

CONTENTS

REPORT FROM THE FORUM CONFERENCE 2003

Indigenous Rights: Focus on the UN system. Cases from Asia

PREFACE 2

INDIGENOUS RIGHTS: FOCUS ON THE UN SYSTEM

Mr. Rodolfo Stavenhagen, UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples: *“Indigenous human rights in international perspective”* 3

Mr. Martin Scheinin, member of the Human Rights Committee, established under the International Covenant on Civil and Political Rights: *“Economic sustainability and development as an element of indigenous peoples rights under the International Covenant on Civil and Political Rights”* 9

Mr. Ole Henrik Magga, Leader of UN Permanent Forum on Indigenous Issues: *“The Permanent Forum and the UN system”* 14

INDIGENOUS RIGHTS: CASES FROM ASIA

Ms. Chandra Roy, Jumma Peoples Network: *“Impact of Development in the Chittagong Hill Tracts: Ways forward”* 21

Ms. Wiveca Stegeborn: *“Understanding Human Rights: Barriers in understanding and communication between the Wanniyala-Aetto of Sri Lanka and the international community”* 29

FORUM UPDATE

Mr. Magne Ove Varsi, Resource Centre for Rights of Indigenous Peoples: *“Challenges in disseminating information on indigenous rights”* 35

Mr. Brian Phillips, Canadian International Development Agency (CIDA): *“CIDA-Towards Partnership with Indigenous Peoples”* 37

Mr. Georges Midre, Maya Competence Building: *“Report from Guatemala”* 41

Ms. Sidsel Saugestad: Forum for Development Cooperation with Indigenous Peoples: *“Land Claims in Southern Africa”* 42

Mr. Geir Tommy Pedersen, Saami Council: *“Indigenous People to Indigenous People Cooperation”* 46

PROGRAM 48

INTERVIEWS

Interview with Chandra Roy 50

Interview with Rodolfo Stavenhagen 52

Interview with Brian Phillips 54

PREFACE

The fourth Forum for Development Cooperation with Indigenous Peoples conference was held at the University of Tromsø, October 9-10, 2003. The conference gathered researchers, development workers, and representatives from Sámi institutions. In addition, the first students of The University of Tromsø's Masters Programme in Indigenous Studies attended, as well as others with an interest in the field. The title of the conference was *"Indigenous Rights: Focus on the UN system. Cases from Asia"*.

The Rector of the University of Tromsø, Mr. Jarle Aarbakke, opened the conference together with the chairman of the board for the Centre for Sámi Studies, Mr. Bård A. Berg, and the chairperson of the board for the Forum for Development Cooperation with Indigenous Peoples, Ms. Sissel Saugestad. Mr. Jarle Aarbakke, welcomed all participants to the conference and talked about how important the study of indigenous issues are to the University of Tromsø, and particularly emphasized the new Masters Programme in Indigenous Studies. Mr. Bård A. Berg used the opportunity to focus on the subjects of The Centre for Sámi Studies and Ms. Sissel Saugestad, talked about the Forum's responsibilities and tasks.

The Forum 2003 conference had three sessions: 1) Indigenous Rights: Focus on the UN system 2) Indigenous Rights: Cases from Asia 3) Forum Update. The first session's speakers, Mr. Rodolfo Stavenhagen, Mr. Martin Sheinin and Mr. Ole Henrik Magga, focused on Indigenous Rights within the UN system and how these rights have been addressed, which helped conference participants keep track of the complicated systems within UN bodies.

The second session focused on Indigenous Rights in Asia. The two speakers of this session, Ms. Chandra Roy and Ms. Wiveca Stegeborn, held passionate speeches about the situation in Bangladesh and Sri Lanka.

The third session was a Forum Update where representatives involved in indigenous issues update the conference on recent news and experiences. The five speakers in this session focused on indigenous people to indigenous people cooperation, partnership with indigenous peoples and the challenges of disseminating information on indigenous rights, and indigenous issues in Guatemala and Southern Africa.

This report includes summaries from all of the presentations and speeches presented at the conference. In addition, we have included interviews with Mr. Rodolfo Stavenhagen, Ms. Chandra Roy and Mr. Brian Phillips, which were conducted during the conference. You can also find these on the Forum for Development Cooperation with Indigenous Peoples homepages:
www.sami.uit.no/forum

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INDIGENOUS RIGHTS: FOCUS ON THE UN SYSTEM

Mr. Rodolfo Stavenhagen

Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples, UN

INDIGENOUS HUMAN RIGHTS IN INTERNATIONAL PERSPECTIVE

In 2001, the Human Rights Commission in the UN decided that professor Rodolfo Stavenhagen from Mexico should be the first Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples. The Special Rapporteur's mandate is to safeguard the indigenous peoples' human rights, and to be a complementary to the Working Group on Indigenous Populations (WGIP) and the Permanent Forum on Indigenous Issues in order to strengthen the mechanisms for protection of the human rights of indigenous peoples.

Rodolfo Stavenhagen was invited to the Forum conference 2003 to talk about "Indigenous human rights in international perspective", with special emphasis on the UN system. His presentation was divided into two parts. First, he gave a general introduction into how human rights of indigenous peoples have been developing within the framework of the international system, particularly within the UN system. Second, he gave a concise presentation of his own mandate as a Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples in the UN Commission on Human Rights.

Concern within the UN system for the issues of human rights of indigenous peoples is a recent development, which began about twenty years ago. According to Mr. Stavenhagen, during the last twenty years enormous progress has been made. This progress is due to the very active articulation and participation of indigenous peoples from all over the world and to the response of various member states who have agreed to set up a new framework within the UN. It is through this framework that indigenous human rights, specifically, are now dealt with as human rights, generally.

Mr. Stavenhagen pointed out that the above-mentioned progress did not just happen out of the blue. It has been long awaited- the first attempts at self-determination by indigenous people occurred at the Versailles Peace Conference in 1919 at the end of the First World War, where the issue of self-determination of nations was a central question. A delegation of North American Indians traveled to Versailles; taking seriously President Wilson's commitment to self-determination for nations, the North American Indians inquired whether indigenous peoples should also be accorded the right to self-determination. Nobody listened to the North American Indians at that time, and they returned back home rather disappointed.

During the years after the First World War, there was much talk about the rights of ethnic minorities. But the "minority protection system" never really got off the ground, and was absolutely destroyed by the outbreak of the Second World War. Yet even during the period following the First

World War when there had been discussions about the protection of minorities, nobody had considered indigenous peoples as a special case.

The UN was founded in 1945, after the end of the Second World War. It was considered necessary to develop a new international system that could do something about the violation of human rights. Human rights violations had been at the root of the Second World War, and because of the terrible genocides and destructions that took place during that period, it was considered necessary to do something about these infringements. But the approach that was dominant in the UN system at this time was the classical approach of universal, individual human rights, with no distinction regarding any kind of ethnic, linguistic, religious or racial differences—an idea that was developed mainly by the western countries in the UN. The belief was that if this new international system were able to develop an effective system of protection that guaranteed the rights of every individual human being in the world on a basis on equality, regardless of gender, of nationality, religion, race, ethnicity etc., then this system would be universally sufficient to protect everybody. In addition, it was believed that if this universal system were able to function, then the differences regarding ethnic groups and minorities would probably disappear and the violations of human rights pertaining to those groups would no longer be an important issue.

The UN Commission on Human Rights was created in 1946, and the UN adopted The Universal Declaration of Human Rights in 1948. Two international covenants of human rights followed, which included: The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political rights. After these covenants were adopted in 1966, they became the basic building blocks of the international charter of human rights protection. The covenants are written in terms of individual rights, but Article 27 of the International Covenant of Civil and Political rights speaks about members of minority groups and the rights of those group members.

The Commission on Human Rights has one Sub-Commission, also created in 1946: The Sub-Commission on the Promotion and Protection of Human Rights. Within the Sub-Commission, there was some debate about minority issues, and reports were published in the 1960s and 1970s regarding those issues. Yet within the framework of the UN, there had always been people saying—“We should also look at the situation of indigenous peoples”—which is how the debate began again in the UN. In one study on Racial Discrimination, a suggestion was made that the UN should also be engaged in a study on discrimination against indigenous peoples. The International Labour Organisation (ILO), back in 1953, had already published a major study on the situation of indigenous peoples, particularly those in colonial countries.

Then came the 1960s, the era of decolonization. New covenants were adopted by the UN, which spoke about the rights of all peoples to self-determination. Within the framework of the principle of self-determination, the UN progressed in the era of decolonization, when the major European powers granted political independence to their colonies in Africa, Asia, the Pacific, the Caribbean, etc. The question remained: if European powers can grant independence for their colonies, does that not also concern people who had been historically colonized, but who happened to live within the borders and territories of independence states? What the UN had been saying all along is that the

right of peoples to self-determination is not really a universal right, but is a right that refers to a particular historical situation, one of colonization and decolonization.

More developments occurred in the late 1970's when a number of NGO's organized meetings about indigenous peoples, where, for the first time representatives of indigenous peoples were able to come to Geneva and state their case. This was a big media event because indigenous peoples had hardly appeared within the framework of the UN since the Versailles Peace Conference of 1919. The media began to focus attention on this new development, posing the question: "What is the UN going to do about peoples who say 'We also have the right to recognition and protection of human rights.'"

The Sub-Commission on the Promotion and Protection of Human Rights decided to conduct a study on the situation of indigenous peoples, which began in the 1970s, and was finally published in the middle of the 1980s. It was an extremely important study because it contained a working definition of indigenous peoples with suggestions as to what specific protection indigenous peoples should have above and beyond the existing universal individual human rights protections. The Sub-Commission on the Promotion and Protection of Human Rights then set up a Working Group on Indigenous Populations (WGIP), which was approved by the Economic and Social Council. This working group began to meet in 1982 and Mr. Stavenhagen attended the meetings as an observer.

