, type of minerals claimed, extension of the land etc. When a claim is filed, there is a five-year period of protection, and after this time, the exploitation stage begins; a two-year extension may be granted if so requested. During the period of exploration, the petitioner must demonstrate that s/he has made the minimal investment in wells, trenches, digs, underground activities, camps, facilities, roads, and geological, geophysical, geochemical, topographic, geodesic and sampling studies. The only persons that have an authorization for mining exploitation are those that have complied with the documentation and whom the State has granted a concession.

### **IMPACT OF GOLD MINING**

In Peru, the common practice is to have a demarcation process with a hectare/man ratio of ten to one hundred hectares per individual. This is similar to the plot system which used to be applied for pioneers. The natural boundaries are not respected due to topographical and technical difficulties. The use of natural resources are not taken into consideration, nor are ancestral occupation, old villages, fallow or agricultural fields in recovery, spiritual sites, or hunting,

fishing or gathering grounds. In fact, the criteria taken for highland peasant communities of scarce fertile land and numerous populations are applied. The tendency is to draw as many squares and straight lines as possible, a practice that is unfavourable for coexistence with neighbours as it does not take into consideration any river margins, one of the most important resources available.

Previously, the Agrarian Bank compensated invaders by granting them loans, and the community had to pay for damages and losses to the benefactors who had to waive their land rights after these were registered. Almost all community territories were non-contiguously demarcated, even in cases of villages of the same ethnic group. If the assembly determined so, the settlers included in these territories could stay and participate in the assemblies. The aftermath of this demarcation practice, carried out by second-level technicians, is that most of the registered communities ask to expand their territories, currently creating forest reserves, but bureaucracy is in extremel slow and the majority of these requests are left unattended.

### **Regional Context: The Amazon**

The Peruvian Amazon region extends over 62% of the national territory. In that region live 65 ethno-linguistic groups. The region has great biological richness, and this constitutes its best asset; but the responsibility for its conservation constitutes a major challenge. The overexploitation of certain species or micro-organisms, the erosion, and the pollution provoked by mining and oil activities, the introduction of species, the agro-industrial crops, intensive livestock, reforestation of exotic species and the changes in the global climate have altered the biological resources.

It has been estimated that the indigenous peoples comprise 300,000 persons, distributed in 1,297 communities, but there are also remote settlements of groups not contacted and who do not wish to have any contact with outsiders and move deeper into the forest, escaping from modernity, diseases and violence. There are also an undetermined number of indigenous persons in urban or rural sites in the Amazon forest; because they are dispersed, their identity and rights are not properly recognized. In addition, due to the particular conditions of local discrimination they do not identify themselves as indigenous peoples, or as members of a particular linguistic group.

In areas of dense forest and rivers of the low jungle in the de-

partments of Madre de Dios, Ucayali and Cusco, there are indigenous peoples living in isolation. There are no detailed linguistic studies, but surveys and data relating to neighbouring indigenous peoples believe these groups to be of Pano origin, and from the Arawak language groups. The areas occupied by these isolated indigenous peoples are rich in renewable and non-renewable natural resources. This has attracted the attention of timber, mining and oil companies, often with dire consequences. A forced contact with the Yora indigenous peoples - from the Pano linguistic family - living between the valleys of the rivers Urubamba in Cusco and Manu in Madre de Dios, by commercial enterprises and religious missionaries caused the death of a large number of this group (1970-80). This was due to the spreading of common diseases such as colds, whooping cough, etc. in a group with no natural immunological defences and thus vulnerable to contact with others.

### **Departmental Context: Madre de Dios**

In Madre de Dios, an extractive-mercantile economy has developed due to the increasing exploitation and extraction of natural resources and their commercialization. This is carried out by outside interests, groups and individuals, in search of riches. According to production cycles for different products, the historic evolution of the Department can be divided into six periods:

- From the Inca period to the middle of the 19<sup>th</sup> Century - a series of unsuccessful attempts were made to enter the region including an expedition led by Juan Alvarez de Maldonado in 1567. When this failed, there was a loss of interest in the region for a long time;
- Mid-19<sup>th</sup> century to 1895 - a series of scientific expeditions were carried out in order to explore the geography of the region and to evaluate and extract natural resources, in particular 'casarilla'. This included those led by Markham, Raimondi, Gardner-Gibbon and Faustino Maldonado. During Maldonado's expedition, the course of the Madre de Dios River was discovered; this opened a new route for the commercialization of rubber;
- 1890-1920s - the rubber boom;
- After a period of stagnation and crisis (1915 - 1935),



the gold boom started. Simultaneously, between 1940 and 1945 rubber extraction activities re-started, although less intensively and restricted to the Iberia area;

- 1955-1965 - large volumes of chestnuts were extracted for export;
- 1973 - a new gold rush began.

There are three gold exploitation systems in Madre de Dios:

- Manual exploitation, whereby the gold is extracted without any mechanization using only a strainer or hopper, which is washed with buckets of water. Two or three persons work together. The work is arduous, there are low investment costs, and a quick turnover of miners, who work in the beaches, without any land titles. It has been estimated that some 2,000 persons work like this, producing approximately 326 kg. per year;
- Exploitation with pumps, commonly used in all the beaches and creeks, whereby the material is washed with water poured through pump hoses. Each camp has an average of 10 persons; every worker has to carry approximately 100 wheelbarrows full of material per day. It has been calculated there are some 870 camps with 1,000 persons with an estimated production of 3,500 kg. per year;
- Extraction with heavy machinery, whereby large capacity front lifters are used instead of wheelbarrows. The machines work day and night, employing some 12 persons overall. Tank trucks are also used to utilise this type of extraction in those places without access to water. In the Madre de Dios River, the gold extraction is carried out through dragging techniques. This requires a large investment, but employs few people. There are an estimated 450 machines, employing approximately 5,000 persons; estimated production amounts to 15,000 kg. per year.

From the economic point of view, mining brings almost nothing to the Department, in terms of taxes. There is no system to control

the sale of gold, thus the mining tax cannot be collected. The capital of the Department, Puerto Maldonado, is one of the most expensive cities in Peru. Many of the commercial transactions are carried out there. According to the small and indigenous farmers of the area, their production is poorly paid, and they have to spend enormous amounts of money for products coming from other regions ranging from food to industrialized goods. Some companies have one thousand hectares under concession, but the largest of them has only about one hundred employees. The former Mining Bank only purchased 10% of the gold production, and part of that came from the large Cariza and Ausorza groups. According to data reported by Mauro Leonel, 'gold extraction would represent the highest income of the department, approximately 2.2 million US dollars, followed by tourism with 1.6 million, timber 1.2 million and finally, livestock with 0.7 US million dollars.'<sup>5</sup> The indigenous peoples are included in the tourism package.

The worst pollution is caused by mercury leakage, but this has not been verified so far. In addition, gold extraction with heavy machinery destroys approximately 15,000 hectares of forests per year. The dragging machines remove 36 square km. of the riverbanks per year, widening the course of the river, leaving behind huge arid beaches, lowering the water level of the river, and endangering navigation. Before mining was mechanized, the water of the rivers cleared during the dry season, allowing the penetration of light and regenerating the aquatic vegetation. Currently, the mining activities prevent plant photosynthesis which alters the habitat.

There are no plans to recover the degraded areas. Neither are there any plans against the dangerous effects of mercury. The fact that no mercury preventive measures have been taken is very grave. The retort, an apparatus and a technique to reuse the mercury and costing some eight to ten US dollars each, saves money and controls pollution, but was never introduced or planned in the region. In neighbouring Brazil, a process to check this serious ecological damage has started. However, the Madre de Dios River will continue carrying mercury towards Bolivia, Brazil and to the Amazon, aggravating the situation on the Brazilian side. Thus, checking measures and studies related to gold market, mercury poisoning, mercury impact for ichthyo-fauna and fishing, working relationships, recovery of degraded areas and the use of retorts, among others, are urgent.

### INDIGENOUS LAND DEMARCATION: CRITERIA AND PRACTICE

Indigenous peoples face many problems in Peru, which can be divided under five general areas: a) land and territory; b) environment and natural resources; c) basic services: education and health; d) citizens' rights exertion and rights for participation; and e) justice administration and application of common law.

Their exclusion is shown in several ways: lack of personal identity documents, essential to identify themselves, to work and to prove land ownership; lack of basic facilities; ignorance of indigenous customs and traditions by the governmental authorities including conflict resolution and cosmovision. In the educational field, Spanish is the main language of instruction, with less than 3% of the school age population receiving bilingual education. There are no mechanisms to guarantee the participation of indigenous peoples in the local, regional and national elections.

Land is vital for the survival of the indigenous communities. With clear land ownership, social conflicts might be avoided. The agrarian situation, and the demarcation and regulation of the land of indigenous communities and traditionally extracting populations e.g., rubber and chestnut collectors, must therefore be defined before any other attribution of possession of title, authorization for investment or settlement is granted. In Madre de Dios, agrarian speculation investments of a non-productive and predatory nature have started to increase because of the rising values of the lands due to road-building activities.

A provisional list shows that of the 36 indigenous areas which are known to exist in Madre de Dios and in Northern Cusco, with the exception of scattered indigenous communities, their land security situation is as follows:

Areas	Per Cent	Status
13	36.1%	legal title, with some unresolved problems
9	25%	recognized as indigenous territories, pending titling
12	33.3%	no legal protection or land titles
2	5.5%	living in isolation. Should be granted legal title, with due care to avoid damaging their health or well being.

In summary, 63.9% of the indigenous communities do not have legal status, while 38.8% have not begun the process to regularize their lands.

The context in which the indigenous peoples in Madre de Dios live, mainly Arakmbut, is deeply marked by 'gold fever.' Some of the rivers carry fine gold in their sand and banks, and the gold price in the market is very high. Thousands of people have arrived to Madre de Dios looking for gold. Those areas which are potentially rich in gold are located in indigenous territories, thus conflicts between the invaders and the indigenous peoples are inevitable.

The construction of roads and dikes, and the implementation of mining and oil exploitation systems have stimulated migration and an uncontrolled colonization, affecting the stability of the indigenous areas by fragmenting or totally eliminating them. To be simultaneously different and equal is a fundamental pillar of the social life and makes possible to have communication and to structure identity processes. As stated by Rodrigo Montoya, when a nation eliminates and marginalizes what is different, the nation denies not only what is different but also what it has, what it owns, what is considered different; and, with that attitude, denies the possibility of developing processes for social articulation.

### **The Amarakaeri**

The Amarakaeri indigenous group is the dominant group of the Harakmbet linguistic family and comprises seven clans: Amarakaeri, Arasaeri, Huachipaeri, Kisamberi, Pukirieri, Sapiteri, and Toyoeri (total: 1,623 persons). The Amarakaeri are the most numerous, with approximately 1,000 persons, according to a database prepared with the support of United Nations Program for Development. The group comprises mostly young persons living in the Department of Cusco, Provinces of Paucartambo and Quispicanchis, Districts of Kosñipata and Camanti; and in the Department of Madre de Dios, Provinces of Manu, Tambopata and Tahuamanu, Districts of Madre de Dios, Inambari and Tahuamanu, respectively.

The agricultural production of the Amarakaeri is subsistence-oriented. They also engage in fishing, hunting and gathering, and trading in chestnuts, rubber and timber as well as gold extraction. This last activity is carried out mainly in the river Karene, in particular in five communities: Shintuya, Alto Madre de Dios, Boca de Inambari, Puerto Luz and San José Kerene, and in Barranco Chico in Pukiri.

At the beginning of the 1970s, the Amarakaeri searched for gold in a modest way, but in 1978 the communities began to mine gold in the rivers, as it descended from the Andes. This was generally as gold powder mixed with sand and gravel, deposited on the riverbanks or in the old river courses in the interior areas. The gold is obtained by straining the sand in water or using a metal rod or a root to find stone deposits where the gold powder is found. When this is found, the Amarakaeri place a large strainer over a tilted wooden tabletop over which a piece of bag is placed. When the sand and the stones are washed over the strainer, the black sand containing gold is collected. Once washed in the rivers, this sand is mixed with mercury, and this clumps the gold separating it from the sand, producing gold pellets. Previously, the mineral was then taken to the Mining Bank –until it disappeared– or directly sold to merchants.

The Amarakaeri work the gold independently, and not as workers for the local bosses. The gold production is organized according to traditional grouping criteria by clans, families or individuals based on a shared trading relationship. Although nowadays gold forms part of their economy, this activity is not disruptive of their society because of the respect they place on their traditional values. Since 1985, the Amarakaeri have been keeping their community lands, using them for gold extraction, within the framework of their values and traditions. However, gold commercialization has influenced their lifestyle and led to an increment in their cost of living. With the gold they sell, they usually buy motor pumps, motors for their boats, and power generators. The amount of gold production has increased, and the Amarakaeri have entered the market economy and become monetarised, with a resulting change in values.

The Amarakaeri were not affected by outside settlement until the rubber boom. However, as a result of migration due to the rubber and gold boom, there has been a huge increase in the number of inhabitants in the region. This has impacted the socio-economic and environmental balance. The ecological equilibrium which was previously managed by the indigenous peoples through their traditional activities such as fishing, hunting and gathering, has been lost. The depredation of resources has resulted in the communities facing extreme poverty. When the Amarakaeri talk about the future and their problems their perspectives range from resignation to confrontation; they are convinced that they will be exterminated. However, in the last few years, there has been a marked resurgence of pride in their identity and heritage with many of the indigenous peoples wearing their traditional clothes with war colours and sym-

bolis; confidence in their own strength has increased.

The Amarakaeri have also made efforts to ensure their children attend primary and secondary school. The children have had difficulties with the language (Spanish) and, in some cases, this has been responsible for many not finishing school. The Amarakaeri also claim that in the schools indigenous culture and heritage is under-valued, and the students complain that the history and geography they are taught do not relate to their own experiences. For instance, Fitzcarraldo is treated as a national hero while in the Amarakaeri culture he is denigrated for subjugating and exterminating their people.

Regarding health, each Amarakaeri family has lost at least half of its members due to diseases, stemming from the time of their first contact with the outside world. There are no first-aid kits to take care of minor diseases and the purchase of medicines means other basic necessities cannot be obtained. However, in response to this situation, interest in herbal medicines has been stimulated, also since many of the modern medicines have components which are derived from Amazon plants and flora.

### **Native Federation of the Madre de Dios River and Tributaries – FENAMAD**

For several decades now, the indigenous communities of Madre de Dios have suffered the consequences of mining activities carried out by individuals and enterprises, which have damaged the national resources and generated social conflicts. This is ongoing.

Gold fever has attracted outside elements onto indigenous lands, forcing some communities to be displaced to areas outside their traditional lands. Currently, the territories of ten indigenous communities (Puerto Luz, San José del Karene, Barranco Chico, Villa Santiago, Kotsimba, Boca de Inambiri, Shiringayoc, Tres Islas, San Jacinto, El Pilar) are zones of conflict between the indigenous peoples and the miners. What is remarkable is that the miners, although invading the indigenous territories, blame the indigenous people for crimes of aggravated usurpation, thefts of gold, violation of personal freedom and other offences, when in reality the community members seek to protect their territories.

The miners are protected as they have applications in process or have been granted mining concessions. They invade the indigenous territories, and, in some cases, even threaten the community members with death. This is in addition to non-compliance with the

requirement to obtain the authorization of the community as established in the Law N° 26505 and Supreme Decree N° 017-EM, and failure to conduct an environmental impact study as stipulated in the Law N° 26786. Since 1996, FENAMAD has requested the central authorities not to accept mining requests in those lands where indigenous peoples hold title, and to cancel the mining concessions of those individuals and companies that fail to comply with the Law N° 26505 and its norms established in the Decree Law N° 757, modified by the Law N° 26786. On 15 September 2000, the leaders of the FENAMAD met with the Minister of Energy and Mines and it was agreed to respond to the Federation's request. In November and December 2000, when no measures had been taken in this regard, the communities of Barranco Chico, Tres Islas, Villa Santiago and San José de Karene decided to protect their rights and expelled miners who had invaded their territory.

The indigenous peoples living in isolation constitute a reduced group that have decided to keep away from the mainstream national society, taking refuge in untouched forests in the Amazon jungle. Their experience with rubber exploitation has made them distrust the majority Peruvian population of Creole extraction, and this attitude has been reinforced by the threatening presence of timber and oil extractors in their territories. The presence of the dominant population brings not only problems with their territories and natural resources, but also spreads diseases for which the indigenous community-members have no defences. This has caused demographic disruption, and in some cases, has put them in danger of extinction.

FENAMAD also works to protect the rights of the isolated indigenous peoples and to guarantee the territorial, physical and cultural integrity of the groups living along the high waters of the Rivers Chandless, Las Piedras, Los Amigos, Tahuamanu and Yaco. In addition, it has also been decided to adopt state policies for the long-term integral protection of these communities living in isolation.

### **Initiatives for Dialogue**

On 18 July 2000, more than 2,000 indigenous peoples from all the communities of Madre de Dios mobilized to initiate direct dialogue with the Government of Peru. They marched to the city of Puerto Maldonado, and demanded the Government cease to grant logging and mining licenses and concessions within indigenous territories. This initiated a process of dialogue with the government and dis-



cussions have been held with the relevant ministries. In August 2000 FENAMAD raised the problems faced by the indigenous peoples living in isolation to the Minister of Agriculture, and requested the protection of their territories and the abolition of forestry contracts in the origin of the Huascar River, which had resulted in the displacement of these peoples.

The Government has a policy of creating protected areas as an environmental protective measure. However, the Manu National Park and Tambopata Candamo Reserve in the Maldonado Department were created on traditional indigenous territories, without proper consultations with the indigenous peoples that have lived there for several centuries. With the Peruvian State adopting this territorial policy, a series of measures have affected the indigenous peoples. The greatest impact is related to access and use of natural resources. The policy orientation is grounded on a purely food-based approach, without taking into consideration other basic needs such as for clothing, education, health, etc., and therefore restricted to subsistence dwellers. FENAMAD has asked the Government and the Special Program for Land Titles (PETT) to grant titles immediately to the indigenous peoples of Isla de los Valles, Tayacome and Yomibato.

On 6 July 2000, the Government identified 988,000 acres (400,000 hectares) as the Amarakari 'reserved zone' by Supreme Decree No. 028-2000-AG. This was re-classified in 2002 as the Amaraeri Communal Reserve (Supreme Decree No. 031-2002-AG of May 11 2002). This was due to the efforts of the Amaraeri Communal Reserve Pro-Recognition and Management Committee and The Native Federation of Madre de Dios and Tributaries (FENAMAD).<sup>6</sup> Areas occupied by farmers and/or loggers were excluded from the reserve as were those under state control. In this context, FENAMAD considers it urgent to demarcate and in some cases to revise the boundaries of the indigenous territories, with due consideration to the historic background, occupation and the resources necessary for these communities to reach an adequate standard of living, according to their culture, economy and production systems.

Because the economic activity generates employment, some people believe that part of the territory should be used for this purpose, conditional to clear guidelines to limit the social and ecological damages. The proposed zones to be 'sacrificed' to this end lie between Manu National Park and the proposed Bahuaja-Sonene Park. The aim would be to conserve the Amaraeri Communal



Reserve. Thus, an environmental equilibrium would be maintained as the mining zone would be included between three protected areas.

## ANALYSIS

### **Contribution to Conflict Prevention and Construction of Peace**

The volatile political situation in Peru has affected the daily lives of the indigenous communities. Drug dealing and political violence, forced displacement of indigenous peoples, the use and abuse of their lands, waters and mining resources by individuals and companies, has aggravated the potential for confrontations and forced the communities to take action to defend their interests. The most serious conflicts have been those generated by the seizure of the Amarakaeri ancestral lands - wherein are concentrated most of the gold reserves in the country - and the pollution of the waters.

These conflicts arise because the State has prioritized mining for its foreign capital earning potential and favours financial investment in that sector. For this reason, the rights of the indigenous peoples are ignored, asymmetrical agreements entered into, and the imposition of situations that generate conflicts fostered. To solve the conflicts, it is necessary to have the communities and the population in general able to interact and negotiate based on mutual respect for differences of approach and vision. Thus, it is necessary to develop closer inter-cultural links and relationships in order to learn from each other including adapting our concepts and values and evaluating them from a different perspective.

To promote situations oriented towards overcoming conflicts, solutions must be sought through dialogue. Thus, it needs to be assessed whether mining activities will contribute to the development of the region, and if not, whether there are other alternatives. Within this framework, the proposals of all parties must be taken into consideration and the solutions must be appropriate, with respect to autonomy and the rights and expectations of each party. Otherwise, conflict will aggravate political and social instability, without finding out whether mining investment might be compatible or not with sustainable development.

We must understand conflict as part of our daily lives. We experiment with it in our homes, work, community, organization, either openly or in a implied manner. Conflict is embedded in our relationships as human beings; thus we must learn how to regulate conflicts and transform them, examining their constructive effects

with the participation of the actors themselves, and in particular, with the communities. However, although we live with conflicts, we do not always accept them, and even less, take a positive attitude towards them. Frequently, we are afraid of conflicts and do not know how to face, treat or transform them.

Consequently, conflict must not always be seen as a negative thing. Conflicts combine positive and negative elements, as key components of life and fundamental needs of persons and societies. A conflict can also mean an opportunity for change. One must understand conflicts in their multiple positive and negative dimensions and consider them not only as fostering lack of union, tension, disruption, fights, non-communication and abuse, but also as a possibility for change, a moment for recognition, for experience-learning and as a mechanism to reinforce identity and self-esteem.

The socio-environmental conflict related to certain practices of use and exploitation of natural resources which damage ecosystems, may lead to changes. An unequal management of the natural resources has been and still is a powerful way of deteriorating the eco-systems and the environment. This leads to confrontation of positions and interests among the various actors competing for the scarce natural and economic resources. The social conflicts include opposing interests among the communities and the companies in a situation that adds nothing; what one party wins is lost by the other party.

The development of the indigenous organizations and their relationship with other members of the civilian society and NGOs that support respect for their rights, has reinforced their links, enabling them to present explicit proposals to the state. There have been joint actions developed by study and research centres to prepare the Atlas and the Census, and initiatives to have the State promoting laws and norms that allow them to live in harmony with the economic interests that affect them, or to have their rights recognized through instances that represent them.

A number of civil society organizations have played fundamental roles supporting the indigenous peoples' movement including the following: Centro para el Desarrollo del Indígena Amazónico-CEDIA; Centro Amazónico de Antropología y Aplicación Práctica - CAAAP; Centro de Investigación y Promoción Amazónica - CIPA; Centro de Estudios Teológicos de la Amazonía - CETA; Instituto de Investigaciones de la Amazonía Peruana -IIAP; Wanamey, Ametra 2001, Centro Eori and Casa Sur Estudios del Socialismo. They have disseminated information on the indigenous peoples, and thereby

enhanced the respect of diverse sectors of the political society for the rights of these peoples.

There are also organizations of indigenous peoples, national and regional, including the Confederación de Nacionalidades Amazónicas del Perú – CONAP; Asociación Interétnica para el Desarrollo de la Selva Peruana – AIDSESP; Federación Nativa del Río Madre de Dios y Afluentes – FENAMAD; Comisión de Emergencia Ashaninka; Federación Regional del Pueblo Asháninka del Valle del Río Pichis – ANAP; and the Federación de Comunidades Nativas del Río Corrientes – FECONACO.

### **Role of United Nations**

Since its creation, the United Nations has been focusing on several issues relating to indigenous peoples. In 1989, the International Labour Organization (ILO) – a UN specialized agency – adopted Convention No. 169 on Indigenous and Tribal Peoples, an international legal instrument that regulates the rights of the indigenous peoples. It recognizes that the indigenous peoples have the right to contribute with their own concepts and values in national policy development. This means that the aim is not to assimilate these peoples into mainstream development concepts, but on the contrary, to acknowledge their existence as different peoples, with their own needs and concerns, their own forms of socio-political organization, their own traditions and culture, their own economy, and their own vision of development.

Peru ratified Convention No. 169 in 1994. The ILO's Regional Office for Latin America and the Caribbean, its Multidisciplinary Team for Andean Countries and the Centro Amazónico de Antropología y Aplicación Práctica – CAAAP together prepared a diagnostic study on the situation of indigenous peoples of the Peruvian Amazon Region in 1996, as a contribution to the Office of the Ombudsman's work in drafting and implementing a special programme for indigenous peoples.

The increasing concern for the situation of the indigenous peoples in the world is also apparent in the work of the international cooperation organisations. The United Nations Development Programme (UNDP) orients its work with indigenous peoples to Convention No. 169. It recognizes that the development strategies adopted so far have contributed to deteriorating the situation of indigenous peoples even further. Thus, UNDP has recommended the promotion of actions to strengthen the capacities of the indig-

enous peoples, within the framework of its policy on indigenous peoples and in cooperation with other international instances and the governments themselves, recognizing in particular the importance of the traditional knowledge to guarantee sustainable human development.

Within this framework, UNDP has carried out a number of projects in Peru relating to Ecological-Economic Zonification, Biodiversity in the Amazon, and Resource Management in Indigenous Lands. These projects were financially supported by UNDP, the Global Environment Facility (GEF), and the UN Office for Project Services (UNOPS). In 1997, an atlas and database was produced: *The Peruvian Amazon: Indigenous Communities, Knowledge and Land*.

The communities have initiated conflict prevention measures and proposed some changes to the State with the aim of maintaining harmony in the use of resources and environment in their territories. UNDP implemented the above-mentioned projects as a way to be better informed with the indigenous peoples, their way of life, production, culture, forms of socializing, and other aspects. The coordination was carried out through civil society organizations, indigenous peoples' representatives, and local and regional NGOs as a mechanism for dialogue and cooperation on the scope and objectives of this task and on the expected results. This exercise was of value, not only for the involved organizations but also for the indigenous peoples as a whole. The immediate result has been a comprehensive overview of the existing resources, both in terms of human and natural resources, and their current conservation status. A large number of institutions and professionals were engaged in this effort on the basis of their skills and technical capacities.

### **LESSONS LEARNED**

Conflict prevention implies the existence of a problem that generates damage or losses and a reaction from the affected persons, questioning the problem. A community may live with a problem as long as it takes no action against those that generate it. Conflict starts when the affected community starts actions in order to overcome the damage or loss, be it territorial or environmental. The existence of territorial and environmental problems does not automatically mean conflict. That is, water pollution, use of land, and so forth, do not necessarily imply conflicts. For that, it is necessary that the communities and inhabitants affected by these problems take a position

against the situation. Being aware is not enough; it is necessary to communicate an interest, a position, to design action strategies, to take action, and only then do conflicts emerge.