In 1982, there were approximately twenty people in the Working Group on Indigenous Populations. Last year, over one thousand people participated in the sessions of the Working Group. The Working Group's sessions have become a major event and they are unique in the annals of the UN. Interested parties actually can come to the UN and speak their mind in a public hearing, but it is only recognized NGO's who have consultative status and are registered at the UN that are allowed to attend the sessions and speak. However, they don't have a vote because only member states can vote in the UN.

The Sub-Commission on the Promotion and Protection of Human Rights is not a state body, but a body of independent experts. Yet their parent body, the Commission of Human Rights, is a body of government representatives. The independent experts in the Sub-Commission have a voice and they can vote in the Sub-Commission. The peoples who come to these meetings, such as representatives of minorities and representatives of indigenous peoples, can only state their case- they don't have a vote.

Mr. Stavenhagen gave the conference audience an overview of the status of the Draft Declaration on the Rights of Indigenous Peoples. The Sub-Commission on the Promotion and Protection of Human Rights adopted the Draft Declaration on the Rights of Indigenous Peoples in 1994. The Draft Declaration was passed on to the Commission on Human Rights. They were supposed to adopt it and pass it on to the General Assembly, which would eventually adopt this declaration, just as they had adopted The Universal Declaration of Human Rights back in 1948. It was hoped that all of this would be have occurred by the year 2004, which is the end of The International Decade of the World's Indigenous Peoples. Mr. Stavenhagen regrets that this, unfortunately, is not going to occur. The Draft Declaration is now "stuck" in the Commission on Human Rights, and is not yet an

international, legal document, because it has not been approved by the member states in the UN. It remains a working document to be discussed, changed and modified. This is a problem because indigenous representatives have put a lot of effort into the drafting of the Draft Declaration at the meetings. The Draft Declaration is a very important document to indigenous peoples because it really puts forth human rights that they believe should be recognized by the international system.

During The International Decade of the World's Indigenous Peoples, many activities have taken place in the UN. Prior to the Decade, the International Labour Organization (ILO), adopted in 1989 a new convention on indigenous and tribal peoples. This convention, known as Convention 169, is a legal document, a treaty, which seventeen countries have ratified and the first country to ratify Convention 169 in 1989 was, in fact, Norway. According to international legal standards on international treaties, the treaty is to have the same status as constitutional law and usually is considered to be above national law itself. So if there is a national law, which enters into contradiction with an international treaty that has been ratified by a particular nation, that nation is supposed to adopt and adjust its national law to what is written in the international treaty. Many indigenous peoples around the world have not been satisfied with the implementation of Convention 169 and have complained about their dissatisfactions to the ILO.

Within the UN itself, two new developments have taken place just within the last three years. The first was the establishment of the UN Permanent Forum on Indigenous Issues. This Permanent Forum was approved by the Economic and Social Council, and met for the first time in New York in 2002. The Permanent Forum is a group of experts who report directly to the Economic and Social Council. They are involved in issues of interest to indigenous peoples, including the issues concerning development, the environment, health, social services, and human rights. The chair of the Permanent Forum is Mr. Ole Henrik Magga

Some states have suggested that because there is now such a Permanent Forum, why should there continue to be a Working Group on Indigenous Populations within the structure of the UN Human Rights mechanisms? But indigenous peoples from all over the world believe that this is not convenient; the Working Group on Indigenous Populations has a specific task, which is looking into human rights issues, and the Permanent Forum has other tasks which complement those of the Working Group. Therefore, there is no overlap and no duplication, but that these two groups serve as complementarities to one another within the complex system of the UN.

The second development within the last three years occurred in 2001. It was the establishment within the Commission on Human Rights of a mandate regarding the human rights and fundamental freedom of indigenous peoples. Mr. Stavenhagen is the first mandate holder, the first Rapporteur for these issues. His mandate is to gather, request, receive and exchange information and communications from all relevant sources on the violations of indigenous peoples human rights and fundamental freedoms. Relevant sources include governments, indigenous peoples themselves, their communities and their organizations. He also has a mandate to formulate recommendations and proposals on appropriate measures and activities as to the prevention of violations of the human rights and fundamental freedom of indigenous peoples.

One of the activities of a Special Rapporteur is to visit countries, which usually implies organizing an official mission in coordination with the foreign ministry or the representative of the foreign ministry in Geneva. After organizing the official mission it is then organized with local NGO's and indigenous peoples organizations. Mr. Stavenhagen has carried out four official missions to the following countries: The Philippines, Guatemala, Chile and Mexico. At the invitation of indigenous peoples organizations and of academic institutions, he has also carried out "semi" official missions to Botswana, Japan, Canada and Norway.

A Special Rapporteur also has to interpret his mandate and establish a profile of what the mandate actually means in terms of the activities of a Special Rapporteur. He also has to create a framework - a space - in which the activities of a Special Rapporteur take place. In this particular case of the mandate of indigenous peoples, the space is actually already provided by previous work done within the UN system regarding indigenous rights, including work that has occurred within the following following: The Working Group on Indigenous Populations, the decisions from the Vienna conference of human rights in 1993, NGO forums within and outside of the UN framework, activities of international NGO's and organizations, ILO Convention 169 and The Permanent Forum on Indigenous Issues.

There would be no need for a Special Rapporteur if there were not a persistence pattern of human rights violations of indigenous peoples. Even though there are universal rights for everybody, there are also specific rights related to indigenous peoples. It is at this level of specific rights where we see a persistent pattern of violations. Violations of indigenous peoples' rights are different from general violations of individual human rights. There is also a "protection gap" between the legal system, the laws, the official rhetoric, and the good intentions of governments and what actually occurs at the local level. Some countries are able to deal with these issues and have in fact dealt them much better than other countries; yet, some other countries don't even recognize that there are indigenous peoples in their midst, which is often the starting point for a Special Rapporteur. For example, in Africa, most countries say that everyone is indigenous, which presents a challenge for a Special Rapporteur. This is not only a human rights issue; it is a problem of definition, of political vision, of philosophy and a question of ethics.

A Special Rapporteur is also supposed to hand in an annual report to The Commission on Human Rights. Mr. Stavenhagen's first report to The Commission in 2002 set up a general framework for the analysis and examination of the major areas of concern in terms of human rights violations of indigenous peoples around the world. The second report, which he presented in April 2003, had a special focus on the implications of the human rights of indigenous peoples in large development projects, such as the relationship between major investments carried out by governments or private corporations and the impact on indigenous peoples.¹ The third report will be presented to the Commission on Human Rights in April 2004, the main topic will be the administration of justice, and in particular, on the implementation of recent legislation on the national level that relate to the rights of indigenous peoples. In that sense, he is interested in what is currently occurring in Norway in terms of the Finnmark Act, land issues, and new legislation. Similar situations are occurring all over the world, where different types of legislation have affected the human rights of indigenous

¹ These reports can be consulted on: <http://www.unhchr.ch/indigenous/rapporteur.htm>

peoples. The struggles of indigenous peoples for their own definition of rights and protection, particularly concerning their land rights, very often gets “bogged down” in the judiciary system. Mr. Stavenhagen gave an example from the Canadian First Nations, who have had to spend an enormous amount of money in order to hire lawyers to defend their case in the courts.

Mr. Stavenhagen ended his speech with reflections on his own mandate. He said the mandate of the Special Rapporteur is a tremendous challenge, and he cannot really carry out his work without the full support of all the other people involved. He considers the role of the Special Rapporteur to be a voice for indigenous peoples in terms of human rights at the Commission on Human Rights and within the UN. Further, he welcomed whatever information indigenous peoples, research centers, academic institutions and others could provide in order to improve the work of the Special Rapporteur.

Mr. Martin Scheinin

Member of the Human Rights Committee, established under the International Covenant on Civil and Political Rights (ICCPR), UN

ECONOMIC SUSTAINABILITY AND DEVELOPMENT AS AN ELEMENT OF INDIGENOUS PEOPLES RIGHTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

In addition to being a member of the Human Rights Committee, Mr. Scheinin is also a Professor of Constitutional and International Law and Director of the Institute for Human Rights of Åbo Akademi University in Finland. He is also a member of an Expert Commission for the elaboration of a convention on the rights of the Sámi people, established jointly by Finland, Norway and Sweden.

Mr. Scheinin spoke about the UN's approaches to indigenous people's rights from a legal perspective that is treaty based and based on the normative commitments by states. What are their international obligations, especially as to how they pertain to one particular international human rights treaty- The International Covenant on Civil and Political Rights (ICCPR)? He dealt with these provisions from the perspective of sustainability and development as elements of indigenous people's rights within the treaty obligations of states.

Indigenous people's claims for the recognition and protection of their distinctive cultures and lifestyles are intimately connected to the sustainability of their traditional forms of economic livelihood. Fishing, hunting, gathering, reindeer herding and specific forms of agriculture are some of the economic activities that illustrate the close ties between economy and culture in the context of indigenous peoples. According to Mr. Scheinin, we cannot distinguish between economy and culture in a broader sense when we speak of many indigenous peoples of the world. Unfortunately, for many of these peoples, the resource base for their traditional ways of life have already been destroyed through the "modernization" process- road construction, hydroelectricity (including dams), mining, logging and extraction of oil and gas- and with all the resulting environmental consequences that ensue. Many other indigenous groups, including the Sámi, have managed to retain the continuity of their means of livelihood, although often within forms that are, to a lesser or greater extent, adapted to modernity. At this moment they are struggling for the survival of their lifestyles.

These struggles have occurred equally within both the developed and the developing world. In both settings one of the key questions is how to secure the sustainability of the indigenous economy. Although international discussion usually focuses on the developing world when addressing the right to development, the same cleavage that exists between the developed and the developing countries exists within many of the developed countries in terms of the relationship between the dominant population and the indigenous population. The differences in economic resources, health factors and life expectancy between the dominant population and the indigenous population can be compared to the relationship between developed and developing countries.

Like Mr. Stavenhagen, Mr. Sheinen referred to Article 1 and Article 27 in the International Covenant on Civil and Political Rights. These covenants are important parts of the normative and historic framework within the context of the ICCPR. Article 1 begins with the right to self-determination for all peoples. Usually, when we referring to self-determination, we think of the political dimension, both external or internal, as well as the right to control your own destiny and to establish your own political institutions. However, in the context of indigenous peoples, it is important to take note that self-determination is not only about political organization within a state or through the establishment of a state of your own: self-determination is also about economy and resources.

Article 1, paragraph 2, begins with: “All peoples may, for their own ends, freely dispose of their natural wealth and resources (...)” and ends with: “In no case may people be deprived of its own means of subsistence.” Here we have, in a crystallized form, what self-determination essentially means for many indigenous peoples; it is a question of recognition, of land and resources and of having the power to decide how to use the resources, the use of which nobody else can come and deprive the indigenous peoples of their subsistence through the deprivation of resources.

Paragraph 3 of Article 1, refers to the so-called “solidarity dimension of self-determination”; all states have an obligation to promote the realization of the right to self-determination. This means that in the context of development and indigenous peoples, developed countries have an obligation to formulate their development policies in ways that promote self-determination by indigenous peoples in developing countries.

Article 27 refers to ethnic, religious or linguistic minorities, and calls for the right to enjoy their own culture, to profess and practice their own religion, and to use their own language. Here we have the notional ‘culture’, which has proven to be crucial in many situations related to indigenous peoples; the word ‘culture’ has also been attributed to cover economic life. Originally, indigenous groups were reluctant to rely on Article 27, because legitimately they said: “We are not the minority, we were always here. Those others came later and established their state, and why should we accept being a minority in respect of that state, by the colonizers?”. The Human Rights Committee has been creative and constructive in explaining that for the purposes of state obligations, indigenous peoples, (even when they are Peoples) can involve the minority rights guaranties, because they are in a minority situation in relation to a state that has ratified the covenant.

Neither one of these provisions includes the notion of indigenousness, which in fact raises the question as to whether indigenous groups constitute 'minorities' under Article 27 or 'peoples' under Article 1. On the basis of the practice of the Human Rights Committee, the answer can be summarized as follows: groups identifying themselves as indigenous peoples generally fall under the protection of Article 27 as 'minorities'. In addition, at least some of them constitute 'peoples' for the purposes of Article 1, and are beneficiaries of the right to self-determination. Hence, the ICCPR does *not* give support to a position, according to which, indigenous peoples are a specific category between minorities and groups, not entitled to the right of self-determination.

Although Article 27 does not employ the notion of ‘indigenous peoples’, such groups have related much of the case law developed under the provision to claims. In General Comment No. 23, the

Human Rights Committee emphasized the applicability of Article 27 with respect to indigenous peoples. In particular, the notion of 'culture' has been interpreted as to afford protection to the nature-based way of life and economy of indigenous peoples. In the terms of paragraph 7 of the General Comment: "With regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law." Here we have certain traditional forms of indigenous economic life, recognized as 'culture,' for the purposes of Article 27. Following that sentence, in the General Comment, there is a footnote referring to the case of *Kitok vs. Sweden*², where it was established that in addition to fishing and hunting, also reindeer herding by the Sámi, comprises a foundation and an element in the notional 'culture'.

With its reference to reindeer herding as an important element of the indigenous culture of the Sámi, the *Kitok* case illustrates another important dimension of Article 27- the recognition of traditional or otherwise typical economic activities as 'culture', particularly with regard to indigenous peoples. This dimension was developed in the case *Lubicon Lake Band vs. Canada*³, in which a violation of article 27 was established because 'historical inequities, to which the state party refers, and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band'. The factual background of the case was related to the exploitation of oil, gas, and timber resources in areas traditionally used by the Lubicon Lake Band for hunting and fishing. The cumulative effect of these forms of competing land and resource uses, over a long period of time, had effectively destroyed the resource basis of traditional hunting and fishing for the Band. The Human Rights Committee concluded that these historical developments, as long as they continue to have an effect on the life of the Lubicon Lake Band, constitute a violation of the right, under article 27, to enjoy one's culture.

Much of the Committee's subsequent case law, under Article 27, has been related to this dimension of Article 27- the link between the notion of 'culture' in the treaty provision and traditional forms of indigenous peoples' economic lives. The case *Länsman vs. Finland No. 1*⁴ was about the harmful effects of a stone quarry in relation to reindeer herding activities of the indigenous Sámi, and the case *Länsman vs. Finland No. 2*⁵ was related to governmental logging activities in the reindeer herding lands of that same Sámi community.

Although no violation of Article 27 was found, the Human Rights Committee established several general principles for the interpretation of Article 27. It emphasized that article 27 does not only protect traditional means of livelihood, but also their adaptation to modern times. As to what kind of interference with a minority culture constitutes 'denial' in the sense of Article 27, the Human Rights Committee developed a combined test of meaningful consultation with the group and the sustainability of the indigenous or minority economy.

² Ivan Kitok vs. Sweden (Communication No. 197/1985)

³ Bernard Ominayak, Chief of the Lubicon Lake Band vs. Canada (Communication 167/1984)

⁴ Ilmari Länsman et al. vs. Finland (Communication 511/1992)

⁵ Jouni E. Länsman et al vs. Finland (Communication 671/1995)

The first part of the test is participation: indigenous peoples must be consulted and have a meaningful say in designing any interference. There cannot be unilateral decision-making by state authorities to interfere; indigenous peoples must have a meaningful say in any decision-making that affects their distinctive way of life, particularly through the use of lands and resources. The second part of the test is the outcome of the consultation; the interference must not be so extensive that it puts at risk the sustainability of the indigenous way of life and the indigenous traditional economy.

In the cases of *Länsman vs. Finland*, the Human Rights Committee took the view that the interferences with Sámi reindeer herding, which were related to minor parts of the overall herding lands of the community, did not put at risk the sustainability of reindeer herding as the resource basis for the Sámi culture. In both cases, however, the Human Rights Committee issued a warning to Finland that went something like this: if you go on like this, sooner or later you will end up at a stage where your activities will put reindeer herding at risk, and then your interference will no longer be compatible with Article 27.

A further dimension of these cases, was the rejection by the Human Rights Committee of a doctrine of "frozen rights", a position that would afford protection only to those expressions of the indigenous economy that are still in practice exactly as they were centuries ago. In the first *Länsman* case, the Human Rights Committee expressed its rejection of the "frozen rights" position in the following terms: "The right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In this connection, the Committee observes that Article 27 does not only protect traditional means of livelihood.... Therefore, that the authors may have adapted their methods of reindeer herding over the years and practice it with the help of modern technology, does not prevent them from invoking Article 27 of the Covenant."

Self-determination is a legal right under the two covenants of 1966 (the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political rights). However, it is a procedurally very specific right- there is no right of individual complaint in relation to self-determination. Self-determination is a right of Peoples, hence, there is no individual victim. This is why the Human Rights Committee has refused to consider complaints directly based on the right of self-determination. But the Human Rights Committee has developed its implementations in the reporting procedure. In that context it has been established that indigenous peoples, also, have the right to self-determination. In most cases, self-determination should find forms that do not require the establishment of new states, but that can be exercised within the context of an existing multicultural state. That would mean participation, development of autonomous self-governing organs with political self-determination functions. It also refers to the resources or the economic dimension of self-determination. Indigenous peoples within a multi-ethnic state have the right to control their means of subsistence, their land, and their resources. It is not only a part of culture under Article 27, it is also a part of Article 1: Self-determination.

In the reporting procedure, the Human Rights Committee has dealt with self-determination by indigenous peoples in a number of concluding observations in relation to Mexico, Norway, Australia, Denmark and Sweden. For instance, in its concluding observations on Australia, the Committee stressed that the state party should take the necessary steps in order to secure for the

indigenous inhabitants a stronger role in decision-making over their traditional land and natural resources.

Since the Vienna World Conference of Human Rights in 1993, it has become commonplace to emphasize the indivisibility and interdependence of all human rights. Nevertheless, such proclamations often have remained at the level of political declarations, and the recognition of interdependence as a principle of law is only emerging. However, the practice of the Human Rights Committee bears witness to the interdependence between articles 1 and 27. For indigenous peoples to enjoy both the right to their own distinctive cultures and to enjoy their right to self-determination, it requires that governments, when designing their approaches to development or allowing domestic or trans-national corporations or other international operators to engage in activities that through "modernization" affect the lives of indigenous communities through exploitation of natural resources or other changes in the environment.--- Full attention must be given to involve the indigenous peoples in decision-making over the interference to the degree that they will "freely dispose of their natural wealth and resources", and full attention must also be given to assessing the consequences of the interference from the perspective of the economy, lifestyle and culture of the indigenous people, to the degree that sustainability is secured.

It is quite clear that for many indigenous groups following these requirements would mean that there would be a situation more favorable than what had prevailed prior to the interference, often as a consequence of centuries of domination and dispossession. But this is exactly what a rights-based approach to development should bring about; not only economic growth, but the involvement of the indigenous peoples in designing their own future, and in a way that is compatible with their own tradition, culture and lifestyle.

Mr. Ole Henrik Magga

Leader of Permanent Forum on Indigenous Issues, UN

THE PERMANENT FORUM AND THE UN SYSTEM

Mr. Magga from Kautokeino in Norway is one of the main leaders in Sámiland, and he is also a professor in Sámi linguistics. He was the President of the Sámi Parliament in Norway from 1990-1997, and in 2002 he was elected as the first President in UN Permanent Forum on Indigenous Issues.⁶

Mr. Magga gave a presentation to the conference on: “The Permanent Forum and the UN system”. He began by informing the audience that in 2003, indigenous peoples had an 80 years anniversary: it has been 80 years since the first attempt was made by indigenous peoples to enter the League of Nations. He told the story about Chief Deskahéh, who traveled to Geneva in 1923 to speak to the League of Nations. He wanted to defend the right of his people to live under their own laws, in their own land, and under their own faith. But Chief Deskahéh was not allowed to speak. Mr. Magga reminded the audience that things have changed a lot since that time.