Lessons learned from the experience of the Amaraqueiri include the following:

- To prevent conflicts it is necessary to analyse the environment and establish a new intervention strategy. For this, the international, regional and national contexts have to be systematized, including economic, political, social and other factors. Besides, the medium-term cost of marginalizing indigenous peoples from their own territory must be determined in terms of health, education, compensation and other such elements;
- Information must be provided to the target communities, and their representatives included in impact-assessments of projects and in policy-making;
- It is important they have time to consult and discuss these issues among the communities allowing them to be constructively engaged in the project. To hear directly what the communities have to say is not only an act of principle, it is a right of the peoples concerned;
- Capacity-building to enable indigenous peoples to protect their rights, to handle the conflicts arising among themselves and with outsiders, to develop efficient management of their environment and organizations within an inter-cultural and national integration framework;
- A culture of peace to avoid all types of violence should be promoted. This implies eradicating drug trafficking, ending military actions, respecting mother tongues and carrying out consultations. Simultaneously, inter-cultural tolerance and integrity should be promoted, administrating conflicts generated by tensions between traditional and modern ways. Denying a culture is providing a basis for exclusion and socio-political domination;
- All development planning should take priority consideration of the indigenous peoples living in the area, who have been there for centuries before the settlement of Europeans. To this end, it is recommended that plan-

ning begin using ethno-scientific resources;

- Without adequate organization and participation of civil society, there is no democracy in planning, and a great potential for correction and efficient application of resources is lost; many times, resources are distributed for goals that are not considered first priority. To make any action possible, it is necessary to adequately use the natural resources and to protect traditional communities and indigenous peoples;
- The recognition and assertion of the indigenous peoples as subjects of rights, and entitled to all human rights, must be enhanced. Their interests and needs deserve attention from national and international communities. If the State takes into consideration the priorities established by the target communities, progress could be quicker and, overall, much more effective;
- In a multi-cultural country, the participation of the indigenous peoples should be reinforced, as they are part and parcel of the national citizenry. With their vision and cultural diversity and richness, they can make a significant contribution towards the consolidation of democracy.

## CONCLUSIONS

In relation to conflict prevention, no solution or alternative is the correct one. All proposals will be adequate or appropriate in a particular time and place. However, some useful actions can be taken:

1. Obtaining information in relation to the territorial, environmental and mining problems;
2. Exchanging experiences with other communities affected by similar problems, in order to coordinate actions;
3. Raising awareness of rights, and training in conflict administration and management;
4. To seek professional help from universities, municipalities and civil society organizations;
5. To lodge protests and file complaints with the authorities;
6. To organize the community to confront the problem; and

7. To sensitize the local, regional and national populations by disseminating information about the cause of conflict through mass media.

When a study process is carried out or the practical application of knowledge starts, we expect them to contribute to our formation and development, which in turn, will improve our performance in the different spheres of life. In this case, the institutions that participate in the project have a closer contact and knowledge of the communities. This does not mean a simple accumulation of new knowledge, but an integration or modification of ideas, establishing relationships and coordinating new knowledge schemes.

The goal is to learn using adequate strategies that may be transferred and adapted to situations or problems that have to be solved. Horizontal and action coordinating relationships have been established among local institutions, to support the communities' demands. The FENAMAD experience is stimulating for other indigenous peoples whose organizational consolidation is pending. FENAMAD has existed for over 20 years and has been systematically forming new leaders through workshops, congresses and events held during all these years.

It is important for communities with similar characteristics to identify their main problems. In this diagnosis, the causes and consequences of the problems must be stated and a plan should be drafted for the community, so it can see the objective and the goals to be reached in a determinate period, answering questions such as: What will the community do with their land? Which projects are needed for development? The objective is to know if the communities are going to waive their land rights or not, or if they do, under which conditions. It is also important to know the reason for the entrepreneur's request for resources and under which modality access may be granted. The community should consider two levels of relationships: an external one manifest through the links with other communities, indigenous organizations, State, municipalities, companies; and the internal one, that should measure the strengths and weaknesses of the community and of its members.

Some of the NGOs working locally have generated larger spaces in their localities and obtained resources to promote development tasks and the reinforcement of the capabilities of local organizations and civil society. An acknowledged role must be given to the work directed towards the active participation of youngsters in networks to defend the indigenous rights and to the study plans for

young members of indigenous communities. The NGOs, in coordination with other institutions of the civilian society, periodically promote training for women on handicraft and tourism issues. These successful experiences within the framework of the projects should be repeated in similar environments.

Conflict prevention is fundamental for sustainable development. The large number of inter-ethnic conflicts occurring all over the world compel us to review the reasons for their emergence as a way of seeking mechanisms for their solution.

### Endnotes:

<sup>1</sup> See Amazon Alliance: For Indigenous and Traditional Peoples of the Amazon Basin at [www.amazonalliance.org](http://www.amazonalliance.org).

<sup>2</sup> District or division.

<sup>3</sup> Drillbits & Tailings: *Indigenous Peruvians Mobilize while ExxonMobil Further Explores Rainforest*, Vol. 5, No. 12 of 20 July 2000 at [www.moles.org](http://www.moles.org).

<sup>4</sup> Sierra Minerals Ltd: 'Mineral exports account for 60% of the country's total exports, with over US\$3.0 billion in mining exports each year. Gold accounts for 40% of Peru's mining exports and production has doubled since 1997. A total of US\$10 billion has been committed to Peruvian mining projects to 2008.' For more details see [www.sierraminerals.com](http://www.sierraminerals.com).

<sup>5</sup> Mauro Leonel: *Carreteras, Indios y Ambiente Leonel, Mauro. Carreteras, Indios y Ambiente en la Amazonía: del Brasil Central al Océano Pacífico*. IAMA Studies. IWGIA Document 13. International Working Group on Indigenous Issues- IWGIA. Copenhagen, 1992. 166 p.

<sup>6</sup> See Parks Watch: Peru at [www.parkswatch.org](http://www.parkswatch.org) for more details. For more details see [www.sierraminerals.com](http://www.sierraminerals.com).

<sup>5</sup> Mauro Leonel: *Carreteras, Indios y Ambiente Leonel, Mauro. Carreteras, Indios y Ambiente en la Amazonía: del Brasil Central al Océano Pacífico*. IAMA Studies. IWGIA Document 13. International Working Group on Indigenous Issues- IWGIA. Copenhagen, 1992. 166 p.

<sup>6</sup> See Parks Watch: Peru at [www.parkswatch.org](http://www.parkswatch.org) for more details.

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## Chapter 9

# The Land Claim of the !Khomani San of South Africa

Roger Chennels<sup>1</sup>



*This case study gives an overview of some of the processes leading up to and subsequent to the historic land claim of the !Khomani San of South Africa. Attention is given to the conflicts that initiated the land claim and arose during the process, as well as to ongoing initiatives to engender peaceful relationships.*

The origin and status of the !Khomani San peoples, as part of the San peoples of Southern Africa, is briefly described. They are a marginalised population that have suffered greatly in recent history. In South Africa, the !Khomani San were in a state of diaspora, scattered and living in poverty far from their traditional lands, and regarded as a de facto underclass in the rural societies in which they lived. In 1994, a group of the !Khomani San decided to launch a land claim under the country's new constitution. They were able to gather their people together, elect leaders, and claim return of their ancient rights in and to their traditional land in the Southern Kalahari, most of which lay within the present Kgalagadi Transfrontier Park. This process however transformed the lives of the !Khomani in unforeseen ways. Whilst resolving the issue of landlessness, the land claim led to new conflicts and tensions as the stresses of property management in a market economy impacted on the community.

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<sup>1</sup>South African San Insitutue (SASI), South Africa, 2004.

This paper records the most important aspects of the land claim process, including the key institutions and actors. Emphasis is placed on how the culture and knowledge systems of the San, forged by their ancient relationship with the harsh Kalahari wilderness, were captured in a Cultural Resource Mapping process, and utilised not only as a necessary basis for the land claim, but more importantly as a powerful tool to re-build a once-dispersed and demoralised community. Finally, some comments are made about the successes, shortcomings, and lessons learned leading towards attempts to build lasting peace amongst the San. The perspective is that of the lawyer and service organisation that assisted the San throughout the process.

### THE SAN

Much has been written about the San of the Kalahari Desert. Like the Batwa or Pigmyes of the deep forests of Central Africa, as well as the Hadza and Okiek of Tanzania and Kenya, and the Aborigines of Australia, the San are members of that most proud and ancient of families of man, the true 'hunter gatherers.' This is not to suggest that the San are total strangers to the keeping of livestock or the planting of food crops, but their history is one characterised by mobility and living in harmony with nature.

The San had lived for thousands of years as a fundamental part of the natural order, as integral part of the vast natural Kalahari ecosystem. During the past three centuries the San of Southern Africa were decimated to the point of virtual extinction. Those that survived were driven off their traditional lands, and forced to exist alongside the more powerful and dominant cultures of pastoralists and colonial landowners.

Fewer and fewer San practiced their ancient culture, and they fell into social disarray as their past lifestyles became a thing of memory, and they lost touch with their Kalahari origins. They became increasingly dominated by the landowners and pastoralists, accepting low-level employment such as sheep herders for the right to merely subsist on the farms. Some lived on the outskirts of towns, similarly demoralised and accepting of their status as the lowest of the low. Removed from the security of their lands, their modern lives were dominated by poverty, tension and fear. They longed for a way to return to their lands, and to connect with the old ways and values.

The San peoples known today as the !Khomani San, the subject



of this report, are part of a group of distinct San tribes inhabiting the Southern area of the vast Kalahari ecosystem, referred to loosely by anthropologists as the 'Southern Kalahari San.'<sup>2</sup> By 1956 they had been totally dispossessed from their traditional lands in and around the Southern Kalahari, and were spread all over South Africa, living in small groups or clans on the outer edges of rural society.

Receiving negligible wages or the right to live in exchange for hard labour on Kalahari livestock farms, San developed few other skills to support life in a rapidly modernising world. Young girls and children were taken as servants or virtual slaves. Atrocities committed by the powerful of these rural frontiers, all too often policemen and landowners, were recounted so often as to become commonplace experience. They had become thoroughly fragmented as a people, some eking out a humble living as 'live attractions' at tourist resorts, where foreign visitors could photograph them in their traditional attire.

In 1994, when a new constitution was being drafted (adopted in 1996), promising restitution of land to those who had been dispossessed, the decision was made by a small group of !Khomani San activists to reclaim their land in the Kalahari. These individuals were determined that they would eventually return to the Kalahari, and with the help of the South African San Institute,<sup>3</sup> they initiated

a process of learning more about their constitutional rights, and rights to land and culture. They also began re-establishing contact with their extended families, in order to determine who could claim back their lands.

Throughout Southern Africa, including Angola, Botswana, Namibia and Zimbabwe the San have been similarly discriminated against and dispossessed of their traditional lands. In 1996, encouraged by a worldwide acknowledgement of the rights of indigenous peoples as reflected in the UN General Assembly declaration of an International Decade of the World's Indigenous Peoples (1995-2004), the San leaders of Botswana, Namibia and South Africa formed a new organisation known as WIMSA<sup>4</sup> which provided the institutional framework required to support the developing land claim of the !Khomani San.

### **RIGHTS TO LAND AS THE KEY TO CHANGE<sup>5</sup>**

International instruments have long confirmed that rights to traditional land and culture are inextricably linked. This includes the International Labour Organization's Conventions on indigenous peoples (Nos. 107 and 169), as well as Article 22 of the Rio Declaration of 1992, Article 8j of the Convention on Biological Diversity and the provisions relating to indigenous peoples contained in Agenda 21. The 1992 decision in the Mabo case in Australia publicised the turning of the moral tide in favour of the long dispossessed indigenous peoples of the world, and provided the San with encouragement as to the essential validity of their quest for restitution of their land rights.

Rights to land were regarded as the key to the problems that beset the !Khomani. San leaders recognised that they would cease to exist as distinct peoples unless a means was found to reverse the processes that had evicted them from their lands, and simultaneously undermined their cultures. The challenge was to embark on a practical strategy that was likely to succeed in the face of political opposition.

In every country where the San had once roamed, their evictions from traditional lands had been effected so as to appear legal.<sup>6</sup> The colonial hunger for farming land lay behind this concerted assault on San traditional lands.<sup>7</sup> Most infamously - as recorded as a shameful chapter of colonialist brutality - San inconveniently occupying land allocated to farmers were officially deemed to be less than human, declared to be 'vermin', and legally exterminated by



pioneer farmers in hunting parties in order to 'tame' and clear the sought-after farming land. This ignominious method of land-grabbing, which incidentally was also taking place in colonised territories in other continents as in Africa, occurred in South Africa as recently as the turn of the twentieth century.<sup>8</sup>

The societies and cultures of the San, in common with other hunter gatherers, were highly complex and effective. However, since they did not live in settlements with European-imposed accoutrements of civilization such as buildings, roads, farms, fences, courts and written laws, they were conveniently and short-sightedly regarded as having no legal 'system' in terms of which their rights to the land could be measured or recognized.

### THE !KHOMANI LAND CLAIM

Whereas in some jurisdictions, such as Australia, Canada and the USA, there is some accommodation to allow the legal reclaim of traditional lands, in most countries in the world, including in South Africa, the national legal systems do not fully recognise the doctrine



of aboriginal title. Thus, the strategy for the !Khomani land claim would need to be more creative than a direct legal challenge to the existing order. In addition, land activists have found, to their cost, that court actions are expensive, confusing, divisive, lengthy, and especially in third world countries, all too often thwarted by the lack of independence of judges. Perhaps as importantly, a legal challenge is seldom conducive to capacity development within the claimant community, for the reason that the legal process capitulates to the lawyers and judges the critical power to articulate and determine the community's future.

It was decided by the !Khomani leaders in consultation with their lawyer to base the !Khomani land claim upon a solid foundation of practical research which would establish and confirm the ancient rights of the San to the land in question, and at the same time capture the history and culture of the San community for future use during the development process that lay ahead.

This anthropological research proved invaluable in not only strengthening the arguments of the lawyers, but additionally to record the core cultural values and belief systems that needed reaffirmation after return to the land.

The old languages spoken by the San had fallen into disuse, and the language loosely described as the !Khomani language was officially extinct. As a result of a cultural resources audit conducted to support the land claim, a number of individuals were discovered who could still speak the original language.<sup>9</sup>

The discovery of a group of San elders provided a significant cultural resource around which the process of reconstituting a dispersed community could proceed. Their oral testimony established irrefutably that the !Khomani San had since time immemorial lived, hunted, gathered and roamed over the Southern area of the South African Kalahari ecosystem.<sup>10</sup>

Research proved that when a huge portion<sup>11</sup> of the southern Kalahari of South Africa was proclaimed in 1931 as the Kalahari Gemsbok National Park, the authorities had initially decided to leave the San unhindered, regarding them virtually as one of the animal species that inhabited the reserve. However tensions soon arose between the state officials tasked with 'conservation' and the human beings who regarded the Reserve as 'home,' resulting in the progressive eviction of the San.<sup>12</sup>

To successfully negotiate their land claim the !Khomani San, dispersed as they were, were required to take a number of crucial steps:



1. Prove irrefutably (by research) that their forefathers had managed, hunted and gathered on the land in question since time immemorial;
2. Identify all the !Khomani San who had been dispersed over a huge area for more than two generations, and notify them of their rights to be part of the reconstituted community;
3. Formulate, with the assistance of SASI, a notion of a new institutional and leadership structure that would operate as a new democratic system of governance that would operate in the place of the old clan-based non-hierarchical systems. The latter refers to small groups who do not have entrenched and formalised hierarchies, as opposed to sedentary agricultural societies that are based around structures of authority, power and command. The San are known to be egalitarian and informal in clan structure and it should be noted that the !Khomani had ceased to live traditionally, hunting in small clans on their own land. The traditional ways had all but disappeared, as they were living in servitude in villages and farms dominated by others. It was required to formulate a virtually new community, with a more modern and 'democratic' leadership structure in order to ensure fair representation of all;
4. Carry out a series of elections, in order that the geographically and historically diverse members of the !Khomani peoples could vote for suitable representatives on the leadership structure. In the new constitution, each geographical community elected representatives to a central committee, which became the formal leadership of the overall !Khomani community. The new constitution, termed the !Khomani San Community Property Association, was thoroughly discussed and debated throughout the community, including through workshops and meetings, in order to ensure its acceptance as a new model of governance;
5. Consult fully with the !Khomani San members, spread out as they were, in order to obtain continuing mandates for the complex negotiations that were to take place.

The traditional structures within clans had been based upon a paradigm of small nomadic groups, living off the land, owning nothing, and not being reliant on any services or contact with modern society. The challenge in this case was to formulate a system of governance that met with the requirements of a democratic state, and that incorporated as much as possible of the culture and norms of the !Khomani peoples.

### **THE DEVELOPMENT OF TENSIONS AND CONFLICT**

The above steps were all taken, with some difficulties. Negotiations took place, during which the newly elected leadership was launched into the unfamiliar territory of advocacy and conflict with government. Tensions developed around numerous fault lines, including the following:

#### **Government**

After years of oppression and marginalization, the San were unaccustomed to asserting themselves against those in power. Submission to the authority of those with financial, political and coercive power over them came more naturally. They had to learn to accept the conflictual nature of negotiating with one's own government, based upon their own rights. The fact that certain government departments were themselves wracked with their own structural and internal tensions made the process of engagement with government more difficult.

#### **South Africa National Parks (SANP)**

The SANP is the para-statal conservation authority that is the statutory custodian in South Africa of all national parks. It presided over the eviction of the San from the Kgalagadi Transfrontier Parks, and was the chief negotiating arm of the government in determining the future relationship of the San and the Park. During negotiations, the San had to learn to be more assertive of the essential moral and legal validity of their position, and of their collective rights as a way of engaging with the SANP on an equal basis. As a result of centuries of discrimination and prejudice, their inclination would have been to simply accept without question the authority of this all powerful body.

### **The 'coloured' people of the Mier region**

Prior to the land claim, during the apartheid era, the San were the acknowledged underclass of the Northern Cape region. They owned no land and no possessions, and were invariably regarded as subservient to the pastoralist 'coloured' peoples of the Mier area. The San seldom entered into any relationship with their coloured neighbours other than as employees or virtual serfs. During the negotiations San leaders were required to engage as equals and assert rights that would overnight make them wealthy landowners. The Mier coloured people had difficulty in the San being acknowledged as 'first peoples' or accorded any special privilege or acknowledgement as this would effectively disturb an ages-old hierarchy. The change in status of the San was deeply disturbing to the Mier community who found it difficult to accept.

### **Leadership within the San**

Numerous difficulties occurred as the San were required by the new system to adapt to a hierarchical representational system. Traditionally decision-making among the San had always been horizontal, during which all members of a clan, usually numbering no more than thirty individuals, would be consulted. The mantle of leadership would shift depending upon the type of issue at hand e.g., hunting, spiritual, practical etc. There was thus no precedent for a hierarchical decision-making structure with leaders taking decisions on their own. However, this was now required legally in order to represent a widely dispersed group as a *de facto* 'community' in the negotiations. It led to widespread resentment as elected leaders were seen to be acting beyond themselves, too rapidly, with undue power, and without the customary slow filtering and consultation process.

### **Traditional and modern world views**

Some San had received education at the hands of the government, and had to a degree assimilated some of the general aspirations of a materialistic world. They had come to measure development in terms of freedom from poverty and the acquisition of the trappings of 'modern life' e.g. possessions, modern housing, vehicles etc. Other San who had avoided the education system and lived a more traditional, less modern life, tended to place a higher value on the San traditional heritage and way of life. Their land use choices reflected a

preference to be able to exist in nature, to hunt, to continue to practice valued traditions, and not to be overly economically active. Tensions between these two divergent views, and the variations between them, were played out in every decision that the new leadership structures were required to make.

### **Principles of governance**

Whilst the modern South African state institutionalised norms and principles of governance, these were not necessarily consistent with traditional values previously operating amongst the San. Transparency, equal rights for all, proper procedures and democratic governance were required in terms of the Communal Property Associations Act, whilst many leaders were brought up under the principle, an unwritten law, that leaders are expected to place the interests of their own families and clan above those of others.

### **Racism and discrimination**

The San land claim was not free of the curse of racial intolerance that is the legacy of forty years of apartheid. The San people, who had been previously grievously discriminated against, tended to resort far too readily to the language of discrimination and 'otherness' in their dealings with the 'coloured' peoples of Mier. Tensions arose as these two communities negotiated whilst their status changed as described above.

It should be noted that the Mier 'coloured' area remains an exceptionally poor rural area, reserved for the 'coloured' community by the previous apartheid government, and many of the local citizens harboured ancient grievances against outsiders for perceived past injustices. Lawyers and consultants working for the !Khomani San, in many cases of 'white' or European origin, encountered significant discrimination and tension from local 'coloured' people, as well as local consultants, who openly expressed the view that 'outsiders' should stop meddling in their area.

### **THE OUTCOME OF THE LAND CLAIM: SUCCESS OR FAILURE?**

In March 1999 the government returned 40,000 hectares of farmland outside the Park to the San after the resolution of the land claim lodged by the !Khomani under the Restitution of Land Act 1994.

This was achieved after two years of intense negotiations when the farms referred to were included as part of the award. This land, six farms in all, was to be used for the benefit and development of the approximately 1,000 San that are now members of the Communal Property Association and thus registered as co-owners of this land. The intention was to use the land for game-farming, eco-tourism, and other related activities.

In August 2002, after two years of further negotiations, the second phase of the land claim was concluded, in which the rights of the !Khomani San in and to the Kgalagadi Transfrontier Park were spelt out.<sup>13</sup> The land as well as the rights to land in the Park cannot legally be sold, and will remain the property of this community in perpetuity.

The land claim was generally regarded as a resounding success for the San peoples generally, and in particular for the once-dispersed !Khomani San. On a material level, there is no doubt that this community, now approximately 1,000 peoples, have a valuable asset base from which to launch their own development into the future.

However on many equally important and visible levels, the land claim has resulted in unforeseen unhappiness. After four years of owning the land, the community is generally depressed, signs of positive development are barely visible, and the farms are in desperate disrepair.

### **Lessons learned**

A number of lessons have been learned, and mistakes made, some of which are the following:

*a. Inadequate preparation of and support to leaders (and community)*

There was an assumption that through a system of voting and democracy the best leaders would emerge, and that they would be able to make the right decisions for the community. However, many of the leaders who were elected to serve on the initial management committees of the !Khomani San could not read or write, and had little or no experience of formal, modern leadership. They were launched headlong, without any preparation or training, from being a poor under-class to being high-ranking directors of a multi-million rand land-owning enterprise, populated by a re-forming community with urgent and complex social and human needs. It was assumed and hoped that they would somehow have the collec-

tive wisdom to make all the right decisions, yet in many cases elementary errors of judgement were made. These errors - which are beyond the scope of this brief study - reduced morale and led to unconstructive processes of culpability and negativity.

*b. Assumptions about primary needs and vision for the land*

It was also assumed that the !Khomani San, despite being dispersed as a community for so long, would have some sense of community and shared vision for the use of their land when re-constituted. This did not occur. Their diverse experiences led to the leaders having different approaches, e.g. whether land should be used for traditional or commercial purposes. These differences created deep tensions in the unaccustomed arena of 'management by committee'.

*c. Ineffective development policies, poor communication between stakeholders*

Both the government and NGOs were committed to assisting the !Khomani San in advancing their social and economic development. However tensions arose between government departments, as well as between service NGOs, with each regarding the other as a competitor rather than an ally. This led to blockages, lack of support for policies, and jostling for position between organisations that should have been united in a difficult task. As a result of some years of strife and relative dysfunction, this process has now matured to some extent, with committed NGOs respecting each other, as well as the central yet lesser role of government, as a basis for working together.

*d. Slow evolution of sense of community*

After more than 80 years of diaspora, families and clans had developed in totally different directions. Some had retained most of the old ways while others were totally immersed in modern life, or were surviving in dismal squatter environments. Many had survived lives of unspeakable hardship and misery. The land claim brought these disparate San, linked by ancient blood ties, into one reconstituted community, practically overnight. The tensions and differences arising from various perceptions, misconceptions, distrust and lack of previous knowledge of other members of the community were under-estimated. These need to be addressed in order to further strengthen the community identity as one single entity.

## CONCLUSION

Development is a 'work in progress'. The success of the land claim has been a tremendous boost to the morale and collective identity of the !Khomani San.

The !Khomani San have succeeded in having their land rights recognized, in settling a land claim believed to be impossible to resolve. Many positive developments, not enumerated in this paper, are now visible.<sup>14</sup> This paper has attempted to describe the invisible underlying elements of the case, and to point out the complexity of strife, conflict and tension throughout the story of the land claim.

It is assumed that conflict and tensions will remain as endemic to the human condition. It is however apparent from this case study that:

- The !Khomani San community has begun to forge a sense of community. This is a slow process of solidarity and cohesion, but it is clear that it has begun;
- The !Khomani San leadership have learnt from their mistakes, and become wiser as the lessons have struck home. They are beginning to assume responsibility for their decisions, rather than blaming government or non-governmental organisations;
- Many San leaders and community-members have accepted the inherent tensions associated with a modern system in which differences are resolved by open discussions and votes on committees (rather than by anger and threats);
- Through bitter experience, government and NGOs have learnt how to work better together; and
- The lesson has been learnt that the old adage 'more haste, less speed' deserves continual respect!

### Endnotes:

<sup>1</sup> The South African San Institute (SASI) <sasi@iafrica.com> and <scarlin@iafrica.com.>

<sup>2</sup> The details of the harassment and further demise of the Southern Kalahari San are beyond the work of this paper, <www.san.org.za.>.

<sup>3</sup> South African San Institute (SASI), a non-government service organisation dedicated to providing social, legal and developmental services to the San, <Sasi@iafrica.com.>.

<sup>4</sup> Working Group of Indigenous Minorities in Southern Africa (WIMSA), a San-owned and led networking and advocacy organisation, representing San organisations in Namibia, Botswana and South Africa, <Wimsareg@iafrica.com.>.

<sup>5</sup> Other land struggles are currently receiving increasing attention, most notably that of the San who were evicted from their traditional homes in the Central Kalahari Game Reserve (CKGR) in Botswana. Kgeigeni Kweni or First People of the Kalahari was formed in response to and to challenge the CKGR evictions. A legal challenge scheduled for the Botswana High Court commenced on 12 July 2004, and at the time of writing is anticipated to conclude by late August 2004.