The Permanent Forum on Indigenous Issues

The Permanent Forum on Indigenous Issues has the following mandate: it is an advisory body to the Economic and Social Council (ECOSOC) with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum will:

- provide expert advice and recommendations on indigenous issues to the Economic and Social Council, as well as to programmes, funds and agencies of the UN (through the Council)
- raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system
- prepare and disseminate information on indigenous issues.

The Permanent Forum is unique when compared to other bodies who deal with indigenous issues within the UN, as well as unique within the UN system in general. It is permanent and not just a working group for a certain theme. Its position is at the highest possible level within the UN system. The Permanent Forum lies directly under the Economic and Social Council and sits at the same level as the Commission on Human Rights. The mandate for The Permanent Forum is very broad; in fact, it covers all of the mandated areas of ECOSOC itself. Many indigenous peoples expect that The Permanent Forum should engage in activities within the states and within each country. There is a formal limitation to this engagement, however, because of their strict mandate.

A secretariat unit, with a staff of three employees, was established by the end of January 2003 within the Department of Economic and Social Affairs at the UN Headquarters in New York. It is expected that three more positions are to be added to the secretariat in the budget for 2004. New York has been selected as the location for the secretariat in order to clarify that The Forum deals

⁶ <http://www.un.org/esa/socdev/pfii/index.html>

with more issues related to indigenous peoples than human rights, which until now have been what was associated with question about indigenous peoples within the UN system.

The Permanent Forum members serve in their personal capacities as independent experts for a period of three years. This Permanent Forum's term expires December 31st, 2004. Decisions are made by consensus. It is open to all indigenous peoples organizations, regardless of their consultative status within the Economic and Social Council, as they may participate as observers in The Forum's meetings.

The Permanent Forum shall provide a holistic approach towards indigenous issues in the UN system, an approach that was previously lacking. It shall seek to guarantee that all UN bodies - in all their activities - take the particular needs and concerns of indigenous peoples into account. The UN has, until now, not adequately addressed indigenous issues. Even though the situation of indigenous peoples have attracted more attention during the last couple of years, all of the available statistics show that indigenous peoples still remain among the most marginalized populations in the world. Hence, the United Nations has increasingly come to recognize that there is an urgent need to take a more overarching approach towards indigenous issues and that it is necessary to consider the specific situation of indigenous peoples in all its activities.

In The Permanent Forum, indigenous peoples and governments meet for the first time on a more equal basis. Eight members of The Forum are nominated by indigenous organizations and governments from seven regions nominate eight members. That means that the membership is equally representative, at least within The Permanent Forum itself. There is also equality in decisions, because governments and indigenous NGO's are invited on the same line, together with the UN agencies, to their annual session. They all have the same status as observers, but the members of The Permanent Forum are the ones who make the decisions.

The Permanent Forum constitutes recognition by the international community. Without the participation by the indigenous peoples themselves, it would be impossible to adequately address the particular needs and concerns of indigenous peoples. In this way, The Permanent Forum symbolizes a new kind of partnership between indigenous peoples and governments, and constitutes a landmark event in the struggle for recognition of the rights of indigenous peoples.

The Permanent Forum makes its recommendations to the UN system in the form of a report. The report is very formalistic; it is limited to certain numbers of pages and certain rules have to be followed to formulate the report. The report is distributed within the UN system and in it The Permanent Forum makes two kinds of recommendations: recommendations directly to the ECOSOC meeting every year and recommendations to the rest of the UN system. The recommendations to the ECOSOC are the most important because The Permanent Forum expects that the ECOSOC will take action immediately on those recommendations, which means that The Permanent Forum has to be very careful to find out what is realistic and politically possible.

At the sessions of The Permanent Forum, representatives of indigenous peoples, governments, the Forum members - and not least important - representatives of UN agencies, are engaged in concrete

dialogues. In Mr. Magga's opinion, these interactive dialogues have been the most fruitful moments of the first two sessions.

The Permanent Forum made some twenty recommendations on the year 2003's special theme: "Indigenous children and youth". They also made twenty recommendations on economic and social development, thirteen on the environment, twenty on health, eleven on human rights, eleven on culture and ten on education. In addition, more than ten recommendations dealt with methods of work and future activities of the Permanent Forum.

Most of The Permanent Forum's work in the first year consisted of establishing good working relations with ECOSOC, UN agencies, governments and international organizations. Mr. Magga gave some examples of how The Permanent Forum is developing relationships within the rest of the UN system.

ECOSOC

The Economic and Social Council is The Permanent Forum's parent body. The Permanent Forum's recommendations on formalities, methods of work, and budget issues, go through the ECOSOC. One of the most important recommendations of 2003 was that the Economic and Social Council should devote its 2006 High-level segment (the top summit meeting of the ECOSOC) to indigenous issues. This was very well received by the ECOSOC, and there is a good chance that the high-level segment will devote its 2006 meeting to indigenous issues. Mr. Magga's impression is that the climate within the ECOSOC bureau is favorable for The Permanent Forum's work. He has been invited to the annual meetings of the Functional Commissions these last two years, which also demonstrates the good will of the bureau.

Human rights issues: The High Commissioner for Human Rights, The Special Rapporteur on the Situation of Human Rights and Fundamental Freedom of Indigenous Peoples and The Working Group on Indigenous Populations (WGIP)

Some very important partners to The Permanent Forum are the human rights bodies within the UN system. Traditionally, the indigenous case has been a human rights issue within the UN system. The Working Group on Indigenous Populations has for more than 20 years been a fertile training ground for the capacity building of indigenous human rights workers from all over the world. WGIP has prepared the well-known Draft Declaration on the Rights of Indigenous Peoples and they developed the idea of a UN Decade of the World's Indigenous Peoples.

The Special Rapporteur on the Human Rights and Fundamental Freedom of Indigenous Peoples is another very important institution to The Permanent Forum within the UN system. One obvious thing for The Permanent Forum is to act upon the report of the Special Rapporteur in respect to the mandate of the Special Rapporteur, The Permanent Forum, and the rest of the UN system. The Permanent Forum needs to work hand in hand with the office of the High Commissioner for Human Rights, the Working Group on Indigenous Populations, the Special Rapporteur, as well as all other human rights bodies on all matters of mutual interest.

Both before and during the 2003-year session, The Permanent Forum received reports about atrocities committed against the Pygme people (Mr. Magga emphasized that the name of the people is not a good name, but this is the name to identify the people for the public) in the Democratic Republic of Congo, the Kuna people of Panama, and of other violations of basic human rights of indigenous peoples. Mr. Magga has urged the UN system to take appropriate action and, together with his colleague from DRC and other members of The Permanent Forum, had a meeting with the president of the Security Council about these questions.

At both of the sessions in 2002 and 2003, The Permanent Forum urged the states to adopt the Draft Declaration on the Rights of Indigenous Peoples before the end of the UN Decade of Indigenous Peoples. The Permanent Forum has also recommended to the General Assembly that they declare a second International Decade of Indigenous Peoples.

Children and youth: UNICEF and the Committee on the Rights of the Child

The Permanent Forum has decided to make indigenous children and youth a focal point of their work in the years to come. The Permanent Forum has recommended that UNICEF shall give indigenous children special attention while coordinating the implementation of the programme of action decided during the 2002 Special Session, and has also recommended that a Special Rapporteur on Indigenous Children should be appointed. Per the Forums request, the Committee on the Rights of the Child convened a Discussion Day on the Rights of the Indigenous Child meeting in Geneva, on September 19th, 2003, where Mr. Magga participated and two of his colleagues chaired the two working groups during the meeting.

Cultural heritage and traditional knowledge: UNESCO and World Intellectual Property Organization (WIPO)

The Permanent Forum has at both of its 1st and 2nd sessions made recommendations to relevant UN agencies working with tangible and intangible heritage and related questions. Cultural heritage is collective, and it is this collective aspect that governments seem to have difficulties grasping. Intellectual property rights regimes, which is the traditional field of WIPO, seem to fail because:

- a. Traditional knowledge often does not meet the criteria of novelty and originality generally required for intellectual property protection.
- b. It is normally impossible to identify the individual creators behind traditional knowledge.
- c. There is a time limitation. The fact that most existing intellectual property mechanisms are time limited, implies that even if protected for a while, the cultural expressions will eventually end up in the public domain. A protection for a culture cannot be time-limited.

In this debate it has been said that subjecting indigenous peoples to existing intellectual property laws, would have the same effect on their identities as the individualisation of land ownership in many countries has had on their territories - that is the fragmentation of it into pieces, and the sale of the pieces, until nothing remains.

WIPO established an Intergovernmental Committee in the year 2000 to investigate the relationship between intellectual property rights, genetic resources, traditional knowledge and folklore, or “traditional cultural expressions”- which does not carry the same kind of derogatory undertone that is implied in the term “folklore”. The WIPO Secretariat has also repeatedly acknowledged the important role indigenous customary laws can play in the protection of genetic resources, traditional knowledge and “traditional cultural expressions”. On the other hand, a growing tension seems to have been building within the Intergovernmental Committee over the last sessions, i.e. the conflict between the interests of the state and indigenous peoples within states, where many developing countries have indicated that, in their opinion, all such knowledge and resources belongs to the state.

It is becoming more and more obvious that The Permanent Forum needs to participate in national and international standard-setting work in all field of human life. When the principles are formulated and agreed upon, we need the institutions that can carry out the work. In most parts of the world, indigenous peoples are denied recognition as peoples and are also denied institutions to support and develop their cultures.

In order to cater to a more holistic approach towards these issues, UN system organizations dealing with cultural heritage and genetic resources, some of which have perspectives other than the intellectual property perspective, such as the UN Food and Agricultural Organization (FAO), the Convention on Biological Diversity (CBD), the High Commissioner on Human Rights and The Permanent Forum, they should all be involved when elaborating upon legally binding norms for the protection of such knowledge and resources. A people’s cultural heritage cannot be protected by a set of disparate intellectual property rights mechanisms and some organizations have concluded that we need a *Sui generis* system- one that respects indigenous peoples’ rights to determine what they want protected, and how they want it protected. It must acknowledge customary laws and practices of indigenous peoples. Cultural expressions of indigenous peoples must also be protected in terms of cultural rights, rather than merely intellectual property rights.

The World Bank

Mr. Magga emphasized the fact that the World Bank has threatened the very basis for many indigenous cultures and peoples. They are now working with the World Bank, to try to readjust the direction. After many meetings with representatives of the World Bank (including vice president Ian Johnson) and The Permanent Forum and indigenous leaders, The World Bank is launching an initiative called the “Grants Facility for Indigenous Peoples” in three parts (amounts for fiscal year 2004):

1. Financial support for strengthening the UN Permanent Forum on Indigenous Issues (US\$150,000).
2. A targeted pilot program of capacity building for indigenous leaders in the Andean region of South America (US\$100,000).
3. The Grants Facility (US\$350,000) to provide grants to indigenous organizations worldwide for a range of development-related activities. The objective of the Grants Facility is to help fulfill a vital development need of indigenous communities by offering them a direct

opportunity to design and implement sustainable development programs based on their cultural preferences.

Even if the amounts are unimpressive, the initiative is part of a new dialogue The Permanent Forum has entered into with the World Bank. According to Mr. Magga, the dialogue with the world bank, as well as other initiatives from The Permanent Forum's side and the responses to them thus far, are the starting point of a new development which can hopefully lead - little by little - to more indigenous communities being able to influence their own lives.

Major events within the UN system

Indigenous peoples have participated very successfully in many of the major global events during the last 10-15 years. The preparations for the Rio Summit and the Johannesburg meeting produced declarations containing indigenous people's positions on environmental issues.

The World Summit on the Information Society (WSIS) took place in Geneva, December 10th-12th, 2003. Within the context of the preparatory process, some of the civil society groups identified as important stakeholders were indigenous peoples. In close contact with The Permanent Forum, the preparatory committee of the World Summit for the Information Society decided to devote one of the formal pre-summit events to the theme "Indigenous Peoples and the Information Society" which took place December 8th-10th, 2003.

Support for the Permanent Forum within the UN system

Several of the UN bodies, initially under the leadership of Office of the High Commissioner on Human Rights on a voluntary basis, and with their own resources, have organized support for The Permanent Forum through the Inter-Agency Support Group (IASG). The Permanent Forum has already established close relations with WHO, ILO, UNITAR, UNDP and many other UN branches. It is composed of focal points/units or representatives who are identified by Heads of the departments or organizations of the UN system whose work is relevant to indigenous issues. Membership in the Support Group implies a commitment to participate regularly and to share information in a timely fashion, as well as to enable and facilitate coordination and cooperation. The Inter-Agency Support Group shall:

- (i) Provide an opportunity for the focal points, units or representatives of the United Nations system to meet regularly to exchange information in relation to their work on indigenous issues;
- (ii) Consider ways of strengthening inter-agency cooperation to promote the human rights and well-being of indigenous peoples through joint activities and other forms of cooperation;
- (iii) Analyze recommendations of the Permanent Forum on Indigenous Issues and contribute to their implementation on the basis of the mandates, resources and capacity of each organization;
- (iv) Develop relationships with governments, donors, civil society organizations (CSOs), indigenous peoples' organizations, and others to consider cooperative ways of supporting the Forum;

- (v) Interact with the Forum and its Members to provide and seek information, advice and substantive inputs;
- (vi) Advise and assist in the mainstreaming of indigenous issues within the UN system;
- (vii) Strengthen mutual support for the focal points/units or representatives in each of the agencies, organizations and programmes participating in the IASG.

Future challenges

First and foremost, the Permanent Forum is a body for dialogue between indigenous peoples, UN agencies, and states. The task of mainstreaming indigenous issues across the inter-governmental system is enormous; therefore, The Permanent Forum needs all these three parts to assist them so that together they can face the challenge of this task. The task of mainstreaming indigenous issues across the inter-governmental system must surely be borne by the whole UN system. The Permanent Forum's mandate deals mostly with the UN system itself and therefore needs the good will of all within the of UN systems. But The Permanent Forum cannot work only on the international level; they need to also have a focus on the practices within states. The challenges are many; certainly, the most serious challenge is that many governments refuse to recognize the very concept of "indigenous people". This is especially the case in Africa and Asia. These challenges are the most serious limitations to The Permanent Forum's work. They also face difficulties within the UN system in terms of resources and staffing.

Excessive reports of violations of basic human rights of indigenous peoples, including extra judicial killings and involuntary disappearances, have been reported to The Permanent Forum. But now, indigenous peoples have a place within the family of nations, according to UN Secretary General Mr. Kofi Annan in his speech to the Permanent Forum in 2002. The Permanent Forum looks forward to more constructive partnerships with states and intergovernmental organizations in order to guarantee the security and dignity of indigenous peoples, both as individual human beings, and as distinct peoples.

INDIGENOUS RIGHTS: CASES FROM ASIA

Ms. Chandra Roy

Jumma Peoples Network

IMPACT OF DEVELOPMENT IN THE CHITTAGONG HILL TRACTS: WAYS FORWARD

Chandra Roy is an indigenous Chakma/Jumma from the Chittagong Hill Tracts (CHT) of Bangladesh. She has focused on the linkage between the indigenous peoples of the Chittagong Hill Tracts and development in a case study. Her presentation at the conference was titled “Impact and Development in the Chittagong Hill Tracts: Ways Forward”.

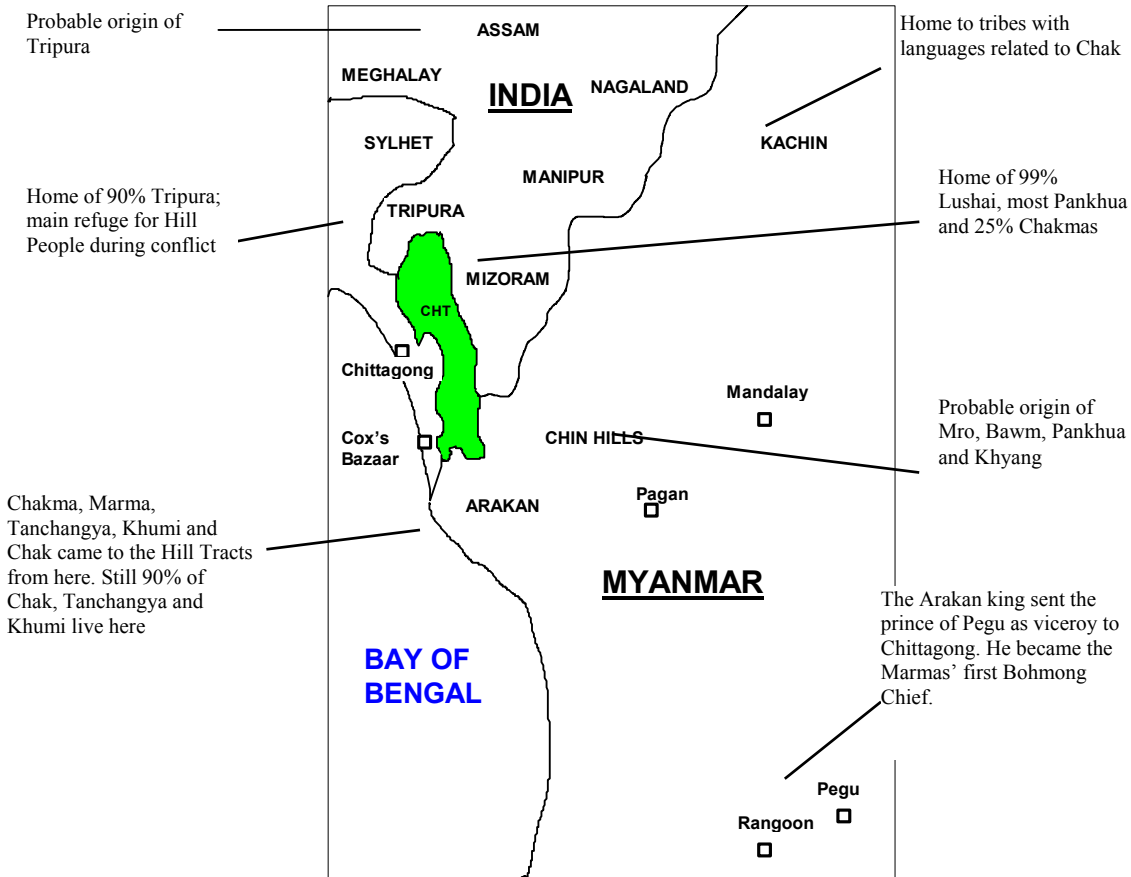
The CHT is the traditional homeland of an estimated 600,000 indigenous people from eleven ethnic groups, namely: the Bawm, Chakma, Chak, Khyang, Khumi, Lushai, Marma, Pankhu, Mro, Taungchangya and Tripura. The collective term Jummas is derived from the various groups’ shared form of rotational agriculture, known locally as Jum. The term was initially used in a derogatory manner to distinguish the hill people from their plains neighbors, but has since evolved into a term of solidarity and national pride for these indigenous peoples.

When India was partitioned in 1947, the CHT was awarded to (East) Pakistan, which was contrary to the expressed demands of the indigenous people who wished to be included within secular India. When Bangladesh was formed in 1971, after a bloody war with (West) Pakistan, the CHT became a part of this new state. Presently, the CHT is divided into three districts - Rangamati, Khagrachari and the Bandarban Hill Districts.