<sup>6</sup> One of the most widespread methods in Southern Africa was the removal of San in order to make way for nature reserves, e.g. the Etosha Game Reserve in Namibia, the Central Kalahari Game Reserve in Botswana, and the Kalahari Gemsbok National Park in South Africa. This was justified as necessary to provide pristine areas of 'wilderness' for tourism and recreation purposes.

<sup>7</sup> In countless recorded cases San were arrested and legally incarcerated by magistrates as 'trespassers' inhabiting land which had - unbeknown to the San - been formally allocated to farmers. Without the San's knowledge, the wild game that they had co-existed with and had hunted since time immemorial became the 'legal' property of those to whom the lands had been allocated. Whilst the men folk were arrested and sent to captivity far away, often never to return the women and the children were enslaved by their captors.

<sup>8</sup> The corresponding and widespread colonial belief prevailing in the 18th and 19th centuries that land inhabited by indigenous peoples was 'terra nullius' or 'unoccupied land', underpinned the vast array of dispossessions in all colonised countries, including the Americas, Asia and Australia, and caused incalculable damage to ancient cultures and knowledge systems that were intrinsically linked to their environments.

<sup>9</sup> The correct name for the !Khomani language is N/u, see N Crawhall, "Written in the sand, Auditing and Managing Cultural Resources with Displaced Indigenous Peoples" (SASI/ UNESCO December 2001). The language was prematurely declared to be officially "dead" in 1970. In many cases children, whose parents had stopped using the language did not even know that they were members of the San peoples.

<sup>10</sup> The Kalahari is the name given to the vast, waterless and sandy semi-desert ecosystem that spans Botswana, Namibia and South Africa, is populated by uniquely adapted fauna and flora, and is one of the harshest environments, inhabited by man. The Kalahari semi-desert is subject to extreme variations in temperature, ranging from 45°C in the summer to well below freezing during the winters, and the San had over centuries evolved an astounding ability to not only survive, but to thrive



in the vast and inhospitable wilderness that was their traditional home.

<sup>11</sup> 9,000 sq. kms. in extent.

<sup>12</sup> The conservation paradigm of the government of the time, in keeping with that of others in the Western world, was simply that environmental conservation and humans did not mix, and by 1956 the last of the resident San had been evicted from the Park.

<sup>13</sup> The !Ae !Hai Kalahari Heritage Park Agreement is a lengthy document, 146 pages in length, in which the rights of the !Khomani San are spelt out. In essence, the !Khomani San have ownership rights to 25000 hectares, preferment commercial rights to a further large area "south of the Auob river," and "Symbolic and cultural" rights to approximately one half of the entire 9000 square kilometre reserve.

<sup>14</sup> Effective programs are under way to promote livelihoods through arts and crafts, through the ancient art of tracking, through engaging with the growing tourism world, teaching the San language and heritage to the youth, and so on. A new management committee was elected in July 2003, which has an excellent combination of young educated San and elders, wise men and women. This committee, in office for a period of four years under the new constitution, is determined not to repeat the mistakes of the past committees.

## Chapter 10

### The Struggle over the Electric Transmission Line to Brazil: Lessons from the Indigenous Conflict in Venezuela

Claudia Rodríguez Gilly\*



*The struggle over the transmission of electricity from Venezuela to Brazil, over indigenous peoples' lands, spilled over into the national arena and stimulated debate and discussion on indigenous rights. This movement eventually played a part in the downfall of the Venezuelan Government in 1998 and the re-writing of a new Constitution in 1999.*

In January 1997, the Venezuelan government began construction work on an Electric Energy Transmission System from Venezuela to Brazil through the lands of the Pemon people in southern Venezuela. This event sparked a struggle between the Venezuelan State and indigenous peoples in cooperation with environmental activists, over the use of indigenous territory for this project, a conflict that has had profound local, national, and international implications.

The struggle over the electric transmission line gained prominence at the national level for two main reasons: (i) the indigenous groups affected by the project; and (ii) the ecological value of the area in which it was to be built. Located in the Bolívar State of Venezuela in the Imataca Sierra and the Gran Sabana regions, the electric transmission line passes through the ancestral lands of the

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\* Venezuelan Program on Human Rights Education and Action (PROVEA), Venezuela, 2004.

Arawako, Akawayo, Kariña and Pemon indigenous peoples. There was concern that the construction of the line would open up the area, with devastating consequences for the indigenous peoples and the environment.

The change in political context provided an opportunity to solve the struggle over the line as the Chavez Government entered into negotiations with the indigenous peoples affected by the construction of the line. However, even though the government signed an agreement with the representatives of the indigenous groups, the conflict took a new turn as some of the indigenous communities most affected by the construction rejected the agreement because it permitted construction to continue. The transmission to Brazil began operating in August 2001. However, the conflict remains unresolved.

This case study provides a detailed account of the conflict from its inception, and the lessons that can be gleaned from this struggle in terms of conflict prevention and resolution. In so doing, it points to the importance of empowering indigenous communities and movements to provide the basis for a sustainable process of conflict resolution and prevention, even if that process leads to some initial conflict. The case study pinpoints the deep roots of the conflict, roots that lie in widely differing conceptions of development and the values attached to that process, and sensitive problems of 'representativity' in negotiating agreements in the political arena. It concludes with a reflection on the meaning of a 'democratic' approach to conflict resolution and prevention in the context of powerful state and business interests.

## BACKGROUND

The Bolivar state is located in the South of Venezuela, between the Guayana region and east of the Amazonas state. It amounts to around 26.1% of the national territory, and is rich in natural resources. According to the World Resources Institute, Venezuela is the fourth most diverse country in the world in terms of the biological diversity of its plant species.<sup>1</sup> This is mainly because of the huge expanses of tropical forest, a significant part of which are in the Bolivar state.

Being one of the oldest regions in the world, its soil has a very thin vegetal layer and it holds many unique animal and plant species. These two factors make it a very ecologically fragile environment. In order to protect its fragility and diversity, the Venezuelan

Government has established a series of protected areas in the region, as areas under a special administration regime (Areas Bajo Regimen de Administración Especial - ABRAE). This juridical figure is designed to regulate the territory.

Apart from the diversity and richness of its natural resources, another special and significant aspect of this region is that it is home to a number of indigenous peoples. In 1990, the Bolivar state had a population of 900.310 persons, scattered through 238.000 sq. km. i.e. a population density of 3.8 inhabitants per sq. km. (General Census. OCEI, 1995). According to the Indigenous Census, 34.977 of the registered population belong to indigenous people: Akawayo (pop. 807); Arawako (pop. 248), Baniva (pop. 21), Bare (pop. 1), Eñepa (pop. 2994), Guajibo (pop. 1462); Joti (pop. 386); Kariña (pop. 3391); Kurripako (pop. 46); Mapoyo (pop. 177); Pemón (pop. 18.871); Piapoco (pop. 164); Piaroa (pop. 2165); Pume (pop. 34); Sanema (pop. 1665); Sape (pop. 28); Uruak (pop. 45); Warao (pop. 33), and the Yekuana (pop. 1789) (OCEI 1993). In this case study, special reference will be made to the Pemón people, as they are the most populous indigenous people in Bolívar, and have been actively involved in the mobilization against the transmission line to Brazil.

### The Pemón People<sup>2</sup>

The word Pemón means 'people.' They belong to the Carib group, and are divided in three linguistic groups: the *taurepan*, the *kumarakoto* and the *arekuna*, each with its own distinct traits. The three groups make up a complex system around a strong identity of what being Pemón means. This is characterized by their special way of being, of satisfying their needs; their community organizations and administration of resources; relationship to their lands; work, time and diet; and also by their spiritual values.

The Pemón describe themselves as heirs of a culture that springs from their sacred relationship with nature, which is the source of wisdom. This wisdom is passed on from generation to generation, as they go about their daily work of harvesting, hunting and fishing: '...we are intelligent, strong and independent; we have our own food and medicines, because we are one with nature, with the anteater, the tiger, the tapir, and even with the smallest living creature.'<sup>3</sup>

The social organization of the Pemón starts from the family nucleus, where each of its members are assigned specific responsibilities according to age and sex, to the community as all are part of



the decision making process: '...We first get together in community and we try to listen to each other, so as find the best solution to a given problem. These meetings are attended by the council of the aged and the women's and young people's committees; after discussions end, we take the decisions.'<sup>4</sup> The meetings at the Pemont communities frequently extend through a long period of time, as every one of them takes part in the debate, and all have the right to speak, without being interrupted. They have a certain hierarchical structure, as each community has its captain or cacique (chief). Nevertheless, the authority of the caciques is not authoritarian but representative. The cacique is democratically elected for a two-year period, though his post can come to an end before its term if the community so decides.

The relation with work and time are also very special characteristics of the Pemont. Their concept of work is not separated from other facets of life. Work is any activity or labour that keeps them aware, busy, and active. These activities are not only a means for providing themselves with the needs of each individual, but also to satisfy their collective needs. The *mayu* or collective work, through which several families co-operate so as to meet their needs, consists mainly of heavy labour, such as cultivating the *conuco* (smallholding) or building a house. The work around the *conuco* and fishing and

hunting are the main tasks, and are the basis for their subsistence. These activities are carried out with a respect for the laws of nature, which they care for and administer '...according to our fundamental human needs, so as not to extinguish the plants, the animals and the rivers' (Ibid). The Pemon culture is not inclined to the accumulation of wealth and riches.

### **The Transmission Line to Brazil**

The first stretch of the transmission line is located in the municipalities of Caroni, Piar, Rosio, El Callao and Sifontes, and crosses the Imataca Forest Reserve. The second stretch goes from the Municipality of Sifontes to the town of Santa Elena de Uairen across 75 km. of the eastern part of the Canaima National Park, and the protected area in southern Bolivar State in the municipality of the Gran Sabana. It stretches through the Pemon communities of San Rafael de Kamoiran, San Francisco de Yuruani, San Ignacio de Yuriani, Santa Cruz de Mapauri and San Antonio de Morichal.

The 1<sup>st</sup> stretch is 290 km. with an electrical charge of 400 kilowatts. It goes from the Caroni River (Hydro-electrical complex Macagua II), up to a sub-station in the mining zone of Las Claritas, in a place known as Km. 85. The 2<sup>nd</sup> stretch covers a total extension of 190 km. with an electrical charge of 400 kilowatts. It goes from Las Claritas up to a second sub-station that is located at the Venezuela-Brazil border. The entire project requires 571 points of support (201 towers and 370 posts), in a total extension of 218.3 km., from the Las Claritas sub-station up to the border with Brazil.<sup>5</sup>

The project was agreed upon within the framework of a covenant of friendship and co-operation (Convenio de Amistad y Cooperación), signed in Brasilia on 17 November 1977, by the then Presidents of Venezuela and Brazil, Carlos Andres Perez and Ernesto Geisel respectively. In 1994, the Presidents of both countries, at the time, Rafael Caldera and Itamar Franco, agreed to an additional protocol to the Covenant, signed in Venezuela on 4 March 1994 and known as the Guzmania Protocol. Under the Covenant, both countries agreed to design and develop joint projects, aimed at providing better conditions for the sustainable economic development of the Southern Region of Venezuela and the Northern Region of Brazil. A priority area was '...the purchase of Venezuelan electric energy by Brazil, and the construction of a transmission line with this purpose.' (Guzmania Protocol, 1994)

In order to develop the agreements included in the Covenant and the Guzmania Protocol, on 29 January 1997, a Memorandum of Understanding for the supply of Venezuelan electric energy to Brazil was signed. This Memorandum set the terms for an energy supply contract, through the companies ELETRONORTE (Brazil) and EDELCA – Electrificación del Caroni (Venezuela). It was agreed to begin the transmission of electric energy by December 1998 at a cost of 20 fixed quotas of US\$ 4,500,000 every six months, for the construction of the transmission system in Venezuelan territory; US\$ 800,000 for operative and maintenance costs; US\$ 26,00/mWh, as payment for the costs of electric energy supplied the first 10 years; and US\$ 28,00/mWh for the supply of the next 10 years; the fees to be annually revised, according to the inflation rates of the United States of America.

Following these agreements, the Government of Venezuela committed to supply electric energy to Brazil, and also to promote the mine, forest and tourist industries in the Region. According to the then President of the Venezuelan Corporation of Guayana (CVG), Elias Ynaty:

*Macagua II will contribute to an increase in the hydro-electrical consumption, and at the same time will satisfy the energy demand of the country, which is in the increase due to the demographic and industrial expansion... these aspects are directly related with... the opening of the oil sector, the development of the mining and gold mining industries in the Region, and the supply of energy to the Northern Region of Brazil...<sup>6</sup>*

With regard to the impact on the Imataca Forest Reserve, it was clarified that the transmission line will be a secure source for the supply of clean energy, which will be needed to satisfy the energy demands of the mining, tourist and forest projects, among others, that will be developed in the Sector of the axis Km. 88 – Santa Elena de Uairen.<sup>7</sup> The CVG was more explicit, when it stated that: ‘The construction of the System for the Transmission of Electric Energy to the Southeast of Venezuela that EDELCA must develop, was not conceived with the purpose of providing electrical energy to Brazil. The project is developed as a result of the energetic needs of the mining installations that the Placer Dome Company will develop in the area of Las Cristinas.’<sup>8</sup>

## THE CONFLICT

### Process of Dialogue

The construction works for the transmission line to Brazil began in January 1997, with the signature of the Memorandum of Understanding. The conflict itself began soon after, when the Pemon people noticed the construction works along their territory.

The following is an overview of developments:

- *1997*: On 26 February 1997, the Pemon sent a letter to the CVG and to the National Institute of Parks (INPARQUES), asking for information about the ongoing construction, without any response.<sup>9</sup> The Pemon went to Caracas in June and July 1997 and marched along with the environmentalists, publicly demonstrating their opposition to the project;
- *1998*: The conflict worsened. The Pemon of the Gran Sabana participated in a series of protests and demonstrations, and closed off the international motorway to Brazil in July and August 1998. These actions had several consequences, including a meeting in August between the indigenous peoples and the governmental authorities. In November of that same year, a writ petition (*recurso de amparo*) was filed against the transmission line at the Supreme Court of Justice, which was found to be inadmissible (March 1999);
- *1999*: The conflict captured public attention and the issue of indigenous peoples' territories received front page coverage. As a result of intense public debates, the new Constitution adopted that year reflected many of the indigenous peoples' demands and included eight articles recognising their rights. This achievement was a direct consequence of the debate around the transmission line that had started back in 1998, with the indigenous peoples leading the movement they were taken into account for the first time in the history of the nation. They were even called upon to participate in the drafting process of the new Constitution. When a new Government took office at the beginning of 1999, it tried to respond to the conflict through the authori-



ties of the Ministry for the Environment and the Natural Renewable Resources (MARNR), and the Venezuelan Corporation of Guayana (CVG). Throughout the year, the MARNR office tried to settle the conflict through strategies of dialogue, without achieving any significant results;

- *2000*: The indigenous opposition to the transmission line continued despite an initial agreement signed in July by the Government with some indigenous representatives, led by the president of the Indigenous Federation of the State of Bolívar (FIB), who until then had been the spokesman of the sectors that opposed the transmission line. The Pemontón went to Caracas in May and August. As a result of these visits, the actions of both the environmentalist and human rights activists intensified, and they joined forces to form the Coalition against the Transmission line to Brazil. During their May visit, the Pemontón introduced a second writ petition against the transmission line, which was again ruled inadmissible by the Supreme Court in November, on the basis that the petitioners did not represent the Pemontón people.<sup>10</sup>
- *2001*: Construction work for the transmission line intensified, as did the indigenous peoples' protests and demonstrations. Several towers of the electric system were knocked down; in response, the Gran Sabana region was militarised. This led to several confrontations between the military forces and members of the Pemontón people. The electric line began operating in August 2001;
- *2002*: The conflict remained unresolved. Following an argument over the electric line, on 24 May 2002, Miguel Lanz, a Pemontón from the San Rafael de Kamoirán community in the Gran Sabana was killed by a sergeant of the armed forces stationed in the Luepa military camp. Sinviano Castro, the Capitán of the Kamoirán community described this as a result of the repressive policies of the Venezuelan State against the struggle of the indigenous peoples (Provea, 2002; 254);
- *2003*: With reference to the participation of the indigenous peoples in the use, administration and manage-

ment of the protected areas under the special administrative regime (ABRAE), in August 2003, the Executive ordered that this be accommodated in the National Park of Canaima and in other protected areas in the region, inhabited by the Pemon. However, a September 2003 visit to the region conducted by the Venezuelan Programme for Education and Action in Human Rights - Programa Venezolano de Educación-Acción en Derechos Humanos (Provea 2003) reported that the indigenous communities had not been informed of this decision, and no measures taken in this regard.

Venezuela is currently engaged in a process of demarcation of indigenous territories. This should have been finalized by December 2001, by constitutional mandate, but has been delayed.<sup>11</sup>

### Central Issues of the Dialogue

The dialogue has not been conducted through open, face-to-face discussions. Only on a few occasions have the specific arguments around each issue been presented due to the lack of opportunities for direct dialogue among the parties involved. In general, the dialogue, or better still, the debate, was carried out for the benefit of public opinion, with the media as the main arena for both sectors of the conflict to expose their arguments, values and criteria.

This section identifies and describes the main arguments presented by the various actors of the conflict, both those that are for and those that are against the transmission line, grouped around focus areas:

#### *Advantages of the transmission line for the indigenous peoples*

Those supporting the development of the project, including the representatives of the Venezuelan Corporation of Guayana (CVG), the National Guard (GN) and the Ministry for the Environment and the Natural Resources (MARN), highlight the following advantages: (i) better development opportunities for the indigenous peoples; (ii) access and use different kinds of electric machinery; (iii) agricultural development; (iv) schools and (v) improved health services. As Jesus Perez, the Secretary for the Environment, said on 20 May 2000, the idea was that the indigenous peoples should come to terms with the project, and assume it as theirs.

The indigenous sectors against the transmission line have said

throughout the conflict that, on the contrary, their communities do not need huge quantities of energy to satisfy their needs. Development goes within, they say; it is not present in material goods. They argue that the forest, mining and tourism projects that will come along with the transmission line will divest them of their territories and resources, finally destroying their culture.<sup>12</sup> For these reasons, they demanded the recognition of the collective aspects of their lands and territories, as a means to protect their culture from this and future projects.

During the conflict, however, the indigenous opposition was divided into two different groups: one arguing that the right to their territory is an inalienable and non-negotiable right; the other believing that if the Government recognises the indigenous rights to their land, then the transmission line would be accepted. This was the position of the Indigenous Federation of the State of Bolívar (FIB), following the signature of the agreement for the continuation of the transmission line in July 2000.

The opposition to the transmission line has been increasing through the years. The declarations and written documents produced by the indigenous peoples have produced a new awareness in the public - about the existence of a different culture that does not need the transmission line to satisfy its needs. The Pemon spokesperson pointed out the following concerns regarding the transmission line:

*Violation of their sacred places; Impoverishment, as it will affect their cultural development: we are not poor, the poor are those that do not have a land to sow; Development is not the same as money; money invades us and destroys our way of thinking, it brings mining and death; Casabe and Kachire (indigenous foods) are our source of nutrition, we do not need money to satisfy our needs; the transmission line hampers our daily life, our freedom of movement and our landscape, not only because of the towers (which are alien to nature) but also because of the deforestation, erosion and sedimentation of rivers (which bring about loss of habitat, animals and plants, thus affecting our hunting, fishing and agriculture); We do not want to face the same problems as our brothers Warao (indigenous peoples of the Orinoco Delta, seriously affected by oil extracting; developments), which have been left without home; It speeds up the process of invasion of our culture; We will be employees, but never our own chiefs; The transmission line imposes a model of development alien to our way of life, we have a right to live and*

*grow according to our own culture.*

*Legal aspects of the transmission line*

The question around the legality of the transmission line has two different moments: under the previous constitutional regime, and after the new Constitution was passed:

a. The 1<sup>st</sup> writ petition (Recurso de Amparo) introduced by the Pemon people before the Supreme Court of Justice (Corte Suprema de Justicia – CSJ), was based on the Constitution of 1961 (which was in force at that time). It was introduced on 5 November 1998 on the grounds that the construction of the transmission line was against Article 77 of the 1961 Constitution:

*...any administrative or legislative act passed by any official organism, that is to be applied or executed in the territories occupied by the indigenous peoples of Venezuela since ancestral times, and will thus have direct impact in the life of our peoples, is in violation of the article 77 of the National Constitution, which establishes a Special Indigenous Regime...This special regime means that the life of indigenous peoples, and thus the Territories in which they live, are not subject to the legal regime of the metropolitan society (Writ petition before the CSJ, Case No. 15170).*

The petition also argued that the project violated Convention No. 107 on Indigenous and Tribal Populations, 1957 of the International Labour Organization (ILO), which Venezuela had ratified and was in force in the country since 1983. Article 11 of Convention No. 107 stipulates that ‘The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.’

In March 1999, the petition was rejected as inadmissible on the ground that the petition included a plea demanding the nullity of the contract for electric supply ‘...whereas the Recurso de Amparo is not the most suitable procedure to ask for this type of pronouncement ...’ (Supreme Court of Justice, Sentence 03.11.99. Registration No. 15.170). The Supreme Court did not rule on the substantive issue of violation of the rights of the indigenous peoples.

b. The 2<sup>nd</sup> writ petition (Recurso de Amparo) before the new Supreme Tribunal of Justice (Tribunal Supremo de Justicia – TSJ) was based in the new Constitution of 1999. The Pemon alleged violation of the rights contained in Articles Nos. 119, 120, 121 and 123:

- Article 119. The Republic will recognise the existence of the indigenous peoples and communities, their social, political and economic organisation, their cultures, ways and habits, languages and religions, as well as their habitat and original rights over the land they have traditionally occupied since ancestral times, and which are necessary for their development and for the protection of their ways of life;
- Article 120. The exploitation by the Government of the natural resources within indigenous territories shall be done without damaging their cultural, social and economic integrity; all projects are subject to prior information and consultation with the respective indigenous communities;
- Article 121. The indigenous peoples have the right to maintain and develop their ethnic and cultural identity, their cosmological vision, their values and religions, and their sacred and cultural places;
- Article 123. The indigenous peoples have the right to maintain and promote their own economic practices, based on reciprocity, solidarity and exchange; their traditional productive activities, their participation in the national economy and the right to define their own priorities. (Constitution of the Bolivarian Republic of Venezuela. 1999)

The writ petition was admitted by the TSJ on 4 October 2000, on the grounds of environmental rights; the alleged violation of indigenous rights was ruled out. The hearing took place on November 16, 2000 with the Constitutional Court ruling against the petition. However it ordered the Ministry for the Environment and Natural Resources to design and immediately implement a Plan, aimed at verifying and guaranteeing the implementation of the due measures for the control of the consequences of the occupation of the territory, and the affectation of the natural renewable resources, according to the conditions established in the administrative authorisations issued in favour of CVG Electrificación del Caroni, C.A. (EDELCA), with the purpose of constructing the electric transmission line Venezuela-Brazil. The plan should be developed in cooperation with the Ombudsperson Office (Defensoría del Pueblo) and the representatives of the indigenous communities of Mapauri, Kamoiran, San

Juan de Kamoiran, San Antonio de Morichal, Manakri, El Vapor, San Jose Km.16, Paruruaca and San Luis de Morichal. (Supreme Tribunal of Justice, Constitutional Court. Case No. 1641)

The Court's decision was based on the fact that the petitioners had no legal basis for the action, although they claimed to represent the Pemon people. The action also included a petition to implement a study on the social and cultural impact of the project; this was deemed to be not acceptable as '...at the time of signature of the conventions that led to the construction of the transmission line, this was not a constitutional nor legal obligation.' (Ibid.)

#### *Process of public consultation*

The right to participate in the process of drafting of the project was claimed since the beginning of the process by the indigenous peoples, even before it was recognised in the 1999 Constitution. This position was based on the article 126 of the Constitution of 1961, which was in force when the project was approved and construction began and states that the Government shall not sign any public contract of national interest, nor any contract of national, state or municipal interest, in which the other part is a Foreign State or Company without the approval of the Congress of the Republic (Constitution of the Republic of Venezuela, 1961. Art. 126).

These demands were also presented by the Commission for the Environment of the Senate, which stated that, according to article 15 of the Law for the Regulation of the Territory (LOOT), the so-called 'Protected Areas' are recognised as under the special administrative regime (ABRAE). Thus, given that the Protected Areas of the South of Bolivar State and the Canaima National Park, which are affected by the transmission line, are both recognized as under the special administrative regime, then the approval for its deregulation should have been previously acknowledged by the National Commission of Territory of the Congress of the Republic (article 17, second paragraph of the LOOT). However, this requirement was never fulfilled (Permanent Commission for the Environment and the Regulation of the Territory, Senate of the Republic. 1998: 19).

The demands regarding the absence of a public consultation process did not receive an official response. However, the new Constitution recognises their right to their territories, and this is in part the result of their struggles.

#### *Indigenous territories and the National Government*

The debate around the indigenous territories began during Presi-

dent Caldera's office when, on August 16 1998, the FIB and several Caciques and members of the indigenous peoples of the area presented the Government with 'The Imataca Proposal.' This document refers to territory as a complex space which comprises the social, economic and cultural space used for the essential activities needed for the generation and sustainability of indigenous peoples' culture and ways of life. Juvencio Gomez, General Cacique of Kavanayen-Mapauri Sector, Gran Sabana, defined territory as the land '...occupied by our ancestors, where I fish, I hunt, I harvest...' (Interview, Juvencio Gomez, Op. cit.). The indigenous concept of lands has a collective and ancestral connotation, and is not related to individual private propriety.

The Imataca Proposal was presented before the national authorities. In this proposal, the FIB and the Caciques and indigenous representatives of The Gran Sabana, Imataca and La Paragua, explicitly say that the indigenous territory must be recognised as part of the political territorial division of the Republic. This right means political and administrative autonomy; official use of their languages; development of their own institutions and organisations, including their own justice administration; free exercise of their own religions and habits; and finally, the right to freely decide, with due information, about the development of any public project within their territories.