The indigenous peoples have their own history, culture and traditions, which differ from the majority Bengali population. They are of Mongolian, Tibeto-Burman or Mon Khmer extraction, and are closer in appearance and culture to their neighbors in northeastern India, Burma, Cambodia and Thailand than to the majority Bengali population. They are mainly Buddhists, with some adherents to the Hindu and Christian faith. As a general rule, all of these indigenous peoples include some form of animism in their customary rites and practices.

Many of these indigenous peoples have their own languages, both in written and oral form, although many of the scripts, including those of the Chakmas, are in danger of being lost entirely as a result of disuse. The medium of instruction in the Chittagong Hill Tracts is Bengali; indigenous languages are not taught in schools. As a result, most of the indigenous peoples cannot read or write in their own language, and many of these languages are under threat of extinction. To preserve indigenous language and culture, some indigenous organizations have taken the initiative to introduce indigenous language instruction in some schools as a pilot project. Development in the Chittagong Hill Tracts has not kept pace with the rest of Bangladesh and the region has been marginalized. It is one of the least developed and poorest districts in Bangladesh.

Hill Tracts and Neighboring Regions



Source: *Report: Chittagong Hill Tracts Region Development Plan* (ADB TA No. 3328-BAN), February 2001, Asian Development Bank.

The major issue in the CHT is land. Land is the economic resource base for the indigenous peoples, which they are dependent on for their economic and cultural survival. They cannot maintain their identity as a separate people without their land. The rate at which the indigenous peoples are being divested of their lands in the CHT is alarming. This is the result of projects and programmes carried out in the name of development and modernization. The end result for the indigenous peoples has been dispossession, deprivation, and poverty. Today, the majority of the indigenous peoples live below the poverty line, and many of them are underemployed or unemployed.

Between 1959 and 1963, the government of the then East Pakistan constructed a hydroelectric power project on the River Karnaphuli at Kaptai. This situation was similar to the Alta Dam in Norway, the San Roque in the Cordilleras, and many others in various parts of the world. At the time of construction, it had the distinction of being one of the largest man-made lakes in the world.

The reservoir submerged under water 54,000 acres of agricultural land of the Chittagong Hill Tracts, which was approximately 40% of land suitable for intensive cultivation. This plunged the Hill Tracts into a situation of constant food insecurity, which continues to this day. The valleys were the rice-fields of the Hill Tracts and rice is the staple diet of the hill people. The Kaptai Dam flooded historical monuments, sacred sites of the indigenous peoples, and countless homes and farms. It has displaced more than 100,000 indigenous people, who had no choice but to abandon their ancestral lands. Many took refuge in India where they remain to this day.

Most of the indigenous peoples received no compensation at all and a few received paltry sums of cash, which often ended up in the hands of unscrupulous officials. Although it was the indigenous peoples who suffered most with the construction of the dam, they did not even have any electricity as it was directed away from the Hill Tracts to the plains districts.

There is currently a move underway by the Government to build a new turbine at the Kaptai Dam, which would increase the level of water of the lake. The funding for this would come from the Japanese Government, a major aid contributor to Bangladesh. The indigenous peoples have organized protests against this action, as it would inundate the fringe areas of the lake, which are used to grow seasonal crops of rice. No action has been taken on their behalf and the project is reportedly in process.

Regarding the level of the lake water there is another cause for concern. The lake level is regulated by the dam officials, and fluctuates. They give no prior notice or information to the indigenous peoples, and many lose their seasonal crops as a result of unexpected increases in the water level. The indigenous peoples have been asking for consultation mechanisms to be institutionalized so that they are involved and informed on any proposed differences in the water level and therefore can be better prepared for the outcomes.

The Government implemented a settlement programme from 1979-84. Its aim was to dilute the indigenous composition of the CHT by bringing in settler families from the plains. At the height of the programme, approximately 200,000-400,000 plains people from other parts of Bangladesh were settled into the Hill Tracts. Each of these families received incentives in the form of rations- 11.5 acres of land (paddy, hilly and mixed), cash, and other benefits.

After having already lost much of their land because of the dam, thus trying to subsist on the little land that remained, the indigenous peoples then had their lands taken from them, (often forcibly and generally illegally) and it was then given to settler families. Naturally, this situation had repercussions that led to confrontations and violence as some of the settlers had been provided with arms – ostensibly for their protection. With the heavy military presence in the Hill Tracts and the lack of institutional protection accorded to the indigenous peoples, reports of violent attacks against the indigenous peoples by the settlers in collaboration with the security forces continued to increase during this period.

There have been many reports of killings and attacks in the Hill Tracts, which have been documented by international human rights organizations including: Amnesty International, the

International Work Group for Indigenous Affairs, Survival International etc., and by the International Labour Organization (ILO)- in its supervision of Bangladesh's compliance with Convention No.107 on Indigenous and Tribal Populations, 1957.

The largest influx of settlers into the Hill Tracts occurred in the 1980's. In current estimates, the total population in the CHT is approximately 1.2 -1.4 million (Bangladesh Bureau of Statistics), and the non-indigenous population is the fastest growing group. To some extent, this is also due to spontaneous migration (vis-à-vis sponsored migration) of families from the plains coming into the Hill Tracts, which is still occurring, although not at the accelerated rate of the 1980's, when the settlement programme was at its peak.

Some migration to the Hill Tracts and forcible take-over of land from the indigenous peoples still continues, i.e. the Billachari village of the Barkal sub-district. However, a major concern is that the settlers are being included on the CHT voter lists as 'permanent residents' in the CHT; this will effectively make their hold, and presence, in the region more firmly entrenched. This was a major cause of contention between the Parbatya Chattagram Jana Samhati Samiti (PCJSS) and the government during the October 2001 elections. The PCJSS boycotted the election. The member of the parliament from Khagrachari district is a non-indigenous person, which is an outcome of this demographic manipulation.

The Government continues to provide food and other rations and benefits to the settlers to ensure their continued presence in the Hill Tracts. It is questionable as to how many would continue to live in the Hill Tracts without such benefits, especially with its inhospitable terrain, and the resentment of them by the local inhabitants. In addition, the fact that only the settlers receive rations adds to the confrontational nature of the relationship between the settlers and the indigenous peoples. None of the indigenous peoples are provided with any such assistance, including the refugees who have returned from India on the premise of an agreed repatriation package. Most of them remain homeless and in temporary shelters.

The army was brought into the Hill Tracts in 1972; however, full-scale militarization as a counter-insurgency strategy was not introduced until 1975. Military sources report that one-third of the national army is stationed in the CHT. The armed forces are responsible for most of the atrocities committed in the CHT, which are often committed in conjunction with the settlers.

A Peace Accord was signed in December 1997 between the Government and the PCJSS. It provides elements for strengthening indigenous management of the region through institutional mechanisms such as an apex Regional Council, three District Councils (established in 1989), and a Land Commission. Although these institutions have been established and are nominally operational, they have not been granted their full powers, and lack both institutional capacity and resources. The Land Commission, which is one of the crucial bodies given that the central issue in the Hill Tracts is land rights, has begun functioning recently under the leadership of a retired judge. However, the other members have not been formally included yet, while tens of thousands of claims have already been filed (approximately 35,000), most of which relate to disputes between the indigenous peoples and the settlers.

A major concern is that many of the settlers have documents, which are allegedly falsifications, while many of the indigenous peoples have lost their documents and records during the civil war. This is particularly true for those who fled the violence in the Hill Tracts and took refuge in India (approximately 55,000). They have returned to the Hill Tracts on the basis of rehabilitation-repatriation agreements with the government (1992 and 1997), but the terms of these agreements have not been met. Many of the returnee refugees remain in temporary venues waiting to have their lands restituted to them as agreed upon.

The Peace Accord also calls for the withdrawal of the armed forces from the CHT, with the exception of those necessary for regional security and border control. However, the armed forces continue to exercise their influence and are involved in all matters relating to the CHT, including the CHT Development Board. Indigenous students still need to obtain a NOC, or No Objection Certificate, from the army to enter university or other higher learning institution, which are not provided to those students suspected of being involved in any “subversive activities”.

Various groups in the CHT (ADB: CHT 2001 Report)

1. Displaced people	Rough estimations and unknowns
Indigenous	Some 150,000 - 200,000
Settlers	Some 60,000 - 100,000
2. People affected by possible changes in land use and current policy	
People affected by land converted to military use	25,000 people
People affected by the conversion of land to reserved forest	> 100,000 people
People affected by the current Forestry policy	> 400,000 people
People affected by an increase in the minimum level of Lake Kaptai: Lakeside people	~ 85,000 people
People affected by the government sponsored settlement programme	~ 80 – 100,000 families
3. Socio-cultural groups	
<i>Indigenous people:</i>	> 550,000
Two dominant indigenous communities, Chakma and Marma	>420,000 people
Two medium-size ethnic groups (Tripura and Tanchangya)	> 90,000 people
Nine minority ethnic groups (including Nepali and Assamese), least integrated in overall society and power structure	> 45,000 people in total
<i>Non indigenous people:</i>	> 550,000
Long time settlers ("adibashi")	Growing group, because of co-optation
Refugee settlers (from India), said to be accepted	Small number
Recent settlers (1960s, and the early 1980s), not accepted by indigenous people.	400,000
4. Socio-economic groups	
Higher and middle income people	400,000 people
Poor people	> 1,000,000 people
Remote area inhabitants	~ 850,000 – 950,000 people
5. Gender and age-based groups	
Men, all age-categories	> 550,000
Women, all age-categories	>500,000
Children, below 15 years of age	>400,000
Elderly people, above 50 years	>50,000

As a result of the regenerated attention on the Hill Tracts, and the flow of funds to the region, a number of national NGOs are also active in the CHT. They are engaged in implementing projects, most of which are settler-oriented. Of the few that are targeted at the indigenous peoples, they take hardly take into account the special characteristics of the indigenous peoples, rather they apply the same approach as in other areas of Bangladesh. This has damaging effects on the indigenous peoples society and culture, for example micro-credit schemes which are alien to the indigenous culture, and can lead to a dependency on the monetary economy.

The indigenous peoples also have their own organizations and have formed the Hill Tracts NGO Forum as an umbrella organization. However, the indigenous peoples' organizations face a major hurdle in accessing funds and other resources as this requires registration with the national NGO bureau, which has been unreceptive to indigenous organizations. As such, very few have the necessary accreditation to enter into cooperation agreements with international donors and funders. It is estimated that there are a total of 50 international, national, and local organizations working in the Hill Tracts.

Concerned that the development agencies would not take the needs and concerns of the indigenous peoples fully into account in implementing activities in the Hill Tracts, the indigenous peoples formulated a declaration to guide development activities in the Hill Tracts in December 1998. It was called the Rangamati Declaration and was adopted at a conference on "Development in the Chittagong Hill Tracts". The declaration stressed that a speedy implementation of the CHT Peace Accord of 1997 is a priority and that all development activities should be implemented in consultation with the Regional Council.

Based on the CHT experience, the following emerge as key elements to be taken into account when carrying out development activities in the Hill Tracts, as well as in other indigenous areas:

Development Priorities: Any development in indigenous areas should strive to be in accordance with the development priorities of the indigenous peoples. As such, it is important for the donors and organizations to engage in a joint exercise with the indigenous peoples in order to ensure that there is agreement on the priorities for development **before** commencing any activities in the area. There may be a time lapse between project formulation and implementation, and situations evolve constantly. Therefore, it is important to include mechanisms to adjust to the dynamics of the situation, should the need arise.

Participation: It is essential to include the indigenous peoples and their representatives and organizations in all processes of the project. This includes the initial needs assessment, which outlines the guidelines for project support, the project implementation and the project review.

Ownership: It is important that the indigenous peoples are involved at all stages, which helps to build confidence and capacity and leads to ownership in the project. This will in turn make the results sustainable once the project has ceased operations.

Consultations: The indigenous peoples should be consulted at all stages, and their opinions taken into account, in order for a project to be participatory and democratic.

Socio-political context: The historic as well as current socio-political context provides good indicators for potential areas of contention and sensitivity. These should be studied, assessed, and taken into account in the implementation of the project. This provides an opportunity to identify and resolve potential problem areas prior to commencing operations.

Cultural Characteristics: The culture of indigenous peoples is often under threat. As such indigenous peoples view cultural protection in all its different expressions as essential to their survival. Any development activity occurring in indigenous areas should not only be culturally sensitive, but also encourage and support indigenous culture and traditions.

Rights-based approach: International instruments and policies provide guidelines and frameworks to ensure indigenous rights are not undermined but protected. In this context, ratified conventions provide common grounds and can serve as indicators of assessment.

Creativity: In working with indigenous peoples, a creative approach is needed. Strategies that worked in other areas are not always appropriate. Each intervention has to be tailored to the specifics of each situation as no two are the same and each geographic area or peoples have their own inherent characteristics and distinctions. Indigenous organizations often do not have access to financial, administrative and technical resources in order to operate effectively.

Constructive Engagement: Commitment to indigenous issues should be long term engagements, otherwise it can lead to ad hoc and piecemeal interventions, which are not sustainable in the long run. Interventions should be entered into with a spirit of mutual respect and constructive engagement.

Ms. Wiveca Stegeborn

UNDERSTANDING HUMAN RIGHTS: BARRIERS IN UNDERSTANDING AND COMMUNICATION BETWEEN THE WANNIYALA-AETTO OF SRI LANKA AND THE INTERNATIONAL COMMUNITY

Dr. Wiveca Stegeborn is a cultural anthropologist from Sweden and she has been working closely with the Wanniyala-Aetto community of Dambana in Sri Lanka since 1977. Ms. Stegeborn held a passionate speech about “Understanding Human Rights: Barriers in understanding and communication between the Wanniyala-Aetto of Sri Lanka and the international community”. During the speech she presented slides from Sri Lanka.

The Wanniyala-Aetto people are the indigenous peoples of Sri Lanka. Wanniyala-Aetto [waniya-la-ätto], which is what they call themselves, means “forest people”. They number less than 2000 individuals today. Their legends, archaeology, and recent living patterns suggest that they descend from the first hunters and gatherers on the island. Since they have not been absorbed into either of the two mainstream societies, the Sinhalese or the Tamil, they have maintained their physical and cultural characteristics. Non-indigenous people call all of the indigenous people of Sri Lanka “Veddahs”, which means “hunters”. The term “Veddah” is more of a classification than it is a name, it is used to describe “backward” people, or landless people, who live on the margins of cultivable land and close to the forest. Occasionally, the word may also be used to mean outlaws. These negative connotations reflect the low social and economic status of the Wanniyala-Aetto in their native land. It has only been since the late 1990’s that the preferred term, *Wanniyala-Aetto*, has come into common use. Ironically, by the time the major society began to refer to them with this preferred term, the Wanniyala-Aetto were no longer permitted to enter the forests, which for thousands of years have supplied them with food and shelter, and from which they have drawn their self-image.

Like many indigenous peoples, the Wanniyala-Aetto do not have a collective term for all the indigenous people of Sri Lanka, much less for the whole world. They are not aware of the concept of “indigenusness”, neither in the context of their own standing, nor regarding the “indigenusness” of other people. The word *adivasi* is a new word that has entered their vocabulary in the 1990’s through the Sinhalese language; they say this word in Sinhalese, since the distinction does not exist in their own vocabulary.

Almost two years after the decision in Colombo, on November 9, 1983, the traditional forestland of the Wanniyala-Aetto, comprising about 51,468 hectares, was designated a combined catchments area⁷ and a Forest and Wildlife Reserve. It is called the *Maduru Oya National Park*. The Department of Wildlife Conservation marked off the land and barriers, guards, and electric fencing with high voltage were erected, and outposts were stationed along the borders. No one was allowed to enter the park without a written permit form the Wildlife Department in Colombo, which is on the other side of the country.

⁷ An ecologic recycling system: Trees “transpiring” water that forms clouds that gives rain to the trees that vaporise water a.s.o.

Most of the Wanniyala-Aetto cannot read and write and day by day their ancient way of life has become criminal in the eyes of the law. Yesterday's hunters and gatherers became today's poachers. As the Accelerated Mahaweli Development Programme proceeded, the old Wanniyala-Aetto country was segmented into systems using alphabetic designations. Half the Tropical Dry Zone Rainforest belonged to System B (north of Maduru Oya) and the southwestern half to System C. The hug trees were logged and bulldozers levelled the last hunting grounds and traditional honeybee sites. The Wanniyala-Aetto country dramatically changed into vast areas of rice, paddy cultivation, towns, villages, highways and infrastructure. Thousands of Sinhalese settlers poured into the area. Eleven thousand hectares of hunting ground were inundated and two small villages situated close to a dam (Kandeganville and Kaeragoda) were threatened with flooding during the monsoon rains.

Five Presidents have governed since the last Wanniyala-Aetto were resettled in the Rehabilitation Villages on System B and System C. They have been extended written and verbal promises for their return to their forest. But as the old Wanniyala-Aetto spokesman, Uru Warige Tissahamy said before he died in 1998-“Leaves is all I have”- while pointing to the pile of written documents (sheets of paper are called 'leaves' in their language).

International Human Rights Organisations such as the International Labour Organization (ILO), the United Nations (UN), Working Group on Indigenous Populations (WGIP), and the European Parliament as well as others, have expressed their concern about the Wanniyala-Aetto to the Sri Lankan government. International NGOs, such as the World Wildlife Fund (WWF), indigenous organisations from most continents and local campaign groups have written hundreds of letters to the various Sri Lankan embassies and to the government asking them to formally recognise the Wanniyala-Aetto as an indigenous minority. The state response has been that the case will be taken into consideration.

Six months prior to their departure from their forest homes to the Rehabilitation Villages, the Sinhalese-Tamil war had exploded. In April 1983, Tamil shops burned down and the universities closed. The government installed a military training camp for Sinhalese soldiers inside the Maduru Oya national park. Close to Pollebedda and Ratugala in the eastern areas of Maha Oya, the Tamil guerrillas plundered Wanniyala-Aetto homes. Silently, the Wanniyala-Aetto, in the village Dambana (close to Mahiyangana) watched the executions of young men in their tropical forest. At the banks of the Maduru Oya River, dismembered bodies were found. Deserters and members of the opposition were tied inside car tires and set on fire on the village road. Many “disappearances” occurred in this scarcely populated area. The war still continues.

The Wanniyala-Aetto are struggling for both their physical and cultural survival; physical, because they get shot and sometimes killed by the park guards if found trespassing on the park border, and cultural, because their way of life and traditional subsistence has been prohibited since November 9th, 1983. There has been little interest on the part of the government of Sri Lanka to accommodate the indigenous people and to allow them to have a little bit of say in their own lives, i.e. a right to self-determination. Since the Wanniyala-Aetto have no desire to rule the country, the term “self-determination” for them simply means looking after their own families, speaking in their own

language, maintaining their religion, marriage and funeral customs, and pursuing their foraging subsistence economy without harassment.