On August 20, 1998, the concept of territory and self-determination developed in this document was discussed at the headquarters of the Venezuelan Corporation of Guayana (CVG) in Ciudad Bolívar, Bolívar State. The authorities had difficulties accepting the proposal and went so far as to equate it with demands for secession. According to the press, the Secretary of the Interior, Asdrubal Aguiar, stated that although he shared many of the elements of the indigenous proposals, he did not agree with the ideas of political and administrative autonomy, official use of their languages, development of their own institutions and organisations including justice administration, and the recognition of the pre-existence of the indigenous peoples by the Venezuelan Republic as this would seem as if they are thinking of the creation of a new nation.<sup>13</sup>

On 24 and 25 August 1998, it was agreed to establish a proceeding for the effective recognition of the right to the property of the lands traditionally occupied by these indigenous communities, with the purpose of incorporating it to a rights charter that will be submitted to the consideration of the President of the Republic. (Republic of Venezuela, Public Attorney General, 1998) Along with these



proposals, the Attorney General offered to issue titles for the individual property of the land. The indigenous peoples rejected this proposal on the basis that:

*...individual property titles do not prevent the implementation of development projects by the National Government, such as the transmission line, which ... produce great cultural, ecological and territorial impact on the indigenous peoples ... For this reason, we consider that our historic demands have not been fulfilled, and we will continue to struggle for our right to the collective property of our lands, and for the achievement of a special regime that may guarantee the exercise of our rights as peoples with our own culture (Ibid).*

A few days before leaving office, President Caldera issued the Presidential Decree 3.273 for the 'Recognition of the Property over the Lands Traditionally Occupied by the Indigenous Communities.' The decree was rejected by Pemon leaders in April 1999 for three reasons:

1. The term 'effectively occupied' had no relation whatsoever with the way they have traditionally related to their land, where they roam; territory has an ancestral and integral connotation that cannot be restricted to the term 'effectively occupied;'
2. The Decree protected private property, as it specifies that the right to the indigenous territory will not be recognised over land that is privately owned; and
3. The Decree establishes that the indigenous people have to register as legal entities before they can claim their rights; this is against their status as a people.

In spite of the relevant progress that the new Constitution represents regarding the rights of the indigenous people, some of their main demands were not fully recognised. One of them is precisely the right to their territory, which was substituted by the expression 'indigenous habitat.' The responsibility for the demarcation of the territories lies mainly with the Government:

Article 119. The Republic will recognise the existence of the indigenous peoples and communities... as well as their habitat and original rights over the lands they have traditionally occupied since ancestral times, and which are



necessary for their development and for the protection of their ways of life. The National Government, with the participation of the indigenous peoples, will demarcate their lands and will guarantee the right to its collective property... (1999 Constitution)

The expression 'habitat' makes reference to the space and biological environment, and not necessarily to the territorial occupation or geographical area that is under the cultural influence of a given people. On the other hand, land refers to the portion of nature that can be owned by an individual or legal entity. Thus, to make reference to this term, without recognising a right to the territory, is to deny one of the fundamental demands and rights of these peoples.

During the Constitution drafting process, the Pemón people issued a document that reflected their interest in being part of the Venezuelan nation:

*If what is at stake is the defence of the integrity of the national territory, then more so is it relevant to recognise our right to the territory as original peoples, so as to work together in the defence of the national sovereignty. (The Indigenous Peoples of Venezuela. Caracas, 11.12.99. Mimeo)*

The authorities that have expressed resistance to the recognition of these rights, in the name of the principles of national sovereignty, are denying, as Mires said (2000), that:

*...the major part of the secessionist struggles that have taken place are originated not because peoples and cultures feel integrated to a nation, but on the contrary, because this nations have not been able to effectively integrate their peoples and cultures. Such struggles are the result of a bad or false or non-existing integration, or of a forced process of assimilation, and, in most cases, of the absence of integration and assimilation at the same time. In both cases, the rupture takes place as a consequence of the non-recognition of diversities. (Mires, 2000)*

*Indigenous and environmentalist opposition and the official reactions*

The actions of protest of the indigenous peoples (that included the closing of the international motorway to Brazil during the months of July, August and October 1998), were accompanied by declarations of both sectors. These were oriented to the justification of the protest, on the one side; and to the regulation of the diversity and its

conflicts in the case of the Government – that's to say, they were intended to regulate the democratic life of the nation. For the indigenous sectors, the intention was to demand dialogue with the authorities.

During the process of drafting of the new Constitution, the indigenous protest came to a peak, when they knocked down several towers of the transmission line. These actions had started since the beginning of the construction, but had not raised the same controversy as when President Chavez was already in office. On October 4, a mission went to the Gran Sabana, including Noeli Pocatterra, one of the representatives of the indigenous peoples before the Constitutional Assembly. The purpose of this mission was to stop the 'sabotage' actions to the transmission line works.

After the passing of the new Constitution, which included the already mentioned right of the indigenous peoples to their 'habitat', the Government thought the conflict was settled, and arranged a meeting on 17 March 2000 with the Pemón people in the Gran Sabana and Imataca. The government presented a document to the communities for the continuation of the transmission line. This was immediately rejected, and the President of the FIB, Jose Luis Gonzalez, said that, according to the indigenous tradition, it must be first discussed with all the members of the communities, in order to reach an agreement by consensus.

In the meanwhile, President Chavez said to the media that it is not possible to impose a project on the indigenous people, and that this was the reason why the Government was trying to reach an agreement. He also explained that the indigenous peoples are being incorporated to the process of regional development (Chavez, 04.08.00). The agreement for the continuation of the transmission line was finally signed by the President of the FIB and some Caciques, on July 22, 2000 as mentioned earlier.

The communities that did not accept the agreement continued protesting. In August, 2000, and due to the frequent knocking down of towers, the Government decided to militarise the Gran Sabana. This strategy, which is still in force, consisted mainly in establishing guarding posts close to the communities that were active in the protests (Santa Cruz de Mapauri and San Rafael de Kamoiran). The presence of the military in The Gran Sabana has led to a series of clashes among members of the Pemón people and the National Army, and allegations of arbitrary stop and searches, harassment, assault etc. On 27 December 2000, Juan Ramon Lezama was heavily beaten by soldiers during an attack on the house of the cacique of San

Rafael de Kamoiran; Survival International and Amnesty International prepared two urgent actions to denounce the case.

*Indigenous agreements for the continuation of the transmission line*

The Government of President Chavez signed an agreement with the majority of Caciques of the communities of Bolivar State in July 2000. This was the result of an intense dialogue between the FIB and some caciques and Vice-president Isaias Rodriguez based on a 'Points of Understanding for the Continuation of the Construction of the Transmission line to Brazil.' This document was discussed in a couple of extraordinary assemblies in the Gran Sabana on April 9 and 26, 2000 and finally signed in Caracas, in July, 2000.

This episode of the conflict has given rise to a series of reactions, due to the division it brought about among the indigenous peoples of the region. According to the General Cacique of Kavanayen-Mapauri Sector, at the beginning of the conflict they were divided between those that were radically against the transmission line (with the FIB as spokesperson), and those that were moderately against it. The latter were ready to accept the project, as long as they achieved positive results to certain demands. As a result of the mediation by the president of the FIB, Jose Luis Gonzalez, a large number of indigenous leaders signed the agreement. This gave the construction some legitimacy.

The three main achievements of the signing of the agreement were: (1) the beginning of the process of demarcation; (2) the cleaning up of the environmentally-affected areas; and (3) the creation of a Fund for the Sustainable and Integral Development. Jose Luis Gonzalez publicly recognised, during an interview on television in August, 2000, that the project was not going to benefit the communities, but that the agreement would at least prevent the development of new industries in the area. He also recognised, however, that this will depend on the mechanisms for consultation, which are very fragile, and usually manipulated by official and private interests.

The indigenous sectors that opposed the transmission line did not agree to sign the MOU as they did not believe it would bring any specific benefits to the communities. The supposed benefits were part of the constitutional dispositions – including the creation of a Fund for Integral Development, which is part of the State's obligations, thus the agreement would not provide anything beyond that. There was also some controversy about the representative character of the majorities that supported the signing of the agreement, and the minorities that are the most affected by the transmission line.

*The environmental perspective*

The debate around the ecological and environmental perspective comes from the shared views of activists and indigenous peoples, against the governmental position. The environmentalist groups base their arguments on three aspects: the effects of the towers themselves, the environmental consequences of the projects, and the indigenous resistance to the project.

Regarding the effects of the construction of the towers, they point out that this will result in deforestation, soil erosion, sedimentation, general loss and fragmentation of the habitat, and also loss of the picturesque value. All this is caused in part by the opening of holes and access roads for the installation of the towers – which turn into big rills, affecting the vegetal soil. Additionally, the holes make it easier for vehicles to come into the National Park, thus violating the Plan for the Regulation of the Oriental Sector of the Canaima National Park, which establishes the preservation of the structure of the ecosystems, avoiding non reversible modifications in the dominant vegetation of the various landscape types; plains, woods, scrublands, palm groves and tepuys (Decree N° 1640. Article 4).

Another argument is the environmental consequences that will come later with the installation of a system of electric interconnection, which will attract gold and diamond miners to the area. The mining activity will produce an increase in the process of sedimentation and deforestation of the basin of the River Caroni – main water source of the Guri Dam, which supplies 70% of the electric energy of the country. The effective life of the dam depends on the state of the basin; due to its vital importance for the national hydroelectric system, it is protected as a zone of limited use. However, the mining activity is a major menace to this. From the environmental perspective, water resources are much more important than gold and diamonds.

The environmentalist groups also rely on the indigenous positions in order to support their arguments, and so allege that the construction of the transmission line goes against the will of the peoples that have occupied the area since ancestral times. They say that this culture has to be respected and supported, because it has millenarian clues to the wiser relationship of human kind with the Gran Sabana.

During a hearing before the Senate, the secretary for the Environment could not deny the claims related with the environmental harm caused by the transmission line. The project went ahead all the same, the main reason being that the environmental factor is

conceived from an idea of development that is exclusively based in the extraction of natural resources. The President of the CVG, Clemente Scotto, pointed out during a Senate hearing on June 22, 1999 that the development projects always bring about unavoidable environmental consequences.

The confrontation between environmental perspectives that are for and against the transmission line shows how this conflict means the clash of two visions of the world: one that subordinates the environmental factors to an idea of development that is centred in the extraction of resources, as a means for pushing economic growth; the other, that sees the ecological factor of the environment as the strategic guide to orient the collective welfare, which is considered as an element of the idea of development. This confrontation is one of the main issues of this debate, as both perspectives are oriented by different ideological conceptions around the same problem.

#### *Economic advantages and disadvantages*

The Government says that the transmission line is a good business because, according to the contract, Brazil will pay Venezuela US\$26 per megawatt/hour (mWh) of electricity during the first 10 years, and US\$28 per mWh, during the next ten years. According to the President of EDELCA, Oswaldo Artiles, these rates are higher than those paid by the Venezuelan heavy industries, which are between US\$16 and US\$20 (Press notice, 10.09.00). The contract also establishes that Brazil will pay Venezuela US\$90 million for the costs of the investment, to be paid in 20 quotas; and US\$800,000 annually, for the maintenance of the system. However, Oswaldo Artiles recognised, in October 2000, that Venezuela had already invested by then US\$302 million in the construction works.

Ali Rodríguez Araque, former Secretary for Energy and Mining, made reference to another of the supposed economic advantages of the project. He said that Venezuela was wasting millions of kilowatts of energy that could be sold in other markets, and that Brazil was interested in buying Venezuelan energy, because of lower rates. (El Guayanes, 23.07.00) This argument was criticized as the project is condemned by some as a threat to national sovereignty. While the Government is offering energy supply to another country, several Venezuelan towns (among which is Ciudad Bolívar) do not have an efficient service. (AMIGRANSA, 2000) And this is because '...in reality, the production of hydroelectric energy *is not abundant*; on the contrary, in certain periods of the year *it is actually scarce*.'

(SCAV, 1998: 7)

The environmentalists also refute the supposed economic advantages of the project, because in the costs and profit analysis, EDELCA did not include other aspects such as the maintenance of the infrastructure of the Raul Leoni and the Macagua I and Macagua II dams, nor the costs for the conservation of the Caroni River basin. These aspects should be incorporated to the asset, as the increase in the energy supply will have direct impact on the state, quality and efficiency of the dams and its water source, the Caroni River (SCAV, 1998).

On August 14, 2000, the Coalition against the Transmission Line said that, taking into account the environmental and social costs of the project, the energy will be sold at too low a price. Thus, Brazil is the actual social, economic and political beneficiary of the project, whereas Venezuela only takes up on itself the environmental and social burden. These opposing views regarding the costs and benefits, are inscribed – much the same as the environmental perspective, in the bigger confrontation between two different visions of development: one that subordinates the environmental factor to the economic development, and another that measures the collective benefits as from the conservation of the main sources of life, such as the water resources.

#### *Development of the border regions*

The argument around the development of the regions that spread around the borders to the neighbouring countries (Brazil, in this case) comes from observations presented by the sectors that oppose the project. The environmentalists have warned in several occasions that this plan will promote the development of the border regions of the North of Brazil, and that the only way that the Government has to balance this side of the border is promoting a forced development. This strategy will not be sustainable, and thus the project stands as a menace to the national sovereignty – as it is offering electric energy supply to another country, while several towns in Venezuela do not receive an efficient service.

From this point of view, the development of the North Region of Brazil will jeopardise the fragile equilibrium of the Gran Sabana, the Imataca Forest Reserve, the Protected Area of the South of Bolivar State, and the Caroni River basin. Thus, Venezuela gets tied to an expansionist and predatory policy, leaving Brazil as the only real beneficiary of the project.

The argument regarding the demographic pressure that will

come from the North of Brazil, is shared by the environmentalists and the indigenous people. According to this argument, the accelerated growth of this area will bring as a consequence an intense demographic pressure, as a result of the industrialisation of the area and the presence of *garimpeiros* (small scale gold miners). The forest will thus be destroyed, and there will be huge quantities of industrial waste around the protected areas, provoking serious environmental and social problems.

On October the 3, 1998, the indigenous people said that this represents a menace for the preservation of their culture. The coming of great numbers of non-indigenous people to the region, attracted by the huge industrial park to be developed, represents a menace not only for the indigenous people, but also for the national sovereignty.

#### *The model of development*

The model of development, as an argument to defend or reject the transmission line, is an issue where, once again, the confrontation between two visions of the world is evident. There is one side for which development means to push towards full integration, in a model of free market, globalisation and economic growth; the other side argues that development is putting the accent on the quality of life of the national population, without jeopardising the main sources of life, such as the biological and cultural diversity, water resources and quality of the air.

For those who defend the transmission line, this project answers to a State decision and to the integration with the neighbouring country. It is an international commitment, with relevant investments, and there should be no obstacles for its prompt implementation. This is a model for development espoused by the spokespersons of both Governments who justify the project, by putting the accent on the international elements, through the argument of promoting regional integration as a means for development.

For the Pemon people, the consequences come with the imposition of an alien model for the development of the communities, a model that will affect their culture. They have thus said that they do not wish to be like the so called 'civilisation' – which the Cacique of Santa Cruz de Mapauri Community described, on April 9, 2000, as a hasty society, that runs in order not to get wet. The Pemon people wrote a letter to President Chavez on 17 August 2000, where they stated that:



*We have a right to the development of our own culture, we talk about development our own way. The problems that the technological progress generate make us think that you cannot call it development. The development goes within oneself, when you learn from nature and you integrate with it in harmony. Development is within oneself, it is not within material things. The development projects produce the learning of behaviours that are contrary to the ethical and moral values of our peoples. Development does not consist of big buildings and construction works, such as the transmission line, that way you lose the land for the harvest.*

As we can see, a clash of visions is what comes about when the social groups that are represented by the environmentalist and indigenous movements, confront the vision of the official sectors of the Government. For the latter, development responds to a vision of integration and exploitation of resources, whereas the other groups confront directly this position, when they say that development must put the accent on the cultural and environmental conditions of the region.

#### *The motivation behind the project*

As expressed in multiple documents, the main argument of the opponents has been aimed at denouncing the motivation behind the project, which would be to promote the mining activity and the (disadvantageous) integration with Brazil. As in other moments of the debate, the environmentalists have argued that the mining activity will bring negative consequences to the Caroni River basin. They have also pointed to the fact that the regional integration, through the development of these kinds of project, will transform Venezuela into Brazil's service provider. It will also promote the predatory policy of the neighbouring country, attracting *garimpeiros* to the region, in search of gold mining opportunities.

Those who defend the project, justify it by saying that it responds to the motivation of promoting future mining developments all along the area covered by the transmission line. This will help, they say, in the development of the Southern Region, which is demanding a higher energy supply, as a result of the infrastructure that is being developed for the import-export industry towards Brazil. They have also pointed among its benefits and motivations, the possibility of supplying the duty-free zone of Manaus, where there's a commercial trade amounting to US\$13 million.



Apart from these economic advantages and motivations, the Secretary for the Environment, Jesus Perez, said on August 18, 2000, that the project responds to a strategic need of regional integration, and to the opening of the Venezuelan markets towards Brazil. These declarations ratify the argument expressed by the environmentalists on October 13, 2000, when they condemned the project on the grounds that the transformation of Venezuela into a service provider is not related to a motivation towards a real integration, as it is an exchange based on unbalanced relations.

*The possibility of bringing to a standstill the construction works of the transmission line*

This debate shows the existing possibilities for the social sectors that oppose the transmission line to be taken into account by those who defend it. The latter have said, through two governmental periods, that this is a decision of the State towards the regional integration, that it has meant significant investments, and that it is in no way convenient for Venezuela to turn inwards. The suspension of the project would mean paying a fine of US\$50 million, and until the problem is solved, Venezuela would also have to pay compensation to the constructors.

To counter these arguments, the opposition calls on the concept of national sovereignty and the general interest. For instance, Alexander Luzardo, former President of the Commission for the Environment, and former President of the Association of Anthropologists and Sociologists, expresses the arguments against this position in the following terms:

*...when, in any situation, a Government decides to justify a decision by any means necessary, it says it responds to State reasons. It seems the citizen's reasons, the environmental reasons, are not State reasons ... (AMIGRANSA. Caracas. 06.22.99)*

Apart from the political arguments to confront the argumentation around the public interest, the environmentalist groups refer to criteria of validity that are contained in the same documents that back the project. In this sense, they point out that the contract for the service establishes that:

*The parties will be freed from the compliance with their legal obligations established in this contract, due to any fact or cir-*

*cumstance duly proved, that constitutes a non-imputable alien cause. (Clausula 29. Contract for the Supply of Electric Service. EDELCA ELETRONORTE, 1997)*

The controversy around the possibilities of stopping the construction of the transmission line reveals one of the essential issues of the conflict, which is related to the definition of the State's interest: does it respond to economic criteria based on the free market, or to criteria that point to the achievement of better living conditions, and a better life, for the present and future generations of the nation?<sup>14</sup>

### LESSONS TO BE SHARED

As a final inventory of the several years of the conflict, we can see the impact of the agreement for the continuation of the transmission line, signed by the Government and some Caciques and members of the indigenous communities of the area. This agreement had a major influence in the final decision of the Supreme Court. It was achieved after a long and strong process of opposition and questioning of the project that had as main actors the indigenous sectors and the FIB. The process also had an important influence on the candidature of Hugo Chavez to the Presidential elections of 1998. He demonstrated an indigenous orientation in his discourse which propitiated the recognition of indigenous peoples' rights in the new Constitution.

The sectors that were against the project had direct participation in the process of the drafting of the Constitution, especially through the President of the FIB, Jose Luis Gonzalez – who was later elected as one of the indigenous members of the National Assembly. This brought about a series of rapprochements between the FIB and the Government, with President Chavez going to the region to seek an understanding between the parties. An agreement was finally reached, thanks to the participation of the President of the FIB as mediator in the conflict.

This sequence of facts is a major clue in the task of identifying the conditions needed for the search of an understanding in the process of this conflict, and also in order to better understand how they actually interacted. This is especially true if we consider the possibilities that those who oppose the project have had to influence the governmental decisions. The fact that the new Constitution included a chapter specially dedicated to the rights of Venezuela's

indigenous peoples is in a good measure a reflection of the struggles that the indigenous peoples of Bolívar State have been staging since 1997. We could thus conclude saying that, in the framework of this conflict, the indigenous peoples have managed to influence the Government's decisions.

However, even if this is true, the constitutional achievements (which include the political participation of indigenous leaders in the national process) have also functioned as a perverse mechanism in the attempt to debilitate the indigenous opposition to the project. This is especially true when the agreement for the continuation of the project comes as an immediate response to the achievements of the new Constitution, and to the presence of several indigenous leaders in the national political scene. In this sense, the Government had more influence in the decisions of the Pemón resistance, than they themselves had in the Government's decisions. And this is mainly due to the fact that the agreement managed to have some aspects of legality and legitimacy, due not only to the direct participation of one of the leaders of the movement against the transmission line; but also, because in the campaign for its legitimisation, those who favoured it used the argument of the majority's rule before the minorities. This is true even though the president of the FIB stated at the beginning of the negotiations with the Government, that the indigenous communities only take decisions by consensus.

As for the environmentalist groups, and their possibilities to have an impact on the governmental decisions, such a possibility was rendered difficult due to a strategy to discredit them implemented by the Government. This strategy was centred on the argument that, as their interests are alien, occult, and come from the North, they are not valid interlocutors. This obviously seriously affected the possibilities to have their opinions heard.

The essential issues that this conflict reveals need to be thoroughly discussed. These are basically: the clash of visions regarding the environmental perspective of development; the definition of general interest; and the cultural diversity within a nation. As long as these issues are not confronted, conflicts such as this one will keep on happening.

## FINAL REFLECTIONS

Even if there have been some agreements between the parties, this debate has put in evidence the problems in public understanding. One of the most significant is the absence of real spaces for actors in

conflict, formal spaces where there is a real search for dialogue, with the explicit intention to ratify or refute arguments. As has already been said, most of the meetings that took place through this conflict, consisted in an exposition of the motives of those who opposed the project, without the possibility for a real confrontation of different visions of the world. In spite of this, a debate did take place before the public and in the media and there was a confrontation of arguments, related with the main issues of the debate.

The possibilities for an understanding that were explicit in these spaces, were also characterised by the presence of communicational distortions, which came about as a result of the State's control over the resources, data, decisions and public power – a State which is interested in globalisation. Some examples are:

- The recurrent use by the sectors that favour these projects of imprecise, or not sufficiently backed data, which can be subject to political manipulation, in order to present them as objective criteria of validity. For example, the debate about the economic advantages of the contract, or around the impossibility of stopping the transmission line – as it responds to an international agreement that must be respected.
- The arguments based on opinions and interpretations, in which the dialogue process is reduced to a confrontation of right or wrong. An example of this was the discussion around the existence or not of a public notification about the beginning of the works for the transmission line, inviting for the process of public consultation.
- The absence of governmental statements regarding several issues, as for example the legal arguments concerning indigenous rights.
- The unconditional confidence of the Government on the technological solutions to tackle the environmental factors.
- The negation of the cultural diversity, of the respect and tolerance towards the difference, the Government's difficulty to understand Venezuela's pluri-culturality.
- The meetings arranged by the Government, to which only those who favour the project are invited. As an example, the agreement reached between the Govern-

ment and the indigenous sectors that did not oppose the transmission line.

- The intervention of the Government in internal indigenous conflicts, as when governmental officials denied or discredited the indigenous opposition.
- The pretext to impose the transmission line, negotiating with the legitimate rights of these peoples. The best example for this is the terms of reference contained in the agreement for the continuation of the transmission line, where rights already present in the Constitution were ratified.
- The efforts to present the indigenous protest as criminal acts; the accusations of subversion and guerrilla influence in the process of reclaiming their rights, and all others oriented to discredit and deny the existence of the indigenous protest.
- The repression of the indigenous protests, and the presence of the military in the Gran Sabana, which has generated reports of harassment and ill treatment by army officers.
- The public declarations of high governmental officers – including President Hugo Chavez, oriented to discredit the environmentalist organisations that have condemned the consequences of these projects.
- The justification of the transmission line, under the concept that it responds to the national interest – ignoring the environmental and indigenous issues as elements that are a part of it.
- The recurrent argument by the Government around environmental criteria, to support the exploitative orientation of development.

Both Caldera's and Chavez' Governments were aware of the need to take into account the environmental perspective in the development projects, mainly as part of the official discourse. However, due to the subordination of this idea to the economic factors that make up for the schemes of economic globalisation, the possibilities for the rapprochement understanding and assimilation of other views are small.<sup>15</sup> In this sense, it is noticeable how the debate confronts two different visions of the world – a confrontation that is

evidenced by the discussion around the value of the resources, the environmental perspective, the idea of development, and the indigenous issue.

The environmentalists and the indigenous peoples argue that the environmental factor must be at the centre of economic policies, whereas for the government, the equation of development is exactly the opposite. The attempts to find agreements for these conflicts is conditioned by the definition of this differential, which reflects one of the main problems in reaching an understanding. At the end, it amounts to the structure of power relations, and the ideologies that support them.

One of the main contributions of the public political sphere of environmentalists and indigenous peoples during the conflict, was the indirect claim for a reform and redefinition of the State's functions. This claim was aimed at increasing the levels of sensibility of the political system, with the purpose of achieving that the State recognise new thematic areas and social actors.<sup>16</sup>

We can make reference to the democratic essence of a political system, according to the measure in which the plurality of interests and cultures are regulated and accepted. According to Mires:

*...to live in democracy implies a never-ending process that begins with the acceptance and regulation of diversity. Without diversity, there would be no need for democracy. A democracy without diversity is an absurd idea; on the other hand, diversity without democracy is close to hell. But for diversity to exist, it is necessary to first recognise its identities, so that, in the end, a theory of democracy can never be formulated without the basis of a theory of recognition ... (Mires 2000)*

Following this method of interpretation, and taking into account the governmental strategy of discrediting the actors and actions of the environmental activists and the indigenous peoples throughout the conflict, we cannot conclude our analysis with a positive result in the definition of our democratic system. Nevertheless, as long as the environmentalists and the indigenous peoples act and speak out as a public political sector, with its due autonomy and according to its purpose of regulating and controlling the function of the State (among other characteristics we have outlined in the present study), then we can still hold our right of self determination over the conditions of our own lives.

The conflict around the transmission line has not yet been solved, although it began functioning in August 2001. The agree-

ments concluded with the indigenous leaders have not been fulfilled. The situation has intensified with the increasing polarization which goes beyond the indigenous and environmental conflict to extend to the penalization or discrediting of any sector or citizen who openly demonstrates opposition to the government of President Chavez.

As a consequence of this context of social and political polarization, it is difficult if not impossible to influence any decisions of the state. In the period following the transmission of the electric line to Brazil, there has been a noticeable demobilization of the indigenous and environmental sector, with the resulting loss of capacity to take any independent action in the political sphere with the possibility of regulating and controlling the state apparatus.

### Endnotes:

<sup>1</sup> Marta Miranda, Alberto Blanco Uribe et al: *No todo lo que brilla es oro. Hacia un nuevo equilibrio entre conservación y desarrollo de las últimas fronteras forestales de Venezuela. Una contribución a la iniciativa sobre la Reserva Forestal Imataca*, (Washington: World Resources Institute 1998), 1.

<sup>2</sup> Much of the information that follows about the Pemonton - plural for Pemon people - is a result of the author's direct contact with them in the Gran Sabana. This section is also based on bibliographical material, and several documents in which the Pemon people talk about their culture.

<sup>3</sup> Silvano Castro, Jose Carmelo Castro, Carmelita Ramirez, among others, in a written communication addressed to the President of the Republic, Hugo Chavez, (2000).

<sup>4</sup> Ibid.

<sup>5</sup> Corporación Venezolana de Guayana - Electrificación del Carona (CVG-EDELCA, 1999).

<sup>6</sup> Elias Ynaty, (El Universal, 1997), 2-1.

<sup>7</sup> Administrative Act, Ministry for the Environment and the Natural Renewable Resources (MARNR). Registration No. 71-01-42-057/98, (1998).

<sup>8</sup> CVG-EDELCA, 8.

<sup>9</sup> Juvencio Gomez, "An interview with Juvencio Gomez," (22 April 1999).

<sup>10</sup> Case 1641 of the Political Constitutional Chamber, Supreme Court of Justice (Expediente 1641 Sala Político Constitucional, Tribunal Supremo de Justicia).

<sup>11</sup> Editorial Note: The National Demarcation Commission (CND), under the leadership of the Minister of Environment and Natural Resources (MARN), has initiated the technical procedures for the titling

applications, and in 2003 a number of workshops were held to this end. Demarcation of indigenous lands and territories is a joint exercise by the MARN and the indigenous peoples, communities and organizations. For more details see *Venezuela in The Indigenous World 2004* (Copenhagen: International Work Group for Indigenous Affairs 2004), 135-137.

<sup>12</sup> This summary statement in this section of the Pemon's position was elaborated with material from different Pemon documents, including one put out by the Indigenous Federation of the State of Bolívar (FIB) on March 3, 1999, another from the Pemon people on August 18, 2000, and a third statement from various indigenous peoples of the area on October 9, 1997.

<sup>13</sup> Nueva Prensa, B-1.

<sup>14</sup> "...According to the *imagery of development*, the modern industrial society of the Western countries represents the future towards which all the Peoples of the earth have to inexorably step towards. There is no possible option, and it is devoid of sense to lament the human, cultural and environmental costs of the process, as it is unavoidable" (Lander, 1995), 182.

<sup>15</sup> As Lander points out, when referring to the social, political and cultural future of Latin America: "Rethinking of the relations of the Region with the rest of the world can only be endeavoured after a thorough recognition of its environmental, economic, political and cultural conditions, and of the reality of Latin American people's lives ..." (1995), 188.

<sup>16</sup> As has also been expressed by Lander: "Today, the environmental future of the Region, the conditions of life of the majority of the population, and the possibility of building genuinely democratic societies stand at stake, along with the survival of the indigenous peoples ..." (1995), 186.

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## Chapter 11

### Synthesis and Reflections

*Victoria Tauli-Corpuz*



The history of indigenous peoples from all the regions in the world is rife with accounts of violent and non-violent conflicts with state and non-state actors. Non-state actors can be corporations, paramilitary groups<sup>1</sup> and revolutionary or guerilla armies. The case studies in this book represent a cross-section of various conflict situations and experiences in resolving these. Most of these were written by representatives of non-government organizations (NGOs) who worked with indigenous peoples. A few were written by indigenous individuals. The idea behind this is to get civil society actors, which includes indigenous peoples, to represent their own experiences and lessons they learned in addressing conflict situations in indigenous territories.

This section is an attempt to synthesize and reflect on the complexity of conflict situations amidst indigenous peoples. It goes into more depth in analyzing some of the cases. Then it will look into the processes of policy formulation, review and revision being done by some UN bodies and the World Bank as these have direct bearings on future peacebuilding efforts.

Some key lessons learned are highlighted. This reflection and analysis is that of an indigenous woman who lived through conflict situations and is actively involved in the indigenous peoples' movements from the local, regional and global levels.

## CENTRALITY OF HUMAN RIGHTS IN CONFLICT RESOLUTION

The root causes of most conflicts found in indigenous peoples' territories are the violations of indigenous peoples' rights to their ancestral territories and resources and their right to self-determination, social exclusion and persistent inequality. What makes it so difficult to resolve or manage conflicts of this nature is the fact that the framework, values, orientation and interests of the conflicting parties are diametrically opposed. How to handle the competing paradigms<sup>2</sup> and interests between the states or corporations and indigenous peoples remains the big question. Most of the post-colonial nation-states were created in the image of the colonizers' political, cultural and socio-economic systems.

The ruling elites who took over leadership were trained in the colonizers' ways. Therefore, the colonizers' development and modernization framework which includes their standards and criteria, were the lens used to determine that indigenous peoples were incapable of self-government and lacked the needed requirements to qualify as peoples and even as nations.<sup>3</sup> This justified the non-recognition and destruction of indigenous systems and programmes for forced assimilation or integration. The prevalence of racist, discriminatory and patronizing behaviors and mindsets from the dominant sectors of society reinforced such programmes. The construction of a national identity made invisible the multinational, multicultural and multiethnic character of most countries.

Some states deny the rights of indigenous peoples and are reluctant to address their needs because they are unwilling. They regard the demands for self-determination, control over territories and self-government as threats. Since territorial integrity, national sovereignty and national security are the sacred cows of nation-state building. Perceived threats to these justify the use of coercive and repressive measures against indigenous peoples who are asserting their rights and competing claims. Some states refuse to acknowledge the identities and presence of indigenous peoples in their borders. This denial is used to justify the absence of laws, policies and programmes on indigenous peoples. In other cases, states deny such rights because of lack of capacity or inability.

There are no existing state structures and policies to address indigenous peoples' issues and needs. The priorities for the use of state resources do not include putting up structures or policies and programmes to address indigenous peoples' rights. These situations are not exclusive of each other. The incapacity can be directly

related to unwillingness and *vice versa*. Denying their existence or making them invisible is a form of unwillingness. It makes sense to make such distinctions because there will be nuances in approaching each situation. Lobbying strategies can be different for each situation. For instance, there are states which already have constitutional provisions, laws and policies which recognize the rights of indigenous peoples and yet implementation is so slow or is not done at all. It is important to determine whether the reason is because of unwillingness or lack of capacity.

To ensure their survival many indigenous peoples had to fight against destructive development projects as well as discriminatory and assimilationist policies and programmes. The methods of resistance employed are directly related to the ways governments respond to their issues and demands. If their rights are respected and spaces are provided for them to enter into meaningful dialogues with governments, it will be hard to justify or mobilize indigenous peoples to take up arms. Unfortunately, for many indigenous peoples no such spaces exist. In fact, laws and justice systems are even shaped to discriminate against them and to violate their fundamental rights. Most of the cases show that it was mainly through their resistance that they managed to gain the attention of government. The absence of spaces in the local or national level led indigenous peoples to carve spaces in the international sphere. Their gains in terms of constitutional amendments, changes or formulation of new laws, policies or programmes to their favor only came about because they used conflict-driven approaches. This forced states to enter into negotiations with them. Their lobbying and advocacy in the United Nations which led to the creation of soft and hard international instruments also proved useful for the creation of national laws or policies.

The state has the power to allow or deny access to resources and processes which are necessary to address needs of indigenous peoples. Because it presents competing claims or becomes the instrument of the elite to legitimize their own claims then the state will deny its competitors of their rights. When indigenous peoples protest against such violations the response of the state is to quell the protests through violent means. These repressive acts are justified by existing policies or laws and outright state or corporate-sponsored violence with the use of military, police and paramilitary forces. Governments and corporations have become experts on the use of divide and rule tactics. Even the basic right of indigenous peoples to be consulted and to give their free, prior and informed consent to

development projects brought into their communities is commonly violated.

While conflict situations in indigenous peoples' territories are almost always linked with the violations of their most basic rights, respect and promotion of human rights has not been an integral component of conflict resolution. This fragmented approach has not provided long-lasting solutions to the problems confronting indigenous peoples. It feeds into the short term interests and goals of many governments which is just to achieve the cessation of hostilities.<sup>4</sup> After arms are laid down it is back to business as usual. The age-old historical and structural roots of conflicts in indigenous peoples' territories are not addressed. It is not any wonder, therefore, that even after arms are laid down the conditions of poverty, inequality and oppression remain the same. In such situations the threat of even bigger conflicts is always looming in the horizon. It is crucial, therefore, to ensure the centrality of human rights in conflict resolution processes. This remains as one of the key challenges in conflict resolution and peace building.

### EMERGENCE OF INDIGENOUS MOVEMENTS

Conflict is not necessarily bad. Seen from a broader socio-economic perspective neither conflict nor peace is all good or bad. Peace without conflict can result into stagnation but conflict without peace can just be a continuous state of chaos.<sup>5</sup> As can be seen in the various case studies, indigenous peoples used their political muscle (their numbers and organized campaigns) to push their issues and demands to the governments. If indigenous peoples remained docile and accepted the way they have been treated by colonizers, governments and the dominant society, many of them would be extinct by now. Fortunately, this was not the case. Indigenous peoples resisted and fought back. They organized. Some took up arms to fight against the repressive and oppressive machineries of the state. Some persisted in creating and using spaces at the local, national and global levels to get their rights to be recognized and protected. It is clear to them that respect for their individual and collective human rights is central in conflict resolution and peace building processes in their territories. Resolving conflict is addressing the gross imbalances and inequity in an existing society, and restoring balance is what many indigenous peoples are doing at the community level up to the global arena.

In their struggles for basic human rights and freedoms indig-



enous peoples created their own movements or became part of broader national movements. Some even became part of armed revolutionary movements which carried, in varying degrees, their issues. The Guatemala case is one example. Significant numbers of indigenous individuals became fighters for the URNG (*Unidad Revolucionaria Nacional Guatemalteca*-National Revolutionary Unity Guatemala). As the majority of the population in Guatemala are indigenous peoples this is to be expected. The EZLN (*Ejercito Zapatista de Liberación Nacional* - Zapatista National Liberation Army), popularly known as the *Zapatistas* in Mexico also has many indigenous individuals within their ranks. The Jumma peoples in the Chittagong Hill Tracts built their own political party, the PCJSS (*Parbatya Chattagram Jana Samhiti Samiti*-United Peoples' Party of CHT). This has an armed wing, the Shanti Bahini, which is composed of Jumma fighters. Even the Moro National Liberation Front and the Moro Islamic Liberation Front had a few indigenous peoples (Lumad) as fighters.<sup>6</sup>

Organized indigenous peoples' movements emerged side by side with other movements like those among peasants and workers, women, environment, human rights and peace movements. Their organizations and networks coalesced with their counterparts across borders and formed a vibrant and dynamic international movement. This global movement entered the halls of the United Nations and effectively fought for the recognition of indigenous peoples as subjects of international law.

### GLOBAL POLITICAL AND MILITARY DIMENSIONS

It is important to look into the international or global dimension of the conflicts in indigenous peoples' territories. The nature of the conflict situation cannot be fully grasped and long-lasting resolution cannot be achieved if this dimension is ignored. Covert and overt military and political interventions from other states influenced the way conflicts were shaped. Many key individuals within the military and paramilitary forces, which fought armed revolutionary groups and committed human rights violations, were given trainings by foreign military and intelligence outfits. Even some political leaders underwent such trainings. For instance, many of the dictators and infamous torturers from the military forces in Latin America and even countries like the Philippines were trained in foreign military schools, such as the School of the Americas.<sup>7</sup>

Indigenous peoples became victims of massive human rights

violations which came along with anti-insurgency campaigns. Foreign military aid, which is part of the foreign policy and package of official assistance from donor countries, were used to fund these military operations. It has been under the dictatorships, which were propped up with the support of countries like the United States, that several liberation wars in countries like Guatemala and the Philippines evolved and became strong.

Counter-insurgency campaigns were integral aspects of military agreements or pacts forged between the newly independent states and their ex-colonizers. These were part of the Cold War politics. However, even after the Cold War was over other convenient reasons were used to continue the forging of military pacts and provision of military aid. One of these is the need to protect the economic interests of the donor countries and their corporations. Another is to control drug-trafficking. After September 11, the "war against terrorism" has become the best justification for military interventions by the US and its "coalition of the willing."

With this later development, the incoherence in the policies of some donor countries becomes even more blatant. They are championing the rule of law, democracy, multilateralism, human rights, among others. Yet, they are also the ones undertaking unilateral actions to invade a nation with the flimsiest justifications. They are now pushing for the legislation of anti-terrorism laws which lead to gross human rights violations. Curtailment of the freedom of speech, freedom of association and the most fundamental right to self-determination is even becoming the norm because of the war against terrorism. National security is heavily used to justify human rights violation. Political dissent or resistance which is one of the most effective tools used by indigenous peoples to protect their rights is criminalized under anti-terrorism laws.

### **ECONOMIC DIMENSIONS**

Global trade, foreign debt, foreign direct investments and official development assistance (ODA) are additional aspects of the global dimension. The development and modernization agenda of developing countries is supported by the international financial institutions, ODA and international trade agreements. Understanding in more depth the globalization project including the main actors and their roles is crucial. The United Nations - which includes its various programmes, specialized agencies, and funds - plays many roles in internationalizing the development agenda and promoting

as well as regulating the globalization project. While it is claimed that unfettered global trade is going to increase wealth within nations, many examples show the opposite.

Evidence also shows that national policies are not enough to address the economic crisis caused by the globalization of trade and investments. One such research was by the Economic Commission for Latin America and the Caribbean (ECLAC) which was published in the book *Globalization and Development* (2002). In its analysis of the Argentina crisis in 2001-2002, it says that:

*..the current crisis triggered by severe slowdown in the world economy that began in a country that has an overarching influence on global and regional economic activity – is truly global in nature. Trade has therefore been the principal channel for the transmission of this crisis, which has been manifested in slower growth or a contraction of export volumes and in a downturn in raw materials prices that has hurt a majority of the countries.<sup>8</sup>*

For indigenous peoples, it is important to analyse more profoundly the relationship between global trade and the situation of inequality, poverty, and development aggression which are the most common root causes of conflicts. Liberalized investment<sup>9</sup> and trade policies are directly related to the increase in primary resource extraction in indigenous peoples' territories and the building of energy projects such as mega hydroelectric dams and electric transmission lines. These were initially facilitated through structural adjustment policies and now through multilateral and bilateral trade agreements. These 'upstream' activities have significantly contributed to the further impoverishment of most peoples in the developing world and leading to more conflicts and high levels of instability and insecurity.

The cases of gold mining in Peru, the Secoya-Occidental negotiations in Ecuador, the water war in Bolivia and the electric energy transmission project in Venezuela, are clear examples of how globalization exacerbates conflicts in indigenous peoples territories. The increasing liberalization and privatization of social services, such as water and energy provision, led to the water crisis in Bolivia. The electric energy transmission project in Venezuela is directly linked to the need for energy by the foreign mining corporations which are being attracted to bring in investments. The spark which led to the eruption of the Zapatista uprising in Mexico was the move of the Salinas government to amend Article 27 of the Con-

stitution to privatize the communal and non-alienable and non-disposable *ejidos*.<sup>10</sup> This is one of the consequences of the membership of Mexico in the North American Free Trade Agreement (NAFTA).

There are several common threads in these cases cited. First is that the projects or policy changes are part of the modernization and globalization agenda and have led to the violation of the rights of indigenous peoples. Secondly, indigenous peoples mounted protests and resistance actions against these. Thirdly, these actions have led to changes in constitutional provisions<sup>11</sup> to recognize their rights to their lands and resources and also to acknowledge that these countries are multicultural and multiethnic. The nature of such constitutional reforms varied from one country to another. As all of these countries ratified ILO Convention 107 or Convention 169, these were used by indigenous peoples to demand the adherence of the governments to these treaties. Fourth is the role played by NGOs to support the indigenous peoples in their empowerment processes, strengthening and linking the campaigns to the international community, and enhancing their skills to negotiate with the government and corporations. Without the sustained support from NGOs who knew how to work the modern system, it would have been difficult for the indigenous peoples to do effective negotiations.

In the Secoya story, resistance led to negotiations which allowed indigenous peoples to gain increased material benefits. However, the price paid for this in terms of sustaining their identities and values as indigenous peoples is something that needs to be analysed further. The same is the case with the !Khomani San peoples in the Kalahari Desert. The defeat of apartheid in South Africa led to the creation of a democratic order which allowed the San to challenge the 1996 Constitution. This was the first step in their successful bid to reclaim their ancestral lands. When they got what they asked for, however, tensions between the San came to a head because of several factors one of which is the differences among them in terms of how the lands should be used. There are those who have adopted the modern lifestyle and there are the more traditional ones. Since the whole process entailed the reconstruction of a community which got dispersed over two generations, the problems faced are expected. In both cases the role played by the NGOs were crucial in determining the trajectory of these and in winning the battles. This was very clear in the case of the !Khomani San. The SASI (South African San Institute) helped in doing the research to prove the basis of the !Khomani San land claims and even to organize the San activists

who gathered their dispersed relatives to reconstitute the indigenous community.

These cases raise many questions which indigenous peoples and their supporters as well as governments have to deal with. Some of these are: What kind of development is appropriate for indigenous peoples? What is the dividing line between what is modern and what is traditional considering that culture is dynamically changing and evolving with the times? What is acceptable in terms of compromises with the modern world and if such compromises or adaptation have to be made what criteria should be developed to ensure that the balance between development and respect of traditional cultures and values is maintained? What kinds of consultation and decision-making processes should be done so that the decisions made can be representative of what indigenous peoples want? Since a significant number of conflict situations relate to entry of extractive activities (mining and oil and gas extraction) into indigenous territories what are the best practices, if there are, in resolving such conflicts?

The global dimension also involves processes which are both legal and illegal. Illegal activities are those which involve drug trafficking, arms smuggling and trafficking of persons, among others. The proliferation of illegal operations undertaken by big-time underworld global networks can only happen with the complicity of some government officials and employees both from the North and the South. This is one factor why conflict situations persist in several communities and countries, in spite of many conflict-resolution and peace building efforts. In Colombia, for example, reports say that paramilitary formations and revolutionary groups are engaged in drug-trafficking. There seems to be a very thin dividing line between the noble goals of so-called revolutionary armed groups to liberate the oppressed and their engagement in criminal activities like drug-trafficking and kidnapping. In several post-conflict situations the proliferation of small arms is still a reality which could be one reason for the increasing criminal violence. The situation faced by indigenous peoples in Colombia, Burma, Northeast India, among others, where armed groups, whether the military or guerillas, are engaged in illicit activities further complicates the problems. In such situations the number of indigenous individuals who are arrested and jailed on charges that they are involved in drug trafficking, etc. is so serious. Attention should be put in documenting how indigenous peoples are affected and whether legal services are made available to them.

These are just few of the evidences which show that the root causes of conflict cannot only be found within the national borders or zones of conflict. These are also found in Europe, the United States and other rich countries. The need to tackle the root causes which are created in these countries is another big challenge. Within this context northern NGOs and even multilateral organizations which are based in the North need to reshift their focus to address the root causes which are related to policies or decisions made by northern governments or multinational corporations such as mining companies. Indigenous peoples need support from Northern NGOs and from indigenous peoples in these countries, like the Native Canadians and Americans, to address corporations whose headquarters are in their countries.

There are already examples where NGOs helped indigenous peoples to file criminal cases against extractive industries, like the case against Freeport McMoran in West Papua which was filed in the United States. Other activities of NGOs such as the campaigns against agricultural subsidies, foreign debt, structural adjustment, land mines, small arms trade, etc. are doing this to a certain extent. Blocking the sale or trafficking of small arms to conflict-ridden countries, for instance, can significantly help in peace building. But this is a high-risk campaign which has not taken off yet. How to make such campaigns achieve the goals of eradicating root causes still remains the most difficult challenge. The way to strengthen partnerships between NGOs and indigenous peoples is discussed in the next section.

### **PARTNERSHIPS BETWEEN PEACE BUILDERS**

A wide range of non-government organizations were established with various goals, one of which is to support indigenous peoples. Most of these NGOs were managed by non-indigenous persons. It has only been in the past ten years that many NGOs set up and managed by indigenous peoples started to emerge. Indigenous individuals also joined non-indigenous NGOs to pursue their goals of addressing their own issues. The creation of NGOs or even community or so-called peoples' organizations which are recognized by the government has been an age-old dilemma faced by indigenous peoples. These are not indigenous structures or institutions and sometimes the creation of these supplant or undermine existing indigenous formations. However, because indigenous peoples have to work within the framework recognized by governments and do-

nor bodies they have to compromise and adapt. Some indigenous formations which opted to lobby the United Nations have to apply to the NGO Committee of the UN to acquire a consultative status as an NGO not as an indigenous organization.

Many NGOs both indigenous and non-indigenous which emerged out of peoples' movements see themselves as service providers for the movements and they are ideologically and politically aligned with them. Others chose to be neutral and simply provided services to whoever needs the services they offered. The writers of most of the case studies in this book belong to NGOs whose mission is to help empower indigenous peoples to assert their rights and negotiate with entities like the state or corporations. These cases can be considered good practices as they were able to enhance the possibilities for indigenous peoples to resolve conflicts between them and the state and corporations. The examples of the SASI in South Africa, the CDES (Centre for Economic and Social Rights) in Ecuador, the ATI (Association for Interdisciplinary Work) in Colombia, are rich with lessons learned in their work with indigenous peoples.

The invaluable reflections and lessons learned should be shared more widely and putting them together in this book is one way of doing this. The facilitating role of NGOs which includes bringing together various indigenous organizations to analyse, reflect and make short-term and long-term plans is crucial in the empowerment process. For such efforts to succeed, however, trust and mutual respect are essential ingredients. Non-indigenous NGOs need to go through a long and painful process of unlearning and learning. They need to shed off their own biases and prejudices and grasp the essence of indigenous peoples' cosmovisions, values and concepts of life and development.

The task of building peace based on justice is a complex and long-term process. It needs intensive and extensive collaboration, complementation and coordination between various actors working in different levels, spaces and sectors. Critical partnerships involve actors who have similar goals and have the desire to work together to achieve their goals. In conflict situations the goal should be attainment of peace based on justice and respect for fundamental freedoms and human rights. Because of the complexities of peace building nobody can claim to have the full range of knowledge, experience, expertise and skills to attain this. Interdependency as a principle and value is very important to recognize and practice by all key actors. The most important actors are the community people who are directly affected by the conflict. As each conflict situation is



unique and embedded in particular social, historical, cultural and economic realities, there is no one single strategy that can be applied to all.<sup>12</sup> A basic condition for effective interventions, therefore, is an adequate understanding of the specific realities and particularities of the target community or peoples. It is also important to understand indigenous ways of resolving conflicts and see how these can be used for specific situations.

The fundamental building blocks that are necessary to create and sustain partnerships are trust, mutual respect, recognition of differences, agreement on roles played by the different actors, and a consensus on the degree of transparency of each partner. It takes years of working together to lay down these building blocks and reach a satisfactory level of relationship and partnership. There are no shortcuts in achieving a relationship of interdependency and trust between the various actors. Unfortunately, in the real world there are NGOs and NGOs, various multilateral bodies, and different social and peoples' movements each having its own agenda, its own donor agencies and patrons and its own ideology. Indigenous peoples felt betrayed many times over by popular movements, NGOs, multilateral agencies, donor bodies, and even by armed revolutionary movements. This is because they have their own agendas or they do not show much interest and spend enough effort to understand the world views and paradigms of indigenous peoples. Indigenous peoples who went through a long history of discrimination are very sensitive to tinges of patronizing attitudes and behaviour. It is crucial for potential partners, therefore, to do a lot of self-reflection to deal with their own baggages that may affect their relationships with indigenous peoples.

The usual approach in the past where those from the dominant populations, came into indigenous peoples' territories to become their patrons or savior does not work anymore. They were the ones who have created cultures of dependency or the dole-out mentality among the indigenous peoples. More progressive NGOs who genuinely support and understand indigenous peoples' perspectives are conscious not to commit the same mistakes and they work hard to become the real partners of indigenous peoples. Several managed to establish good track records in developing equal partnerships. However, there are new forms of colonialism coming into indigenous territories brought in by right-wing Northern-based Christian fundamentalist groups, corporate-supported conservation groups and bioprospectors. Such development is another problem being confronted by indigenous peoples. In some cases the funda-



mentalist Christian groups are even used by military and paramilitary groups. NGO support groups who come from the same countries as these groups can help document where these groups are coming from and who are supporting them.

Since a fundamental problem is the basic contradiction between world views and paradigms between the various actors, some leveling-off process has to be undertaken to identify differences in concepts and methods. This is especially clear if we examine the divergences in views on the substance and process of actualizing the right of self-determination of indigenous peoples in the political, economic, social and cultural realms. It has to be recognized that the right of self-determination is inherent to indigenous peoples. Even before colonization and the birth of nation-states most indigenous peoples have been living independently in their own territories with their own political, cultural, economic and social systems.

Colonizers and post-colonial states attempted to destroy these indigenous systems but due to the resistance or isolation of indigenous peoples their systems or remnants of these persist up to the present. Their relationships to their territories, their traditional systems, their world views, value systems and cultures are what makes them indigenous. Thus, the main content of indigenous peoples' struggles is the defense of territories and resources and the right to use their own economic, political and cultural systems. Herein lies the main contradiction between them and the modern nation-state. The key partners of indigenous peoples need to fully grasp this because this defines the nature of the partnerships being developed.

### **PARTNERSHIPS WITH GOVERNMENT AND INTERGOVERNMENTAL ORGANIZATIONS**

Partnerships between governments and intergovernmental organizations and indigenous peoples also developed in the common quest for peace and development. Some of the partnerships at the national level were the positive outcomes of the conflicts between them and the governments. The theme of the International Decade of the World's Indigenous People, which was declared by the United Nations in December 2003, is "Indigenous People - New Partnership." Despite some pronouncements that the Decade has not achieved the goals it has set, it is fair to say that some gains were achieved. If we look back at the situation in the early 70s the situation of indigenous peoples was hardly visible. In the 80s the situation of indigenous peoples became a UN concern, especially with the birth of the UN

Working Group on Indigenous Populations in 1982. When the Decade was established UN bodies and member-states had to undertake some of the activities in the Decade Programme. With the growing strength of indigenous peoples' movements from the ground and the mandate from the global level to address their concerns, some kind of partnership had to be built between governments and indigenous peoples.

Earlier it was mentioned that indigenous peoples who cannot find justice and redress in the national borders had to look for this in the international arena. As early as the 1920s, during the era of the League of Nations, there were attempts from Native Canadians (under Chief Deskaheh) to bring their case against the Canadian government to the League. This was rejected by the League but indigenous peoples pursued this possibility within the United Nations. In the meantime the International Labour Organization adopted ILO Convention 107 in 1957 which was later revised to ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries in 1989. The UN Subcommission on the Prevention of Discrimination and Protection of Minorities appointed a UN Special Rapporteur (Martínez-Cobo) to do the Study on the Problem of Discrimination against Indigenous Populations in 1971. This study led to the creation of the UN Working Group on Indigenous Populations which was established in 1982 and this was the beginning of the active engagement of indigenous peoples with the inter-governmental system.

The formulation of the Draft Declaration on the Rights of Indigenous Peoples since 1984 and its subsequent adoption by the Sub-Commission on the Protection and Prevention of Discrimination of Minorities in 1993 was a major breakthrough. Unfortunately, the process for its adoption by the Commission on Human Rights is painfully slow. The Decade for the World's Indigenous People is ending this year but only two articles have been adopted. Such a situation clouds some of the achievements of the Decade's and makes a mockery of the theme - New Partnership. In spite of this depressing record, however, indigenous peoples maximized the use of the Draft Declaration by using it as a framework to push for the creation of policies and national laws on indigenous peoples.

There are other developments during the Decade which can be considered as the building blocks in developing the partnership between states and indigenous peoples. One is the setting up of some UN specialized agencies, funds, and bodies of focal persons who are tasked to handle indigenous concerns. Some of these agen-

cies developed internal guidelines referring to indigenous peoples. Examples of these agencies and funds are the World Health Organization and the International Fund for Agricultural Development. Second is the creation of policies or programmes on indigenous peoples. The United Nations Development Programme (UNDP) adopted a "Policy of Engagement with Indigenous Peoples" and the European Commission/European Union had a "Council Resolution on Indigenous Peoples within the framework of the Development Cooperation of the EU and Member States." Some international financial institutions like the World Bank, Asian Development Bank and donor agencies like DANIDA (Royal Danish Ministry of Foreign Affairs), DGIS (Dutch Foreign Ministry and Directorate General for Development Cooperation) Netherlands, BMZ (German Federal Ministry for Economic Cooperation and Development) Germany and AECI (Agencia Española de Cooperación Internacional)-Spain also adopted policies on indigenous peoples.<sup>13</sup>

Third is the establishment of the United Nations Permanent Forum on Indigenous Issues in 2001. This unique subsidiary body of the Economic and Social Council (ECOSOC) has fourteen members, seven who are chosen by governments and seven who are recommended by indigenous peoples and appointed by the ECOSOC Chairperson. Fourth is the establishment of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in 2002.

At the national level, the pressure put by indigenous peoples on states to recognize the multicultural and multiethnic character of their nations is the giant step towards the acknowledgement of pluralism in legal, economic and cultural systems. This demand has been crucial in getting governments to amend their constitutions to recognize this basic reality. Examples of these are the Philippines, Mexico, Bolivia, Colombia, Venezuela, Ecuador, Peru, among others. So if we look back into the gains achieved by indigenous peoples within the International Decade, we can say that there were partnerships created between them and the member-states of the United Nations and also between them and the multilateral organizations. Much more can be done in terms of making laws and policies, which respect indigenous peoples' rights and implementing these, but we cannot underestimate what have already been achieved.

## CHALLENGING THE STRUCTURAL CAUSES OF CONFLICTS

While we recognize the positive outcomes especially the partnerships which evolved between the different actors, we should not gloss over the hard realities that still prevail. The conflict resolution approach, so far, has not effectively challenged and changed the assumptions, the inequality, exclusion and injustice, domination and discrimination of the prevailing world order. Nation-building, which has been the pre-occupation of post-colonial states is framed around neo-liberal, market-oriented economic structures and reforms. Market-oriented economic reforms, as we have seen so far, conflict with the recognition of the rights of indigenous peoples to their ancestral territories and their resources and the protection of the environment. The Zapatista uprising in Chiapas illustrates a conflict brought about by neo-liberal market reforms. The push from the World Trade Organization and bilateral free trade agreements for the liberalization of trade and investments will lead states to give more rights to foreign investors and corporations than to their own citizens and indigenous peoples.

Almost all violent conflicts found in indigenous territories are rooted in gross inequality and injustice. The Commission for Historical Clarification (CEH) which was established as a result of the peace talks in Guatemala described the nature of violent conflict in Guatemala.

*..The violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality. The anti-democratic nature of the Guatemalan political tradition has its roots in an economic structure, which is marked by the concentration of productive wealth in the hands of a minority. This established the foundations of a system of multiple exclusions, including elements of racism, which is, in turn, the most profound manifestation of a violent and dehumanizing social system. The State gradually evolved as an instrument for the protection of this structure, guaranteeing the continuation of exclusion and injustice.<sup>14</sup>*

Jenny Pearce, an expert on conflict resolution from the University of Bradford, along with others analysed the weaknesses in the peace building processes in Guatemala and Nicaragua. She observed that in these countries issues affecting the poor and peace building were least prioritized. Economic stabilization, structural adjustment

and liberalization were given more attention as these were the priorities of the elite and global-policy making bodies like the World Bank and the International Monetary Fund. She says:

*..the macro-level context of Central America in the 1990s has impeded creative micro-level peace building initiatives in the region..The priority given to structural adjustment programmes after peace accords were signed signaled to these elites that economic liberalization was ultimately far more important to those donors than peace building and the redistributive agenda that it would require.<sup>15</sup>*

The examples provided by the peace building efforts in Guatemala and Nicaragua would reinforce emerging views of critical theorists who say that conflict resolution has originated and rests on unchallenged assumptions of social order, thus perpetuating those structures that had originated the conflict in the first place.<sup>16</sup> The resistance to imagine and produce different structures (at an institutional and relational level) means that spaces are not carved to create radical solutions that will address the structural dimensions of the conflict.

We are witnessing a world of double standards where states who pose as champions for human rights are also the ones leading the moves to give corporations their own bill of rights, e.g. the Multilateral Investment Agreement (MAI).<sup>17</sup> Corporations are regarded as legal persons who have their own rights. They are also the main producers of small arms and the ones who are behind extractive industries which are wreaking havoc in many indigenous peoples' territories. There are very aggressive campaigns and lobbying from the trade negotiators of the US, the EU, Canada and Australia to get developing countries to agree to their trade and investment liberalization agenda. On the other hand, they are also sitting down or obstructing the negotiations for the adoption of the Draft Declaration on the Rights of Indigenous Peoples.

Even some universal values and international laws and principles are being distorted and interpreted in ways which reinforce market-oriented neo-liberal values like consumerism, individualism, and competitiveness. Civil and political human rights are individual human rights and basically ignore collective rights or group rights. The Covenant on Economic, Social and Cultural Rights recognizes both individual and collective rights but it is still hardly implemented. Concepts like progressive realization of these rights virtually means it is difficult to comply with these because of many

constraints and obstacles faced by member-states. There are serious disagreements between the developed and developing member-states on what these obstacles are and how these should be addressed. The debt problem is a classic illustration. Good governance mainly addresses corruption among governments in the South but does not deal with corruption within multilateral financial institutions, corporations, or governments in the North. There are many inconsistencies on how such standards are applied and unless these contradictions are made visible and addressed, the results of conflict resolution efforts will be short-lived.

Comprehensive assessments of the peace building and conflict resolution efforts in indigenous peoples' territories need to be done. For this to be useful, the criteria which will be used to assess the attainment of just peace should be clearly identified. This can range from the minimal criterion which is the ending of armed hostilities to the maximum which is the elimination of the root causes of conflict. The maximum criteria is the achievement of longer term objectives such as the reduction of inequality and poverty, redistributive mechanisms, social justice, peaceful co-existence and complementation of plural and diverse systems, ecological sustainability, etc. This can be seen through the enactment of laws and policies, serious implementation of such laws, re-engineering government institutions and laws to be more pluralistic and pro-poor, and above all, the demonstration of political will on the side of governments to protect the rights of its own citizens over and above the interests of foreign corporations or governments. This should also include how the global dimensions of the root causes have been addressed.

The case studies on the peace processes in Guatemala, the CHT in Bangladesh, Mindanao in the Philippines and Chiapas in Mexico demonstrate that gains can be very limited because the root causes of the conflicts are not comprehensively dealt with. The hostilities between armed revolutionary groups (PCJSS and URNG), and government armed forces were stopped in Bangladesh and Guatemala. In the Philippines, these also stopped between the government and the Moro National Liberation Front (MNLF). However this is still not the case with the Moro Islamic Liberation Front (MILF) and the New Peoples Army/National Democratic Front/Communist Party of the Philippines.(NPA/NDF/CPP). These armed movements now have their own peace negotiations with the government but progress is slow because of many factors which this chapter cannot deal with in detail. This can be addressed in future projects.

## ISSUE OF INDIGENOUS PEOPLES' INCLUSION IN PEACE PROCESSES

It is important to also assess how indigenous peoples and their issues have been included or excluded in peace processes. The case of the Lumad peoples in Mindanao which was introduced in the case study on Mindanao is a good example. They are adversely affected by the conflicts and significant parts of their ancestral lands are included in the contested areas, and yet they are not key players in the peace processes. Even in the negotiations with the MNLF there was hardly any participation by the Lumad peoples. The Peace Agreement with the MNLF led to the creation of the Autonomous Region of Muslim Mindanao and the Special Zone for Peace and Development (SZOPAD) which was run by the South Philippines Council for Peace and Development (SPCPD).

Tens of thousands of dollars were poured into the SPCPD by the UNDP, the World Bank, US Agency for International Development (USAID), Islamic Bank, among others. It is worthwhile looking more deeply into what the impacts of these funds are in peace building and sustainable development in the region. It is also worthwhile looking into the efforts of these projects to include the Lumad peoples. The case study has identified some peace building initiatives from the Lumad, the civil society, religious groups, and the women. No doubt some of these were supported by UNDP projects and programmes and also by other donor agencies, whether public or private. Such efforts should be increased even more to really grapple with how the root causes of the problem, such as the concentration of the biggest and best tracts of lands in the hands of the big political warlords, landlords, and agribusiness corporations can be addressed.

The gross inequality and persistent violation of the basic rights of the Moro peoples and the Lumad remains the sad reality. In the latest round of talks between the MILF and the government, the MILF is demanding that the rights of the Moros to their ancestral domains be recognized and they are invoking the provisions of the Indigenous Peoples' Rights Act. They are demanding that the provisions on lands and resources should apply to them as well. They still do not self-identify as indigenous peoples but this recent development is sending some signals worth watching.

The Mexico story has similarities with the other cases. Like the URNG, the EZLN's (Ejercito Zapatista de Liberación Nacional - Zapatista National Liberation Army) original platform did not in-



clude the demand of indigenous peoples for their rights to their territories, to self-determination, and autonomy to be recognized and respected. The indigenous peoples were the ones who had to insist that their demands be included as part of the EZLN platform.<sup>18</sup> Margarito Ruiz Hernandez, a Maya-Tojolab'al and a founder and member of the Executive Council of ANIPA (Asamblea Nacional Indígena Plural por Autonomía) described how EZLN handled the indigenous issues. He says:

*Two issues were notable from the beginning: a) that although they were an army of indigenous people, demands for Indian rights, for self-determination and for autonomy were not considered within their programme of struggle, and b) that despite being an indigenous army, it did not expressly call upon the indigenous movement as the preferred interlocutor of the rebels but only as one of the several hundred other movements, personalities and civil and people's organizations which became the privileged interlocutors of the EZLN. It was not until 1995 that the indigenous movement began to gain a presence in the Zapatista agenda, and this was not for free. The national indigenous movement had to win its place on the basis of its proposals and its organization.<sup>19</sup>*

The determination of indigenous peoples to make sure of this led them to establish ANIPA (Asamblea Nacional Indígena Plural por Autonomía - Multi-National Indigenous Assembly for Autonomy) in April 1995. This is a broad formation of indigenous deputies, senators, indigenous organizations and NGOs. This formation was an attempt to pursue higher unities between indigenous peoples which goes beyond political affiliations and ideological positions. The basis of unity is to strengthen the national indigenous peoples' movement by entering into dialogues among themselves without external interests and actors intervening. Thus it had to be constituted and organized in a plural fashion. It persisted in pushing the Zapatistas to include their concerns but when the final San Andrés Accords were signed in February 1996, the central issues of land and proposals for regional autonomy were out. Initially an agreement on Indigenous Rights and Culture was part of the package. However, the hope to have this included was frustrated again when the Accords were to be ratified after March 1996. The talks got suspended in August 1996 and efforts up to the present to have Congress pass legislations to give more rights to indigenous peoples are painfully slow. A decade has passed after the uprising but no substantial



structural and legal changes have happened.

With the suspension of the peace talks EZLN resumed the formation of 32 autonomous municipalities and eight autonomous regions within the conflict zone (Highlands and the Lacandon Forest) and within the Northern Zone. They justify these actions on the basis of the Accords on Indigenous Rights and Culture which was signed between the government and the EZLN but was not transformed into law. They also use the ILO Convention 169 as another justification as the Mexican government is a signatory. The government refused to recognize these autonomous municipalities and in 1998 they forcibly dismantled four municipalities. The remaining regions and municipalities are under daily threats from the huge contingent of military and paramilitary forces deployed in Chiapas. The way this conflict is going to be resolved depends a lot on how the Mexican government will respond to the demands of indigenous peoples to have their rights recognized and respected.

It is instructive to deal in more detail with the Guatemala experience because this further illustrates the difficulties indigenous peoples go through to get their issues addressed both by governments and non-state entities. It was mainly through the sheer persistence and assertion of the indigenous peoples of Guatemala that the subject of the identity and rights of indigenous peoples had to be included as part of the whole package. During the negotiations the indigenous peoples through a federation they built, COPMAGUA (Coordination of Organizations of the Mayan People of Guatemala), formulated their own agenda which they presented to the Peace Panel. As noted in the case study this agenda was not welcomed by both the government and the URNG and even the participation of indigenous representatives in the panel was refused by them. The United Nations played an active role in helping indigenous peoples formulate the Agreement on the Identity and Rights of Indigenous Peoples.

This specific agreement led to substantial debates on the issues of discrimination, self-determination, rights to territory and resources, among others. The need for constitutional amendments to recognize indigenous rights and cultural diversity was a key agenda. Unfortunately, when the referendum was held to decide whether constitutional amendments should be made to reflect the multiethnic and multicultural nature of Guatemalan society, this battle was lost. The referendum result is very revealing. Even if indigenous peoples compose 60 percent or even more of the total population most of them do not vote. They do not have faith in the electoral system

which is very much controlled by the *colono* and *mestizo*<sup>20</sup> ruling elite. This shows the great difficulties faced when the status quo is challenged.

The armed revolution which has been waged for thirty-six years has not created any major shift in power relations. The ruling elite is still very much entrenched. They still control the economy, the media, the election process, and the military. They have the capacity to deceive and divide the indigenous peoples. It takes more than a Peace Agreement to change this inequity in power structures and relations. The terms of the peace agreement which can lead towards changes are still not implemented.

The URNG waged an armed struggle to change the structural injustice and violence which prevailed in Guatemala for several centuries. It was a just war which aimed to bring liberation and democracy to the majority of peoples who were oppressed and marginalized. Unfortunately, this noble objective was not accomplished. It can be said that one of the key weaknesses of this revolutionary movement was the way it handled the indigenous question. While majority of the fighting force of the URNG are indigenous, their issues did not occupy a central place in the revolutionary agenda. Even during the peace negotiations, as shown earlier, this was still the case.

This position can be partially explained by the fact that its guiding ideology is Marxism and therefore its politics is primarily class-based. Indigenous issues as well as women's issues are considered supra-class concerns which should be considered secondary to the class struggle. Thus, it is not surprising that people are not organized on the basis of their ethnicity but on the basis of class. The referendum results can be a reflection of the weaknesses in building a mass-base among indigenous peoples. Maybe if more efforts were spent in raising the awareness of indigenous peoples of their rights and empowering them to assert these, the referendum results would have been different.

The PCJSS of the Chittagong Hill Tracts in Bangladesh was quite unique because at the very outset it identified itself as the political party of the Jummas. The Bangladesh government did not recognize the Jummas as indigenous peoples and they refer to them as tribals or hill people. Jumma, which is a political construct, is a collective term which was evolved to refer to the various tribal groups. It was only in the later stages of the struggle that they self-identified as indigenous peoples and this identification partly informed the framework upon which the Peace Accord was negotiated and how

it is being implemented. There is a big difference between the experiences of negotiating peace in Guatemala and Bangladesh. Guatemala enjoyed the support of the UN before, during and after the peace agreements were signed. The MINUGUA was set up precisely to monitor the implementation of the Agreements. (This is discussed more lengthily in the next section.) The PCJSS negotiated with the Bangladesh government without much support from multilateral bodies like the UN. The UN became more active and visible in the post-conflict period.

The commonality between the Guatemala and Bangladesh cases is the non-implementation by the governments of the most salient elements of the peace agreements. These are the aspects which can bring about structural changes such as the Land Commission of the CHT Peace Accords. In the Bangladesh case the Chittagong Hill Tracts Regional Council was created and this is headed by Shantu Larma who is also the PCJSS Chairperson. However, the powers and resources allotted for this body to effectively function are very limited. There are various efforts being done to help strengthen this body. One of these is through some activities of a recently established UNDP project called the Chittagong Hill Tracts Development Facility. It remains to be seen whether this and other efforts can help in addressing the structural problems.

### ENGENDERING THE PEACE PROCESS

One bright spot in the peace process in Mexico was the determination of indigenous women to ensure that their issues are integrated both by the national indigenous peoples' movement and the EZLN. The fourth assembly of ANIPA which was held in December 1995 included the "National Meeting of Women of ANIPA" which saw the participation of 300 women. This discussed the relationship of the demand for right to autonomy and gender rights. In their resolution they defined autonomy:

*Autonomy for women means the right to be autonomous as women, to receive training, to seek spaces and mechanisms through which we will be listened to in community assemblies and to hold positions of responsibility. It also means facing up to our fears and daring to take decisions and participate, seeking financial independence, to have independence in the family and to continue gaining information, for knowledge leads to autonomy. To disseminate women's experiences in order to encourage others to participate, to give them the power to partici-*

*pate, in this type of meeting.*<sup>21</sup>

A series of meetings and conference or encounters by the indigenous women followed until the National Coordinating Body of Indigenous Women of Mexico was established in 1997. They linked up with other indigenous women in Latin America and the Caribbean through a series of Continental Encounters of Indigenous Women of the First Nations Of Abya Yala.

Land and territory, culture, justice and self-development were important components of their demands for autonomous rights. A gender analysis of the San Andres Peace Accords was done by them and they formulated proposals for the reform of the Mexican Constitution. The reform of Article 4 of the Constitution to allow for the full recognition of women's rights, recognition of the pluriethnic nature of Mexican society and equality between women and men was one of these proposals. Somehow the negotiation of the San Andres Accord was the process which allowed for the direct collaboration between the women of ANIPA and those from the EZLN.

Cross fertilization between the work of indigenous women in the open and armed movements resulted into positive outcomes in the recognition of women's rights and their capacities to be equal partners with the indigenous men in fighting for indigenous peoples' rights. The Zapatistas developed the Revolutionary Law of Zapatista women which embodies the reproductive rights of women. The case study on Mexico specifically dealt with this because it is important to highlight the roles played by indigenous women in peace building processes. The way revolutionary movements are handling the indigenous question has many similarities to how they are dealing with the woman question. The most effective way of ensuring that issues of gender and ethnicity are addressed both by the state and by revolutionary movements is to build strong indigenous peoples' movements and women's movements.

### **ROLE OF THE UN IN GUATEMALA**

The contributions of the UN in the peace building and conflict resolution processes were very extensive and direct in Guatemala than in any of the other cases in this book. Whether the UN more effectively used the human rights approach to conflict resolution is something that needs to be assessed more comprehensively. The UN should do its own assessment of its own contributions and roles in the peace processes and in the post-conflict situations. This assess-

ment is especially critical in light of the analysis presented by Jenny Pearce on how economic liberalization took precedence over peace building. This is a challenge for multilateral organizations like the United Nations, including its subsidiary bodies, programmes and specialized agencies. How self-critical are they in assessing their own roles in conflict resolution and peace building? What contributions have they made in evolving and strengthening the human rights approach which recognizes that conflicts arise from inequalities, exclusion, injustices, and discrimination and the solution lies in comprehensively addressing these? What lessons were learned by the UN in its participation in negotiating peace agreements which involve indigenous peoples and in helping reconstruct war-ravaged indigenous communities? Were they sensitive enough to indigenous peoples?

One of the outstanding UN initiatives in Guatemala is the MINUGUA (The United Nations Verification Mission in Guatemala). This was set up in 1994 to monitor the Guatemala's compliance with the Peace Agreements. It just ended its existence in December 2003. The United Nations Secretary General's Report of the 54<sup>th</sup> General Assembly Session in its section on Post-Conflict had paragraph 105 which described the role of MINUGUA.<sup>22</sup> This presents a picture of the activities and intentions of the UN.

*The United Nations Verification Mission in Guatemala is mandated by the General Assembly to carry out a range of post-conflict peace building activities in addition to verifying the peace agreements, providing good offices and undertaking advisory and public information activities. Since 1997, considerable emphasis has been placed on human rights, particularly indigenous rights; social investment; decentralization of State activities; rural development; fiscal and judicial reforms; and the reform of public security and national defence. In 1998, these initiatives provided the basis for a constitutional reform package, which was approved by Congress but which the people failed to ratify in a national referendum in May 1999. As presidential and legislative elections approach in November 1999, continuing commitment to the peace agenda will be crucial to its sustainability.*

As the case study on Guatemala does not described in more detail the role played by MINUGUA, this can be an area of continuing research. One of the most recent reports of MINUGUA to the Consultative Group Meeting for Guatemala presented an assess-

ment of the implementation of the Agreements from 2002 to 2003. This report says:

*that in the area of indigenous rights, the peace agreements continued to register a heavy backlog in their implementation, notwithstanding its obvious centrality in the country where roughly half of the population are members of indigenous peoples subject to heavy ethnic discrimination and economic and social marginalization.*<sup>23</sup>

Similar conclusions were also made by non-government organizations. One of these is the Irish Peace Society which made a report six years after the Peace Accords were signed.<sup>24</sup> This report looked into the human rights situation and it says that “.. six years after the signing, it is pertinent to ask whether the peace accords have been a success. In the most immediate sense, they have been, since there has been no new outbreak of war. On the other hand, crime has risen to unprecedented levels in post-settlement Guatemala, and most people have not felt any improvement in their living conditions. The peace accords have been implemented only to a very limited extent, and there is widespread disillusion and indifference towards the peace process “

The UN, undoubtedly, has played a very important role in brokering the peace negotiations and helping monitor and implement the Guatemala Peace Agreements. It may even be the one of the countries where the whole UN system has spent a lot of financial, technical and human resources to ensure that sustainable peace and development will be attained. It is beyond the scope of this chapter to make a thorough analysis of why the situation has not significantly improved. However, this writer recommends that a workshop be held which should be attended by the UN bodies which have been intimately involved in this field, indigenous peoples from Guatemala and Latin America and from other parts of the world, and governments to analyse more comprehensively what happened in Guatemala. We only skimmed the surface of the Guatemala story. It may be worthwhile investing resources and energies to go deeper and gather invaluable lessons which can be used for the future.

### **STOCKTAKING OF PEACE BUILDING EFFORTS**

There are many other reports which echo this same observation. In Bangladesh, Mexico and the Philippines, similar observations are

also made. The challenge therefore remains, which is the need to look more deeply into the results of peace building efforts in post-conflict countries and to analyse the reasons for successes and failures. In 1992 the UN General Secretary Boutros Boutros Gali launched the Agenda for Peace. This was the impetus for the evolution of what is now referred to as the “peace building enterprise.”<sup>25</sup> This is the conglomeration of multilateral bodies, NGOs, academic institutions which are active in the peace building field. It has been more than ten years since the Agenda for Peace and it is about time to do stocktaking exercises to see the lessons learned within this period.

The International Development Research Centre (IDRC) and its Peacebuilding and Reconstruction Program Initiative (PBR) in 2002 undertook its own stocktaking exercise. It held a workshop called “What Kind of Peace is Being Built” which was meant to reflect on the state of peace building ten years after the Agenda for Peace. This was the culmination of a process which involved virtual discussions between its partners and interlocutors doing research, diplomacy work and policy advocacy. This writer participated in this workshop. It is worthwhile highlighting the six main themes which emerged as these are relevant points to consider in subsequent stocktaking exercises.<sup>26</sup>

1. Though it has grown over the past decade, the peace building enterprise faces profound challenges related both to its effectiveness and legitimacy;
2. Peace building has become more difficult but also more vital in the aftermath of September 11, 2001;
3. Globalization is a multidimensional phenomenon whose impacts on peace building are complex and ambiguous;
4. The causes of conflict may change but linking short-term peace building to longer term measures that address the causes of conflict remains a major challenge;
5. The proliferation of peace building actors calls for a research programme that tracks their evolving comparative advantages and thereby contribute to enhanced partnerships;
6. Overarching research on “meta” issues such as globalization or the kind of peace that is being built should be linked to the ongoing analysis of particular peace building efforts and the accumulation of knowledge on sectoral challenges.



Tebtebba's contribution to this stocktaking exercise is the "International Conference on Conflict Resolution, Peacebuilding, Sustainable Development and Indigenous Peoples" held in the Philippines in December 2000. This was organized to respond to the need to have a more focused look into conflict situations in indigenous peoples' territories. A conference statement called the "Manila Declaration" emerged out of this which identified ways forward for bringing about peace and sustainable development for indigenous peoples. The UNDP along with other donors gave a significant contribution for the conference. Most of the papers in this conference were presented in a recently published book entitled "Reclaiming Balance: Indigenous Peoples, Conflict Resolution and Sustainable Development" launched at the July 2004 session of the UN Working Group on Indigenous Populations.

## **PRESENT EFFORTS ON CONFLICT AND HUMAN RIGHTS**

### **The United Nations Permanent Forum on Indigenous Issues**

The active representation and intervention of indigenous peoples in the United Nations, with the support of some governments and non-government organizations, has led to important initiatives. Key United Nations bodies which dealing with indigenous concerns are handling the issue of conflict and indigenous peoples in various ways. The newly established UN Permanent Forum on Indigenous Issues which does not have conflict as one of its mandated areas still has to deal with this in its sessions. When the Permanent Forum was being established, there was a strong push by indigenous peoples to have conflict included as one of its mandated areas.

Several States stood firm against this on the grounds that conflict is the business of the UN Security Council. Since it remains as an important issue, however, it is still raised in many interventions from indigenous peoples. At its Second Session in 2003 the Batwa peoples from the Democratic Republic of Congo asked the Forum to look into the incidents of cannibalism committed against some Batwas. This was related to the ongoing conflicts in that country. The Forum Chairperson presented this issue to a representative of the Security Council and an inquiry was made.

At the second session of the Permanent Forum in 2003 the UNDP supported the recommendation for the establishment of a working group on free, prior and informed consent (FPIC). The recommendation was discussed further at the Inter-Agency Support Group<sup>27</sup> meet-



ing where UNDP was selected to coordinate the preparation of a report on the understanding of the various UN bodies of FPIC and their policies and practice. UNDP prepared a report based on a questionnaire sent to the indigenous peoples' focal points in the UN system. The report was distributed at the Third Session of the Permanent Forum.<sup>28</sup> The main conclusions are the following: a) No agency has adopted a formal definition of the principle, but all recognize that FPIC is embedded in the human rights framework. They all recognize that effective participation and consultation are key to the design, implementation and evaluation of any activity; b) FPIC, to a large extent, is implemented on an ad-hoc basis. Constraints and the degree of implementation vary depending on the political situation of each country and the strength of civil society; c) There is a growing recognition of the need for more cultural sensitivity in programme development. The main challenge is to build the capacity of both UN staff and indigenous peoples on issues related to FPIC.

In May 2004 at its third session which had the theme "Indigenous Women," some of the presentations tackled the issue of conflict and gender. The reports highlighted violence against indigenous women especially in situations of armed conflicts, resulting in recommendations addressed to the various UN bodies. Prior to this session various indigenous women's networks from Asia, Africa and the Americas held their general assemblies and outlined the key issues faced by indigenous women.

The Asia Indigenous Women's Network (AIWN), for example, raised militarization and violence against women as a major concern and presented proposals on how to deal with these at the Permanent Forum session. The declaration of the 2<sup>nd</sup> Asian Indigenous Women's Conference<sup>29</sup> reiterated that indigenous women are not just victims of conflict but are active peace builders. It demanded justice for the indigenous women who are victims of rape committed by military and paramilitary men and a stop to state impunity and militarization. It also reiterated the commitment of the AIWN members to engender peace and conflict resolution processes and asked that peace panels ensure the inclusion of women and their concerns.

### **The Office of the High Commissioner on Human Rights**

The theme of the UN Working Group on Indigenous Populations for its 22<sup>nd</sup> Session in July 2004 was "Conflict and Indigenous Peoples."

The quality of discussions and contributions from the experts and indigenous peoples were excellent and many recommendations emerged out of this session. For the first time the WGIP experts jointly wrote papers with indigenous organizations on specific themes such as free, prior and informed consent (FPIC) and traditional knowledge. The paper on FPIC was done with Tebtebba and the one on traditional knowledge with the Saami Council.<sup>30</sup> Judge Guisse, one of the experts, wrote the paper on “Globalization and Indigenous Peoples.”

One of the root causes of conflicts in indigenous peoples’ territories is the entry of extractive industries even without the free, prior and informed consent of the people. The phenomenon of extractive industries illustrates a clear conflict of paradigms between many governments and indigenous peoples. To surface further the issues between indigenous peoples and the private sector, the UN Sub-Commission on Human Rights on the Promotion and Protection of Human Rights organized a workshop on “Indigenous Peoples, Private Sector, Natural Resource, Energy and Mining Companies and Human Rights.” This was held in Geneva in December 2001. The participants included representatives of indigenous peoples, the private sector, governments and UN bodies like the Office of the High Commissioner on Human Rights, the UN Commission on Trade and Development (UNCTAD) and even the World Trade Organization. Tebtebba was asked to prepare an overview paper for this workshop. The final report of this workshop contains some proposals on ways forward. This was a good beginning in terms of creating spaces for dialogue between the indigenous peoples and the private sector. The 22<sup>nd</sup> session of the WGIP recommended that a second workshop be held in 2005 to follow up on the first one.

Another mechanism which was established by the OHCHR is the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. This post was created in 2001 and the first missions of the Special Rapporteur were in Guatemala and the Philippines in 2002. His mission report on Guatemala reiterated some of the observations raised earlier in this section. One of his recommendations was the setting up of an office of the High Commissioner on Human Rights in Guatemala. This is needed because MINUGUA ended in December 2003. On December 1, 2003, the Government of Guatemala and the OHCHR signed an agreement for the setting up of an office of the OHCHR in Guatemala. This will help monitor the human rights situation in Guatemala and will provide advice to the Government on the formulation and

implementation of policies, measures and programmes for the promotion of human rights.

The Special Rapporteur also made a similar recommendation in his Philippine mission report. He called on the OHCHR to set up an office in the Philippines. Unlike, Guatemala, however, there are no concrete steps being taken by the Philippine government to have this recommendation implemented. He also recommended that paramilitary troops be withdrawn from indigenous territories within the national framework of demilitarizing these territories. That resolving land rights issues of indigenous peoples should take precedence over commercial development was also reiterated by him.<sup>31</sup> One year after his visit indigenous peoples gathered again in a *National Conference on Human Rights of Indigenous Peoples* held in February 2004 to assess developments. The main conclusion in this conference was that none of his recommendations have yet been acted upon by the Philippine government.<sup>32</sup>

### **The United Nations Development Programme**

In August 2001, UNDP adopted the *Policy of Engagement with Indigenous Peoples*. This is a set of principles intended to give guidance to the staff. The policy is a result of a series of internal consultations and with representatives of indigenous peoples organizations who made important recommendations. It also benefited from an extensive survey of existing bilateral and multilateral policies on indigenous peoples and lessons from their implementation. It is a well-crafted policy document framed within a rights-based and a bottom-up approach to development. The policy recognizes the right to free, prior and informed consent of indigenous peoples to development plans and activities that may affect their lands. Some of the weaknesses of this policy are the lack of binding operational provisions and rules for respecting and securing land and resource rights. It does not have clear-cut benchmarks or mandatory provisions that must be met before UNDP approves or engages in a project affecting indigenous peoples. Social and environmental assessments prior to UNDP development interventions are recommended rather than required.<sup>33</sup>

A joint effort of UNDP with the Office of the High Commissioner on Human Rights is the Human Rights Strengthening Programme (HURIST). A memorandum of understanding (MOU) was signed between the UNDP and the OHCHR in 1998 to support the implementation of the UNDP policy on *Integrating Human Rights*

*with Sustainable Development*. HURIST was launched in 1999. Several national workshops and projects were held to promote the mainstreaming of human rights in development. This includes the elaboration of National Human Rights Action Plans. The indigenous component of this programme was recently developed. Alejandra Pero in the UNDP CSO Division described this effort:

*In 2002 Hurist incorporated an indigenous peoples' component to its overall programme. The principal objectives of the component are:*

*1. to contribute to the implementation of UNDP's policy of engagement with indigenous peoples (IPs), underpinned by the human rights framework*

*2. to create a mechanism for dialogue at the national level to ensure the participation of indigenous peoples in UNDP activities at both the policy and programmatic levels.*

*The key underlying principle is to promote the **active, free and meaningful** participation of indigenous peoples in the planning, implementation and evaluation of the projects that (may) affect them. Its first pilot took place in Ecuador in March 2004 and another training will be held in Kenya.<sup>34</sup>*

In Bangladesh, UNDP established the Chittagong Hill Tracts Development Facility (CHTDF) in 2003. This is a comprehensive programme to address development issues in the Hill Tracts. Some aspects of the programme are focused on how to enhance further the capacities of the CHT Regional Council to function as defined in the Peace Accords. The Regional Council (RC) is mandated to be the coordinating body for development in the Hill Tracts but this function has not been implemented to the satisfaction of the Regional Council members.

In Bangladesh, UNDP established the Chittagong Hill Tracts Development Facility (CHTDF) in 2003. This is a comprehensive programme to address development issues in the Hill tracts. Some aspects of the programme are focused on how to enhance further the capacities of the CHT Regional Council to function as defined in the Peace Accords. The Regional Council (RC) is mandated to be the coordinating body for development in the Hill tracts but this function has not been implemented to the satisfaction of the Regional Council members. Further, the council felt that it had not been fully consulted when the CHTDF was set up, and complained that the UNDP had not implemented its Policy of Engagement with Indigenous Peoples in the development of the CHTDF. UNDP sent a

stock-taking mission<sup>35</sup> to Bangladesh to talk with the key actors in January 2004. At present the level of coordination and cooperation between the UNDP and the Regional Council and the HTNF is working well, according to reports from the UNDP country office in Bangladesh. Aside from UNDP other donor agencies also provide support to post-conflict reconstruction activities.

The work of UNDP in formulating its policy on indigenous peoples and linking it with its other policies, shows the dynamics of the partnerships between indigenous peoples and multilateral bodies. This is an example of good practice in terms of policy and programme formulation. In the future it is worthwhile doing an in-depth evaluation of the efforts of UNDP in addressing indigenous peoples' issues and its trailblazing work in promoting a rights-based framework for development.

### **World Bank's Policy Review and Revision Processes**

Indigenous peoples have also been actively engaged with the World Bank especially in its review and revision of its policies on indigenous peoples and on extractive industries. The World Bank was the first multilateral development bank to adopt a policy on "tribal" peoples in 1982. This is its Operational Manual Statement 2.34 (OMS 2.34) which required Bank staff to include measures to protect indigenous peoples' land rights, health and cultural integrity. It also required that their participation in project planning and implementation is ensured. The conflicts which erupted in some countries due to World Bank-funded projects led to the formulation of this policy. One of these projects was the Chico River Basin Hydroelectric Dam Project in the Cordillera Region in the Philippines. In the mid-1970s this WB-funded project was rammed through by the Marcos government despite the resistance from the Bontocs and Kalingas. The armed conflict between the government and the New Peoples' Army, who took up this issue, got more vicious because of this project. The WB was forced to withdraw its loan for this project which was cancelled in the 1980s.

An internal review in 1987 revealed that less than half of 33 sampled WB projects observed the policy. In September 1991 after this review and extensive consultations within the Bank a new policy was adopted which was called Operational Directive 4.20 "Indigenous Peoples." This is one of ten safeguard policies to protect the environment and vulnerable social groups. This policy, which focused on mitigation, participation and benefit-sharing, was drawn

up with minimal participation of indigenous peoples. It failed to meet the standards of the ILO Convention 169 and did not even make any reference to this. However this contains guidelines which are binding on Bank staff and project managers. It also requires government commitment to the policy and provides for capacity of the government to deal with indigenous peoples. It also contains provisions to secure the legal recognition of indigenous peoples' land tenure and resource rights. The weakness of this policy is that it does not adopt a rights-based approach and does not recognize the right to free, prior and informed consent. This policy also does not apply to the Bank's adjustment and policy lending which have more significant adverse impacts on indigenous peoples.<sup>36</sup>

This policy was subjected to another revision process which started in 1995 and the revised policy (Draft Operational Policy 4.10) is in the last stages of being finalized. Indigenous peoples who took part in the first round of consultations which started in 1998 sent a clear message that a new policy should be stronger than the previous one especially in recognizing and respecting land and resource rights. Unfortunately, the revised draft was even weaker than the previous one. It does not recognize free, prior and informed consent nor does it take action to safeguard rights to control and manage indigenous lands. It also fails to prohibit involuntary resettlement of indigenous peoples.

A series of consultations between the World Bank and indigenous peoples ensued and the last one was held in May 2004 in New York during the 3<sup>rd</sup> Session of the Permanent Forum. A simultaneous process is the Extractive Industries Review (EIR) where a series of consultations and case studies on impacts of extractive industries<sup>37</sup> on indigenous peoples were done. The final report of the EIR was released by the World Bank in April 2004 and one of its main recommendations, the need to recognize the free, prior and informed consent of indigenous peoples and local communities, was not received well by the Management of the World Bank. Their proposal is to change this to free, prior, informed consultation.

These developments do not bode well for indigenous peoples and their desire to have long and lasting peace based on justice. The World Bank remains one of the leading development agencies which supports projects and policy reform in countries which have direct impacts on indigenous peoples. In 2003 it established its Indigenous Peoples Grant Facility which funds projects from indigenous organizations. The World Bank has a very important role to play in preventing conflicts in indigenous territories and also in support-

ing life projects of indigenous peoples. The engagement of indigenous peoples with this institution should result in more positive outcomes especially in conflict prevention and sustainable development. However, what is badly needed is a re-examination by the Bank of its own development paradigm which obviously clashes with indigenous peoples' life plans and world views.

### **Tebtebba**

On the part of indigenous organizations like Tebtebba and its partners, the *Manila Declaration of the International Conference on Conflict Resolution, Peace building, Sustainable Development and Indigenous Peoples* remains a key framework for its continuing activities on peace building. This identifies some key post-conference activities which should be undertaken. One of this is the formation of an Indigenous Peoples' International Commission for Conflict Resolution and Mediation. Another is the creation of an Indigenous Peoples' Global Network for Research and Education (IPGREN). The IPGREN was organized in December 2003 and its initial members are indigenous individuals from the Philippines, Indonesia, India, Bangladesh, Kenya, South Africa, Guatemala and Ecuador. This network is meant to enhance capacities of indigenous organizations and networks to do research and education work for peace and sustainable development. The International Commission will undertake missions to conflict zones in indigenous peoples' territories to assess the situation and identify what needs to be done. This is still being composed and initial efforts are being done for this Commission to undertake a mission to Colombia in 2005. The indigenous representatives from Colombia who were at the Manila conference specifically requested that this be held but preparations for this are still being done at the country level.

Aside from all these, Tebtebba continuously engages with the various UN bodies and programmes and in policy reform activities within the World Bank and also the World Trade Organization. The adoption of the Draft Declaration on the Rights of Indigenous Peoples remains a primary concern. Together with the Asian Indigenous Women's Network it will pursue capacity-building activities for indigenous women to engender peace processes and to become active players in the national and international arenas.



## CONCLUSION

There are many lessons to learn from indigenous peoples' historical and present experiences in using non-violent and violent conflict approaches in dealing with their problems. The processes and substance of negotiations with state and non-state actors, the gains achieved and the shortcomings have yet to be substantially assessed by indigenous peoples, themselves. This chapter has looked into the nature and roots of some of the conflict situations and highlighted some of the issues which need to be further explored. The role NGOs and other civil society organizations play in supporting indigenous peoples to assert their rights cannot be underestimated. Some NGOs and UN bodies accompanied indigenous peoples to engage more effectively with the modern system.

Policy formulation, review and revision processes in the UN and other institutions like the World Bank, should be monitored and influenced because these will have direct effects on conflict prevention and peace building. The extent and manner in which open and revolutionary movements integrated or excluded indigenous peoples and their issues in their platforms or agenda for change was looked into. In most cases inclusion only happens if indigenous organizations and individuals consciously struggle to have their specific concerns and perspectives included. The peace negotiations in Guatemala and Mexico are stories which provide rich lessons on this. Engendering peace processes and conflict resolution approaches is another important ingredient to include. Indigenous women with a feminist consciousness contributed in pushing for the inclusion of gender issues in these struggles. The discourses on the indigenous question and woman question had to be addressed by movements for change if part of their agenda is to fight against social exclusion.

Various kinds of partnerships developed between indigenous peoples and NGOs and civil society organizations and between them and governments and inter-governmental bodies. The degree of trust, mutual cooperation, collaboration and interdependency depends on how each other's goals and approaches gel together. Spaces carved in the government and in the United Nations to address and include indigenous peoples in decision-making contributed in developing partnerships. There is still a long way to go, however, in developing these to become equal partnerships. Initial steps have been taken which hopefully will eventually lead to the creation of societies where inequality, social exclusion and discrimination against indigenous peoples will disappear.



## Endnotes:

<sup>1</sup> In some countries, like the Philippines, paramilitary groups are usually set up by the military to be their adjuncts in counter-insurgency campaigns. Thus, they cannot really be classified as non-state actors. In other countries paramilitary groups are those set up by landlords, underworld syndicates like drug traffickers to be their private armies. In this case they are counted as non-state actors.

<sup>2</sup> Different paradigms, means different descriptions and explanations of the same thing. There are multiple and even competing conceptions of reality which makes the concept of paradigms particularly relevant to conflict and conflict resolution. Indigenous peoples are one of the least understood sections of society because their values and paradigms run counter to the dominant paradigm of individualism, competition and capitalism.

<sup>3</sup> Victoria Tauli-Corpuz and Joji Carino eds., *Reclaiming Balance*, (Baguio City: Tebtebba Foundation, 2004), 8.

<sup>4</sup> The classical conflict resolution goal is the cessation of hostilities. This, referred to by conflict resolution experts, is a "negative" peace outcome, which just aims to achieve limited political goals and makes concessions that may result in a peace agreement. This may end violent hostilities but does not address the fundamental causes of the violent conflict. Positive peace is a more comprehensive concept, which includes reconciliation, social and economic recovery and building inclusive political institutions and systems.

<sup>5</sup> Mohamed Rabie, *Conflict Resolution and Ethnicity*, (1994).

<sup>6</sup> It must be noted that the Moros, the Filipino Muslims, do not self-identify as indigenous peoples. It is the Christianized indigenous peoples who are collectively referred to as Lumads, who are considered as indigenous.

<sup>7</sup> This is now called Western Hemisphere Institute for Security Cooperation (WHISC). The School of the Americas was known as the training school for assassins, dictators and their henchmen (Associate Press, 05/02/98). It was established in 1946 and legally closed in 2001 with WISC as its successor. An account published in *The Guardian* (Oct. 30, 2001) described one of the graduates of the SOA. "Colonel Byron Lima Estrada, once a student at the school, was convicted in Guatemala City of murdering Bishop Juan Gerardi in 1998. Gerardi was killed because he had helped to write a report on the atrocities committed by Guatemala's D-2, the military intelligence agency run by Lima Estrada with the help of two other SOA graduates. D-2 coordinated the "anti-insurgency" campaign, which obliterated 448 Mayan Indian villages, and murdered tens of thousands of their people. Forty per cent of the cabinet ministers who served the genocidal regimes of Lucas Garcia, Rios Montt and Mejia Victores studied at the School of the Americas."

<sup>8</sup> "Globalization and Development," ECLAC, LC/G.2157 (SES.29/3), (15 April 2002), 136.

<sup>9</sup> The classic case of how investment policies are liberalized is the case of the Philippine Mining Act of 1995. Through the support of the World Bank and the United Nations Department of Technical Cooperation and Development, a seminar called "Prospects for the Mining Industry to the Year 2000" was convened in 1989. The Philippine government sent its representatives to this seminar and consequently through a joint effort of the mining industry, the government, the UN Department of Technical Cooperation, the draft Mining Code was made. This was the basis for the Mining Act of 1995, which fully liberalized the entry of foreign mining investments and corporations into the Philippines. For more details see "Extracting Promises" (2003).

<sup>10</sup> Article 27 of Mexico's Constitution allows the federal government of the United Mexican States to create agrarian lands for the benefit of their citizens. With its constitutional inception in 1917, Mexico began the process to provide "campesinos" (farmers) a beneficiary interest to land owned by the government. Entitled under "La Ley Agraria" (the Agrarian Law), these government parcels, known as "ejidos", are recorded with the Registro Agrario Nacional (National Agrarian Registry) in Mexico City. The ejidatarios can live, farm, homestead and construct dwellings on the property but they do not own it. Under Agrarian Law, the ejidatarios can not sell, lease, subdivide, joint venture, contribute, mortgage or encumber the property. In essence, they have the use and benefit of the land, but they do not have title to it.

In 1992, recognizing the inherent value ejidos presented due to their geographic, border or coastal location, coupled with the development potential they created, the Mexican government enacted a Constitutional Amendment in order to "regularize" agrarian lands. Under the auspices of the Office of Agrarian Reform, the Mexican government could now provide a process of legal entitlement transforming the ejidal regimen to one of "regimen de domino pleno o privado" (regimen of full dominion or private land).

<sup>11</sup> Mexico is an exception to this, however, because constitutional changes have not yet come about as a result of the peace negotiations between the government and the EZLN.

<sup>12</sup> Alejandro Bendana, Paper presented during a workshop called "What kind of peace is being built?" which was sponsored by the International Centre for Development Research (IDRC), September 2002, Working Paper No. 7 of IDRC (Jan. 2003).

<sup>13</sup> Tom Griffiths, *A Failure of Accountability: Indigenous Peoples, human rights and development agency standards*, (United Kingdom: Forest Peoples' Program, 2003).

<sup>14</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in his Guatemala Mission, Document E/CN.4/2003/90/Add.2. p.6.

<sup>15</sup> Jenny Pearce, "Peace-building in the periphery: lessons from Central America", *Third World Quarterly* 20, no. 1: 56 and 66.

<sup>16</sup> Hugh Miall, Oliver Ramsbotham and Tom Woodhouse, *Contem-*

*porary Conflict Resolution. The Prevention, Management and Transformation of Deadly Conflicts*, (1999), 75-78.

<sup>17</sup> It was the campaign led by NGOs like the Third World Network, Council of Canadians, International Forum on Globalization, etc. which led to the defeat of the MAI and the temporary removal of the Investment Agreement of the Singapore Issues in the Doha Development Round of the WTO. While these are out of the negotiating table, however, there is a mad rash by the US and the EU to negotiate bilateral free trade agreements with developing countries, which contain elements of the MAI and the Investment Agreement.

<sup>18</sup> I was part of a mission organized by Rigoberta Menchu Tum, under the Indigenous Initiative for Peace, which visited Chiapas in February 1994, one month after the uprising broke out. In this trip I had a chance to talk to some indigenous leaders, like Margarito Ruiz, who organized "Indigenous Assembly for Plural Autonomy. This Assembly, which I attended, has as its main objective the creation of an indigenous agenda and how to get the Zapatistas to make this agenda an integral part of their platform. This was discussed in more detail by Margarito Ruiz Hernandez in "The Plural National Indigenous Assembly for Plural Autonomy" in *Indigenous Autonomy in Mexico*, (IWGIA Document No. 94), 24-52.

<sup>19</sup> Margarito Ruiz Hernandez, "The Plural National Indigenous Assembly for Plural Autonomy," in *Indigenous Autonomy in Mexico*, (Copenhagen: IWGIA Document Document 94, 2000), 24-52.

<sup>20</sup> *Mestizo* is a term that refers to those who are results of intermarriages between the Spaniards and the natives. *Colono* is a term for the white colonizers and their descendants who remained in Guatemala.

<sup>21</sup> *Ibid.*, 37.

<sup>22</sup> General Assembly Official Records, Fifty-fourth Session, Supplement No. 1 (A/54/1).

<sup>23</sup> "Executive Summary," MINUGUA Report to the Consultative Group Meeting for Guatemala, (7 May 2003), 3.

<sup>24</sup> Irish Peace Society, "Guatemala six years after the peace accords: A hostile environment for human rights advocates," <[www.peace.ie/](http://www.peace.ie/)>

<sup>25</sup> Personally I do not like the term "peace building enterprise" or peace industry. It sounds as if individuals and NGOs enter into peace work for material gains and personal gains. While this may be the case for some, generally peace workers are in it for the sheer commitment to the goals of peace and sustainable development.

<sup>26</sup> Working Paper No. 7 of the Peace building and Reconstruction Programme Initiative of the IDRC (2003).

<sup>27</sup> The Inter-Agency Support group is a formation of the various UN bodies, specialized agencies, funds, and programmes which have programs addressing indigenous peoples. It was created to provide more systematic support to the Permanent Forum on Indigenous Issues. Some of the members of this group are the Office of the High Commissioner on Human Rights, the UNDP, the International Fund for Agricultural

Development (IFAD), the World Bank, and the International Labor Organization (ILO), Permanent Forum Secretariat, among others.

<sup>28</sup> The UN bodies which sent their responses were the UNDP, UNFPA, FAO, ILO, UNITAR, IFAD, OHCHR and WHO. The report entitled "*Inter-agency Support Group on Indigenous Issues Report on Free Prior and Informed Consent*" was submitted late for the session so it did not have a document number yet. However, this was distributed at the conference room.

<sup>29</sup> "Baguio Declaration," of the 2<sup>nd</sup> *Asian Indigenous Women's Conference*. One of the official documents at the Third Session of the Permanent Forum on Indigenous Issues, New York, 16 March 2004, E/C.19/2004/CRP.1. <[www.tebtebba.org](http://www.tebtebba.org)>.

<sup>30</sup> Antoanella-Iulia Motoc and Tebtebba Foundation, *Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept*, paper came under the "Standard-Setting agenda item" at the 22<sup>nd</sup> Session of the Working Group on Indigenous Populations, Geneva, 8 July 2004, E/CN.4/Sub.2/AC.4/2004/4.

<sup>31</sup> See UN Document E/CN.4/2003/90/Add.3, 5 March 2003, Indigenous Issues: Mission to the Philippines. See also Tauli-Corpuz and Alcantara (2004), *Engaging the Special Rapporteur on Indigenous People*, Tebtebba, Baguio City, Philippines, p.197-231.

<sup>32</sup> Cordillera Peoples' Alliance, *Proceedings of the National Conference on Human Rights of Indigenous Peoples*, (Manila: Cordillera Peoples' Alliance, 2004), 61- 62.

<sup>33</sup> *Ibid.*, Tom Griffiths, p. 61-62.

<sup>34</sup> Alejandra Pero, "Report on the HURIST activity held in Kenya," (June 2004).

<sup>34</sup> The members of the Stocktaking Mission were Sarah Timpson, the former UNDP Resident Representative in the Philippines, Elsa Stamatopoulou, the Chief of the Secretariat of the Permanent Forum (she was in this on her personal capacity), and this author. Mr. Hafiz Pasha, the Head of the UNDP Regional Bureau for Asia Pacific (RBAP) was the one who took the lead in organizing this mission in close coordination with Mr. Jorgen Lissner the UNDP Resident Representative in Bangladesh.

<sup>34</sup> Griffiths., 35-44.

<sup>35</sup> Tebtebba Foundation, *Forest Peoples' Program, Extracting Promises*, (Baguio City: Tebtebba Foundation, Forest Peoples' Program, 2003).

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## CONCLUSION

### Challenges and Ways Forward

*Victoria Tauli-Corpuz*



The following conclusion provides a summary of the main challenges identified in the case studies and recommendations for ways forward.

#### **Summary of Challenges for peace building**

The cases presented in this collection provide a cross-section of the nature and roots of conflicts taking place in indigenous territories and the past and present efforts taken to address them. The main points that pose various challenges are as follows:

1. The forms of resistance indigenous peoples use are determined by government responses to their issues. They continue to use non-violent and violent conflict approaches to resist projects, programmes and policies which displace them from their territories and deprive them of control and access to their lands and resources. These approaches are also used to get the state and other non-state actors (e.g. corporations, paramilitary forces) to negotiate with them and to make them recognize and respect their rights.

2. Conflicts in indigenous territories are directly linked to the non-recognition of their basic rights and fundamental freedoms, social exclusion, and gross inequality and to the competing claims and paradigms between them and the state. The centrality of human rights in conflict resolution approaches is essential. It is not enough to end hostilities. The structural roots of the conflicts need to be

addressed so that just and sustainable peace can be achieved. The weaknesses of several Peace Accords, (e.g., Guatemala and Chittagong Hill Tracts) lie in the inability of governments to implement the most salient aspects which address the structural causes of the conflict.

3. The structural roots of conflicts in indigenous territories have both national, regional and global political, military and economic dimensions. NGOs in the North should spend some of their efforts to influence international opinion, to get the northern governments and northern-based corporations and multilateral bodies to stop their policies, programmes and projects that at times contribute to the emergence of conflicts. The struggle against global economic injustice has to be effectively addressed at its roots and where global policies are being crafted.

4. Indigenous peoples need to actively assert to the states, to social and peoples' movements, and to armed revolutionary groups, corporations, multilateral development and finance agencies, and other actors in peace and conflict resolution processes that their basic rights and interests should be integral in the peace and development platforms and agenda. The rich experiences of indigenous peoples in engaging with these various bodies and formations provide lessons which can enrich the process of putting human rights in the center of peace and development work. Policies of the most important intergovernmental institutions like the United Nations, the World Bank and the World Trade Organization, among others, have to be influenced to help in conflict prevention and peace building.

5. The partnerships established between indigenous peoples and civil society organizations, and other social and peoples' movements are crucial in achieving gains in conflict resolution and peace building processes. The most basic elements of partnership are mutual respect and mutual trust. Non-discrimination and equality are the basic principles for the establishment of partnerships. The attainment of peace is attributed to a host of interconnected factors, organizations and efforts. There are many valuable lessons learned in building such partnerships which should be shared more widely.

6. The United Nations system has contributed to the resolution of some conflicts in indigenous territories and is actively involved in post-conflict reconstruction programmes and activities. It needs to assess more deeply what has been done to make human rights central in conflict resolution and peace building. International standard setting activities for the recognition and respect of indigenous



peoples' rights should be hastened. The adoption of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Draft Declaration on the Rights of Indigenous People should be adopted by the Commission on Human Rights and the UN General Assembly as soon as possible.

7. Some governments, in close partnership with indigenous organizations, created spaces in the United Nations which address indigenous issues and concerns. Indigenous peoples are using such spaces, mechanisms and processes to report on developments in their communities, evolve international standards for the protection of their rights and raise the awareness of the general public on indigenous issues. Organized indigenous peoples' movements pushed states to enact legislation and amend constitutions to acknowledge the multi-cultural and multi-ethnic characteristic of the nation-state. More enabling laws have to be put in place to operationalize the recognition and respect for cultural diversity in most countries. More countries with indigenous peoples should follow the example of those which have amended their constitutions and laws to respect the rights of indigenous peoples.

## **Ways forward**

### **1. The need to do adequate context analysis**

Any programme for peace building and conflict resolution must be based on a good analysis of the context. This includes an understanding of which political and economic interests are benefiting from the conflict and therefore are least interested in its resolution. The different dimensions of the context, which include the local, regional and global dimensions and linkages as well as the economic, political and cultural aspects, need to be grasped. Who are the ones interested to maintain injustice and discrimination? How do we handle such interests? Good empirical research must be done for the formulation of appropriate and effective plans and strategies for conflict resolution.

Understanding the perspectives, traditions and cultures of indigenous communities in the zones of conflict should be integral in context analysis. Peace building should be a mass movement which includes the diverse multi-stakeholders. Learning lessons from previous experiences will be helpful so a peace builder should be able to facilitate exchange of views and experiences between key actors or gather more knowledge from previous experiences. Context analy-



sis is best done through broad consultations with various constituencies. If people feel that they are included even in the process of understanding the problem, mobilizing them for action would not be very difficult.

## **2. The challenge of creating, defending or reclaiming diverse spaces and engendering peace processes**

Indigenous peoples went through many experiences of creating or occupying spaces which were denied them by the colonizers and states. Carving out spaces can be done at various levels. Women who have been deprived of their place to have a say in traditional leadership bodies and in peace building processes are now claiming their own space and this should be fully supported. Indigenous peoples and women should be afforded places at the negotiating table.

Their capacity to assert this right has to be fully enhanced. Traditional spaces for leadership which can be made more women-friendly should be maintained and not be undermined by modern spaces or systems. It is important for indigenous peoples to know what the available spaces and mechanisms are at the UN system which they can use. Building their capacity on what these are and how to use them should be part of the strategy. Reclaiming traditional territories is part of all this. In some countries indigenous peoples are easily intimidated by the powers that be. This is why human rights training is very much needed as this is a crucial step in empowerment.

## **3. Promoting and respecting diversity and pluralism**

How do we promote diversity and pluralism in a world which is increasingly becoming harmonized into the values and systems of a neoliberal globalized world order? Sustaining traditional systems and indigenous worldviews or cosmologies in this kind of world is very difficult. There is not a shortage of good practices in terms of how indigenous peoples reclaimed their traditional lands, practiced their customary land tenure systems and land laws. Documentation of these experience will make it easier to share lessons with others. More indigenous peoples should be trained to be able to demand and lobby for laws which will recognize their diversity and their right to self-determination. Their participation in campaigns and programmes to fight against global rules which discriminate

against them should further be supported.

Legal pluralism is the logical outcome of the acknowledgement of the multiethnic and multicultural nature of most countries. What are the most effective ways of restructuring legal, economic and cultural systems, which were shaped in the image of the colonizers, to become more relevant and responsive for indigenous peoples and the other sectors of society who are likewise marginalized? What skills and capacities should indigenous peoples develop further to effectively engage and challenge institutions who are the main bearers of the dominant development paradigms?

#### **4. Putting human rights at the center of peace building and conflict resolution**

As this does not take place automatically, there needs to be a more active exchange of views and experiences on what this really means and how we should do it. Training workshops on the how to use a human rights-based approach in peace building should be undertaken for indigenous peoples, support groups, governmental and intergovernmental bodies. Increased thinking and strategizing on how to implement this is needed. The most over-used jargon nowadays is the “rights-based” approach. How do we operationalize such approach? The HURIST programme of UNDP and OHCHR, especially with its new indigenous component, should be promoted and implemented in many countries. The recent experiences of HURIST workshops in Ecuador and Kenya could be replicated in other countries. More active networking and collaboration between human rights organizations, indigenous organizations and NGOs working on conflict resolution and peace building should be done from the local up to the international level.

#### **5. Helping develop “life plans”/projects or alternative development plans of indigenous peoples**

One aspect of the conflicting paradigms between states and indigenous peoples is on the issue of development. Indigenous peoples in several countries are still formulating what alternative development is for them. However, there are those who are already implementing aspects of their “life plans.” The indigenous peoples and the Afro-descendants prefer to use the term “life plans” as this is not trapped in the narrow framework of the dominant development paradigm. It is more attuned to the indigenous peoples’ world views and practices in pursuing their own life plans. Exchanges between

indigenous peoples on how their life plans are being shaped and asserted should be done. The Permanent Forum on Indigenous Issues which includes economic and social development and environment in its mandated areas should spearhead discussions, research and roundtable dialogues on this topic. The recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people on this issue should be revisited and used.

## **6. Addressing the structural roots of violent conflicts and enhancing partnerships of indigenous peoples with NGOs, governments and the United Nations System**

To be effective in challenging the assumptions, injustices and inequality underpinning the prevailing world order, the indigenous peoples have to enhance partnership with NGOs, civil society actors, government and the nation-state. Bringing on board the various sectors of society to question the neoliberal world order is a big step in addressing the structural causes of violent conflicts. The complexity of the conflicts in indigenous territories needs a strong collaboration and coordinated actions between various peace builders. How to develop partnerships which will not disintegrate easily due to differences in ideology, competition for dwindling resources is not an easy task. However, if indigenous peoples develop criteria for selecting partners based on mutual trust and respect then this relationship can go a very long way.

Northern-based partners should be made more conscious of their responsibility to engage more effectively and on a sustained basis with the donor bodies and multilateral organizations like the World Bank and other regional banks, the International Monetary Fund, and the World Trade Organization, among others, to review their programmes and policies and make these more rights-based in their framework and approach. As most indigenous organizations are working more at the local level their capacities to influence international bodies are limited. Partnerships are therefore crucial to ensure that needed changes will come about.

## **7. Challenging movements for change to genuinely and effectively address the indigenous question**

The many lessons learned from the experiences of indigenous peoples in getting their issues to be addressed by peoples' or social

movements should be shared more widely. Active dialogues with these groups should be facilitated. Indigenous individuals who are members of these movements should play lead roles in influencing the thinking and strategies within. These movements should understand fully what respect for the rights of indigenous peoples to self-determination means. Recognizing and respecting the integrity of and particularity of the indigenous peoples' struggles is part of this.

## List of Acronyms

<b>AANOP</b>	- <i>Asociacion de Ayllus del Norte de Potosi/</i> Ayllus Association of Potosi's North
<b>ABRAE</b>	- <i>Areas Bajo Regimen de Administracion Especial</i>
<b>ACOBOL</b>	- <i>Asociacion de Concejalas de Bolivia/</i> Female Councilors' Association of Bolivia
<b>ACS -</b>	Assembly of Civil Society
<b>AIDSESP</b>	- <i>Asociacion Interetnica para el Desarrollo de la Selva Peruana</i>
<b>AIPE</b>	- <i>Asociacion de Instituciones de Promocion y Educacion/</i> Institutions for Promotion and Education Association
<b>AIWN</b>	- Asian Indigenous Women's Network
<b>ALMG</b>	- Academy of Maya Languages of Guatemala
<b>ANAP</b>	- <i>Federacion Regional del Pueblo Ashaninka del Valle de Rio Pichis</i>
<b>AMIGRANSA</b>	- <i>Sociedad de Amigos en Defensa de la Gran Sabana</i>
<b>ANAPQUI</b>	- <i>Asociacion Nacional de Productores de Quinua/</i> Quinoa Producers' National Association
<b>ANIPA</b>	- <i>Nacional Indigena Plural por la Autonomia/</i> Plural National Indigenous Assembly for Autonomy
<b>AP's</b>	- <i>Asociaciones de Productores/</i> Producers' Associations
<b>APCOB</b>	- <i>Apoyo para el Campesino- Indigena del Oriente Boliviano/</i> Support for the Peasant Farmer- Native of the Bolivian East
<b>APG</b>	- <i>Asamblea de Pueblo Guarani/</i> Guarani Peoples Assembly
<b>ATI</b>	- <i>Asociacion de Trabajo Interdisciplinario/</i> Association for Interdisciplinary Work
<b>AUC</b>	- <i>Autodefensas Unidas de Colombia/</i> United Self-Defense Forces of Colombia
<b>BOLICERT</b>	- <i>Boliviana de Certificacion/</i> Certification of Bolivia
<b>BNP</b>	- Bangladesh National Party
<b>BRAC</b>	- Bangladesh Rural Advancement Committee
<b>CAAAP</b>	- <i>Centro Amazonico de Antropologia y Aplicacion Practica</i>
<b>CDES</b>	- Centre for Economic and Social Rights
<b>CDI</b>	- <i>Comision Nacional para el Desarrollo de los Pueblos Indigenas/</i> Development of Indigenous Peoples
<b>CEDIA</b>	- <i>Centro para el Desarrollo del Indigena Amazonico</i>

<b>CEH</b>	- Commission for Historical Clarification
<b>CEJIS</b>	- <i>Centro de Estudios Juridicos Indigenas y Sociales/</i> Center for Indigenous and Social Legal Studies
<b>CEME</b>	- <i>Central de Mujeres de Eiti/</i> Eiti Women Head Office
<b>CENDES</b>	- <i>Centro de Estudios del Desarrollo</i>
<b>CETA</b>	- <i>Centro de Estudios Teologicos de la Amazonia</i>
<b>CHT</b>	- Chittagong Hill Tracts
<b>CHTDF</b>	- Chittagong Hill Tracts Development Fund
<b>CIDEBENI</b>	- <i>Centro de Investigacion del Desarrollo de Beni/</i> Center for Development Research of Beni
<b>CIDOB</b>	- <i>Confederacion Indigena del Oriente, Chaco y Amazonia</i> <i>de Bolivia/</i> Indigenous Federation of the Bolivian East, Chaco and Amazon
<b>CIOEC</b>	- <i>Central Industrial de Organizaciones Economicas</i> <i>Campesinas/</i> Industrial Head office of Economic Peasant Farmers Organizations
<b>CIMCI</b>	- <i>Central Intercomunal de Mujeres de la Capitania del</i> <i>Izosog/</i> Izosog Women Inter-community Head Office
<b>CINEP</b>	- <i>Centro de Investigacion y Educacion Popular/</i> Center for Grassroots Research and Education
<b>CIP</b>	- <i>Congreso Indio Permanente/</i> Permanent Indian Congress
<b>CIPA</b>	- <i>Centro de Investigacion y Promocion Amazonica</i>
<b>CIPCA</b>	- <i>Centro de Investigacion y Promocion del</i> <i>Campesinado/</i> Peasant Farmers Investigation and Promotion Center
<b>CIRABO</b>	- <i>Central Indigena de la Region Amazonica de Bolivia/</i> Bolivian Amazon Native Head Office
<b>CIRABO</b>	- <i>Coordinadora Indigena de la Region Amazonica de</i> <i>Bolivia/</i> Bolivian Amazon Indigenous Coordinating Committee
<b>CIT</b>	- <i>Confederacion Indigena Tayrona/</i> Tayrona Indigenous Confederation
<b>CITES</b>	- Convention on International Trade in Endangered Species of wild Fauna and Flora
<b>CMIB</b>	- <i>Central de Mujeres Indigenas del Beni/</i> Beni Native Women Head Office
<b>CNE</b>	- National Electoral Convention of Indigenous Peoples
<b>CNI</b>	- National Indigenous Congress
<b>CNPI</b>	- <i>Consejo Nacional de Pueblos Indigenas/</i> National Council of Indigenous Peoples
<b>COAJC</b>	- <i>Consejo Occidental de Ayllus de Jach'a Carangas/</i>

- Ayllus West Council of Jach'a Carangas
- COB** - *Central Obrera de Bolivia*/ Labour Head Office of Bolivia
- COCOPA** - Commission for Reconciliation and Pacification
- CODEMPE** - Council of Nationalities and Peoples of Ecuador
- CODHES** - *Consultoria para los Derechos Humanos y Desplazamiento*
- COICA** - *Coordinadora Indigena de la Region Amazonica de Bolivia*/ Amazon Basin Natives Coordinating Committee
- COMG** - Council of Mayan Organizations of Guatemala
- CONAP** - *Confederacion de Nacionalidades Amazonicas del Peru*
- COPMAGUA** - Coordination of Organizations of the Mayan People of Guatemala
- CORACA** - *Corporacion Agropecuaria Campesina*/ Peasant Farmers Agricultural Corporation
- CPE** - *Constitucion Politica del Estado*/State's Political Constitution
- CPESC** - *Coordinadora de los Pueblos Etnicos de Santa Cruz*/ Ethnic Towns of Santa Cruz Head Office
- CPESC** - *Central de Pueblos Etnicos de Santa Cruz*/ Santa Cruz Ethnic Peoples Head Office
- CPIB** - *Central de Pueblos Indigenas del Beni*/ Beni Native Peoples Head Office
- CPP** - Communit Party of the Philippines
- CRIC** - Cauca Regional Indigenous Council
- CRIT** - *Consejo Regional Indigena del Tolima*/ Tolima Regional Indigenous Council
- CSJ** - *Corte Suprema de Justicia*
- CSUTCB** - *Confederacion Sindical Unica de Trabajadores Campesinos de Bolivia*/ Sole Union Federation of Rural Workers of Bolivia
- CTCB** - *Confederacion Sindical Unica de Trabajadores Colonizadores de Bolivia*/ Federation of Settlers Workers of Bolivia
- CVG** - Venezuelan Corporation of Guayana
- DUSAKAW** - Indigenous Health Care Providing Enterprise in Northern Colombia
- DC** - Deputy Commissioners
- ECLAC** - Economic Commission for Latin America and the Caribbean
- EDELCA** - *Electrificacion del Caroni*
- ELN** - *Ejercito de Liberacion Nacional*/National Liberation

	Army
<b>EPL</b>	- <i>Ejercito Popular de Liberacion</i> /Peoples Liberation army
<b>ERPB</b>	- <i>Estrategia de Reduccion de la Pobreza en Bolivia</i> / Strategy for Poverty Reduction in Bolivia
<b>ESAF</b>	- Enhanced Structural Adjustment Facility
<b>ESMAP</b>	- Energy Management Assistance Program
<b>ETIS</b>	- <i>Entidades Territoriales Indigenas</i> /Indigenous Territorial Entities
<b>EZLN</b>	- <i>Ejercito Zapatista de Liberacion Nacional</i> / Zapatista National Liberation Army
<b>FACOPI</b>	- <i>Federacion de Ayllus y Comunidades Originarias de la Provincia Ingavi</i> / Ayllus and Communities of Origin Federation of the Ingavi Province
<b>FARC</b>	- <i>Fuerzas Armadas Revolucionarias de Colombia</i> / Revolutionary Armed Forces of Columbia
<b>FASOR</b>	- <i>Federacion de Ayllus de Oruro</i> / Oruro Ayllus Federation
<b>FDA</b>	- Amazon Defence Front
<b>FECONACO</b>	- <i>Federacion de Comunidades Nativas de Rio Corrientes</i>
<b>FENAMAD</b>	- <i>Federacion Nativa del Rio Madre de Dios y Afluentes</i>
<b>FEPP</b>	- Ecuadorian Fund for Peoples' Progress
<b>FFLA</b>	- Latin American Future foundation
<b>FIB</b>	- Indigenous Federation of the State of Bolivar
<b>FMI</b>	- <i>Fondo Monetario Internacional</i> /International Monetary Fund
<b>FNM-BS</b>	- <i>Federacion Nacional de Mujeres Campesinas de Bolivia-Bartolina Sisa</i> / National federation of Rural women of Bolivia- Bartolina Sisa
<b>FPIC</b>	- Free, Prior and Informed Consent
<b>GEF</b>	- Global Environment Facility
<b>GN</b>	- National Guard
<b>HDC</b>	- Hill District Councils
<b>HIPC</b>	- Initiative for Heavily Indebted Poor Countries
<b>HURIST</b>	- Human Rights Strengthening Programme
<b>IDG</b>	- <i>Indice de Desarrollo de Genero</i> / Gender Development Rate
<b>IDH</b>	- <i>Indice de Desarrollo Humano</i> / Human Development Rate
<b>IDRC</b>	- International Development Research Centre
<b>IERAC</b>	- <i>Instituto Nacional de Reforma Agraria y Colonizacion</i> / National Institute of Agrarian Reform and Settlement
<b>IIAP</b>	- <i>Instituto de Investigaciones de la Amazonia Peruana</i>



<b>ILO</b>	- International Labor Organization
<b>ILSA</b>	- <i>Instituto Latinoamericano de Servicios Legales Alternativos/ Latin American Alternate Legal Services Institute</i>
<b>ILV</b>	- <i>Instituto Linguistico de Verano/ Summer Linguistic Institute</i>
<b>IPGREN</b>	- Indigenous Peoples' Global Research and Education Network
<b>INCORA</b>	- <i>Instituto Colombiano de la Reforma Agrarian/ Colombian Land Reform Institute</i>
<b>INDA</b>	- <i>Instituto de Desarrollo Agrarion/ Agrarian Development Institute</i>
<b>INDICEP</b>	- <i>Instituto del Desarrollo Campesino y Educacion Popular/ Institute for Rural Developmet and Popular Education</i>
<b>INEGI</b>	- National Institute of Statistics, Geography and Information
<b>INI</b>	- <i>Instituto Nacional Indigenista,/ National Indigenous Institute</i>
<b>INPARQUES</b>	- National Institute of Parks
<b>INRA</b>	- <i>Instituto Nacional de Reforma Agraria/ National Institute for Agrarian Reform</i>
<b>IPD's</b>	- <i>Instituciones Privadas de Desarrollo/ Private Development Institutions</i>
<b>IPTK</b>	- <i>Instituto Politecnico Tomas Katari/ Technical Institute Tomas Katari</i>
<b>IWGIA</b>	- International Work Group for Indigenous Affairs
<b>LMA</b>	- <i>Ley del Medio Ambiente/ Law of Environment</i>
<b>LOM</b>	- <i>Ley Organica de Municipalidades/ Organic Law of Municipalities</i>
<b>LOOT</b>	- Law for the Regulation of the Territory
<b>LPP</b>	- <i>Ley de Participacion Popular/ Law of Popular Participation</i>
<b>LRE</b>	- <i>Ley de Reforma Educativa/ Education Reform Law</i>
<b>MARNR</b>	- Ministry of the Environment and the Natural Renewable Resources
<b>MAI</b>	- Multilateral Investment Agreement
<b>MID</b>	- <i>Marco Integral de Desarrollo/ Integral Development Frame</i>
<b>MILF</b>	- Moro Islamic Liberation Front
<b>MNLF</b>	- Moro National Liberation Front
<b>NAFTA</b>	- North American Free Trade Agreement
<b>NBI</b>	- <i>Necesidades Basicas Insatisfechas/ Basic Unsatisfied</i>

	Needs
<b>NGO</b>	- Nongovernmental Organization
<b>NPA/NDF/ CPP</b>	- New Peoples Army/ National Democratic Front/ Communist Party of the Philippines
<b>NPE</b>	- <i>Nueva Politica Economica</i> / New Economic Policy
<b>OCEI</b>	- Central Office of Statistics and Information
<b>OEB's</b>	- <i>Organizaciones Economicas de Base</i> / Fundamental Economic Organizations
<b>OEPC</b>	- Occidental Exploration and Production Company
<b>OIA</b>	- <i>Organizacion Indigena de Antioquia</i> / Indigenous Organization of Antioquia
<b>OIK</b>	- <i>Organizacion Indigena Kankuamu</i> / Kankuamu Indigenous Organization
<b>OIM</b>	- <i>Organizacion Internacional para las Migraciones</i> / Organization of International Migrations
<b>OIMM</b>	- <i>Organizacion Intercommunal de Mujeres Movimas</i>
<b>OISE</b>	- Secoya Indigenous Organization of Ecuador
<b>OLADE</b>	- <i>Organizacion Latino-Americaa de Energia</i> / Energy Organization of Latin Americans
<b>OMIM</b>	- <i>Organizacion de Mujeres Indigenas Mosenen</i> / Mosenen Native Women Organization
<b>OMIS</b>	- <i>Organizacion de Mujeres Indigenas Sirionos</i> / Sirono Native Women Organization
<b>ONIC</b>	- <i>Organizacion Nacional Indigena de Colombia</i> / Na- tional Indigenous Organization of Colombia
<b>OPEB</b>	- <i>Organizaciones de Productores Ecologicos de Bolivia</i> / Organization of Ecological Producers of Bolivia
<b>OPS</b>	- <i>Organizacion Panamericana de la Salud</i> / Pan-Ameri- can Health Organization
<b>OSC</b>	- <i>Organizaciones de la Sociedad Civil</i> / Civil Society Organizations
<b>ORCAWE</b>	- <i>Organizacion de Comunidades Autoctonas Weenhayek</i> / Weenhayek Local Communities Organization
<b>ORCAWETA</b>	- <i>Organizacion de Capitanias Weenhayek- Tapiete</i> / Organization of Captaincies Weenhayek
<b>PAN</b>	- <i>Plan de Accion Nacional</i> / National Action Plan
<b>PEA</b>	- <i>Poblacion Economicamente Activa</i> / Economically Active Population
<b>PETT</b>	- Special Program for Land Titles
<b>PCJSS</b>	- Parbatya Chhattagram Jana Samhati Samiti
<b>PGDES</b>	- <i>Plan General de Desarrollo Economico y Social</i> / General Plan of Economic and Social Development

<b>PGN</b>	- <i>Presupuesto General de la Nacion/</i> National General Budget
<b>PONSACS</b>	- Programme of Non-Violent Sanctions and Survivals
<b>PRD</b>	- Party of the Democratic Revolution
<b>PRI</b>	- Institutional Electoral Convention
<b>PROVEA</b>	- <i>Programa Venezolano de Educacion/Accion en</i> Derechos Humanos
<b>REDEPAZ</b>	- <i>Red Nacional de Iniciativas Contra la Guerra y por la Paz/</i> National Network of Initiatives Against War and for Peace
<b>RC</b>	- Regional Councils
<b>SANP</b>	- South Africa National Parks
<b>SCAV</b>	- <i>Sociedad Conservacionista Audubon de Venezuela</i>
<b>SEDES</b>	- <i>Servicios Departamentales de Salud/</i> Department of Health Services
<b>SEMTA</b>	- <i>Centro de Servicios Multiples de Tecnologias Apropriadas/</i> Center for Multiple Services on Appropriate Technologies
<b>SOBOMETRA</b>	- <i>Sociedad Boliviana de Medicos Tradicionales/</i> Bolivia Society of Traditional Doctors
<b>SPCPD</b>	- Southern Philippines Council for Peace and Development
<b>SZOPAD</b>	- Special Zone for Peace and Development
<b>TCO's</b>	- <i>Tierras Comunitarias de Origen/</i> Community Lands of Origin
<b>TGN</b>	- <i>Tesoro General de la Nacion/</i> National General Treasury
<b>TSJ</b>	- Supreme Tribunal of Justice
<b>UNCED</b>	- United Nations Conference on Environment and Development
<b>UNDP</b>	- United Nations Development Programme
<b>UNHCR</b>	- United Nations High Commissioner for Refugees
<b>UNITAS</b>	- <i>Union Nacional de Instituciones de Trabajo de Accion Social/</i> National Union of Institutions for Social Action Work
<b>UNOPS</b>	- United Nations Office for Project Services
<b>URNG</b>	- <i>Unidad Revolucionaria Nacional Guatemateca/</i> Guatemalan National Revolutionary Unity
<b>USAID</b>	- US Agency for Internatioal Development
<b>WIMSA</b>	- Working Group of Indigenous Minorities in South-ern Africa