In July 1985 the Wanniyala-Aetto were invited to the newly established forum, The Working Group for Indigenous Populations (WGIP) at the UN. With great effort the Wanniyala-Aetto obtained passports, a task that is not without complications; they do not have birth certificates to prove that they were born. Prior to the 1990's, the Wanniyala-Aetto were born and died among the near and dear ones in the jungle, unorganised and without certificates. Once the passports were on the way, Ms. Stegeborn, was informed that the Wanniyala-Aetto were not 'real' Sri Lankans, hence, they needed a Sri Lankan to go with them to the UN. She found a skilled journalist with a good old aristocratic Singhalese surname to accompany them. After having overcome this obstacle, they heard that the Wanniyala-Aetto were considered to be of 'cultural value' to the country, hence they needed a special permit to leave the country from the Ministry of Cultural Affairs. This was arranged in two days, but now the Wanniyala-Aetto had become an issue for the Ministry of Justice- the delays continued. On the last day, three hours before the flights departure, the Office of Immigration and Emigration told Ms. Stegeborn and the Wanniyala-Aetto representatives that the President had summoned his closest ministers and that they had decided that the Wanniyala-Aetto, under no conditions, were going to be allowed to leave the country and go to the UN in Geneva. Ms. Stegeborn's driver returned the three indigenous representatives to the jungle and she alone caught the flight to attend the WGIP meeting. When the time came to deliver the Wanniyala-Aetto case to the WGIP, there were three empty seats beside her, which brought great confusion to the meeting and caused numerous questions. Forty-two indigenous groups/nations protested against such overt breaches in human rights, such as the liberty to travel from ones own country and return to the same, freedom of speech, and the freedom to attend a democratic meeting such as that at the United Nations. Sri Lanka, after all, is a member state of the United Nations and is also a signatory of international covenants, such as the ICCPR.

Since the Wanniyala-Aetto were not able to attend the meeting at the UN, a number of leading international human rights attorneys decided to visit the Wanniyala-Aetto. The delegation made a formal application to the embassy for Sri Lanka in Geneva. All were told they were welcome, except Ms. Stegeborn, who according to the Permanent Mission of Sri Lanka shared a 'biased' view on the indigenous situation. This was a major setback since the delegates were unaware of the Wanniyala-Aetto's location and also because they could not speak the Wanniyala-Aetto language. Due to these setbacks, the trip had to be cancelled.

As the war continued in Sri Lanka through the 1980's and 1990's, it became increasingly difficult to hold private weapons. The forest people's old muzzleloaders had to be licensed which meant they had to pay for the document. Bullets and gunpowder were scarce, but the Wanniyala-Aetto found industrious solutions. Meanwhile, the Wanniyala-Aetto persistently tried to revoke the government's policy regarding their involuntary habitation and subsistence. Following failed commitments from Sri Lanka's three previous presidents, prime ministers and other ministers, the Wanniyala-Aetto once again contacted the UN Working Group on Indigenous Populations. In 1996 the Wanniyala-Aetto managed to exit Sri Lanka without obstacles as NGOs followed them through the legal passport procedure. Many people working within the UN awaited the arrival of the Wanniyala-Aetto, not just the ones who

remembered what had happened in 1985, but also Madam Chairperson of the WGIP, Erica Daes. She gave extra time for deliverance based on their previous difficulties.

The first son of the legendary Chief, Uru Warige, (surname) Tissahamy (first name) delivered the presentation by heart. His name is Wanniya; a good name for someone living in the *wanni*, which means jungle. Wanniya cannot read Roman orthography so when the translators tried translating the pre-printed scripts they soon realised that Wanniya could not follow the manuscript. This was a precarious situation, as no one understood the presenter! Ms. Stegeborn was consulted to be an emergency solution. She listened and translated Wanniya's words to English, and then the professional translators listened and translated her words into their own respective languages. After having completed the deliverance, the emergency translator (Ms. Stegeborn) received a sharp public correction from the Chairperson who stated that an unauthorised translator was not allowed inside the cubicles. Madame Chairperson pointed out “—I repeat. This cannot happen again.” The correction was admittedly well founded, but what would have Wanniya done at the WGIP if no one would have been able to understand him? Are Human Rights merely for the ones fluent in languages of the North, Chinese and Russian? In his presentation, Wanniya gave recognition to the consequences of the loss of their forest and their own impact on their former land based on the new regulations.

The WGIP participants forwarded a Resolution to the government of Sri Lanka expressing support for the Wanniyala-Aetto petition to return to their former hunting grounds. To strengthen the Resolution, the document cited several international UN conventions and treaties that were pertinent to the Wanniyala-Aetto issue that had been previously signed and ratified by Sri Lanka. At the WGIP meeting, a tripartite dialogue opened between the Wanniyala-Aetto, the Ambassador for Sri Lanka in Geneva, and with two nature conservation organisations, the World Wildlife Fund (WWF) and the International Union of Conservation of Nature (IUCN). The parties agreed to find an expeditious solution to the issues facing the Wanniyala-Aetto.

In late June, one month prior to the WGIP conference of 1998, the Wanniyala-Aetto were invited to a meeting with the government of Sri Lanka. They were told that their land claim had been reconsidered, and that the government had approved the Principles and Rules for Wanniyala-Aetto conduct within the Maduru Oya National Park, a document that they, the Wanniyala-Aetto had drafted. Unaware that the government strategy was to direct this message toward the international community, the Wanniyala-Aetto rejoiced and started planning their return to their forest. That same year the ambassador of Sri Lanka placed himself on the speakers' list at the WGIP meeting. He informed the members of the board and the WGIP participants that her Excellency, the President of Sri Lanka, consented to mediate the Wanniyala-Aetto grievance. The Wanniyala-Aetto would once be allowed to continue their traditional way of life and make progress of their civilisation. Two more points were made by the President: (1) the possibility of Wanniyala-Aetto participation in the protection of flora and fauna of the Maduru Oya National Park, and (2) the President's assurance that she would take action to promote the social and economic health of their community.

Four months later, on the night of December 23, 1998, Uru Warige Punchi Banda and two other Wanniyala-Aetto men were hunting deer inside the Maduru Oya National Park. Suddenly, Punchi Banda was shot in the back by a park guard. Afraid for their lives, the other men escaped, but Punchi

Banda fell and was taken prisoner. He was taken to the capital of Colombo and was placed in one of the worst prisons in Sri Lanka. The bullet had penetrated his spine. He became paralysed from the waist down, and he could not control his bladder and bowel movements. Half of his face became immobile. Eventually he died.

In spite of the tragic consequences of the government's actions, Punchi Banda's wife was ordered to pay the required fine to the Department of Wildlife for her husband's supposed "trespassing" in the park. In spite of the government's assurances that they would cover the funeral expenditures, she eventually had to assume responsibility for them as well. Experience has shown the Wanniyala-Aetto to be moderate in their celebrations when it comes to the government's statements.

The 1998 participants of the WGIP meeting do not know that the Presidential promise has failed to be completed. The lack of communication between this indigenous people and international instruments has inhibited the sharing of knowledge. The Wanniyala-Aetto cannot speak, read, or write any European language. There are no telephones in the jungle and no one handles the Internet so direct communication is the sole alternative. There were times when audiocassettes were mailed to the Wanniyala-Aetto with vocal letters. However, "long fingers" at the postal service thought the tapes contained western music, and therefore the tapes disappeared.

If the Wanniyala-Aetto are going to survive as a culture, they need to have the self-confidence to speak out on their own, even in the presence of what they have been made to believe are "more advanced" peoples (Singhalese, Tamils, people of the North). This can be achieved if they learn to critically examine government statements and legal documents. They also need to establish an extensive network with UN instruments, Human Rights fora, indigenous NGO's and funding agencies. In order to gain this knowledge, they need to find financial resources, excel at school and advance to higher education, perhaps even abroad, such as in old "Mother Country England". Human rights and capacity building on indigenous issues is not on the agenda in Sri Lanka.

This is the paradox: If the Wanniyala-Aetto wish to raise their children according to their traditions, teach their language, and share in their beliefs and way of life, they first have to send their children to mainstream (in this context, Singhalese) society. In addition, the adult student when studying abroad may acquire customs that are alien to the ones practised by his own forest people. He may dress, talk, and smell strangely, and he may become distanced from his people in the compound. Chances are that he will not choose a girl from the settlement as his future spouse or take up the Wanniyala-Aetto way of life and join his fellow kinsmen hunting. Who will teach a grown up man to hunt? Even so, there must be times when he will long to be back with his old friends in London, Cambridge or Oxford. In spite of assistance from outside organisations such as the United Nations' WGIP, WWF, Social Policy and Protected Areas, as well as innumerable NGO's, the Wanniyala-Aetto have not achieved a viable forum to defend their human rights. Hence, the irony is that the Wanniyala-Aetto may first have to acquire an alien culture, maybe even two (national and international), in order to maintain their own.

Ms. Stegeborn ended her presentation with two constructive propositions that had sprung up from the first day's session. Professor Martin Scheinin suggested, in the informal discussion, that a UN consultative group could be present in a country assisting the government with indigenous Human

Rights issues. The other proposition came from the International Work Group on Indigenous Affairs (IWGIA), which as pointed to a follow-up procedure by the Permanent Forum in Indigenous Issues. The Permanent Forum would point at specific indigenous issues and subsequently enquire about the results from the UNDP, the government, and other bodies. Ms. Stegeborn asked once again- “How do we handle the language constraints?”

FORUM UPDATE

Mr. Magne Ove Varsi

Resource Centre for Rights of Indigenous Peoples

CHALLENGES IN DISSEMINATING INFORMATION ON INDIGENOUS RIGHTS

Mr. Varsi works as the head of The Resource Centre for Rights of Indigenous Peoples⁸ in Kautokeino, Norway. The Resource Centre was established in 2003, with the aim of working to increase the knowledge and understanding about indigenous peoples' and Sámi peoples' rights. The Norwegian government established The Resource Centre as a part of their human rights policy and Norway's official Sámi policy. The centre's work is to find, gather, and disseminate information, which works on two levels: 1) To increase the knowledge of Sámi and indigenous rights 2) To increase the understanding of Sámi and other indigenous peoples' rights.

Changing attitudes in a positive direction is an important goal for the centre. They are working to make contrary negative attitudes because research has shown that there are still visible effects of negative attitudes, and cases involving Sámi are very often negatively exposed. Mr. Varsi showed the audience some examples of negative exposures of the Sámi people by using abstracts from Norwegian newspapers and the first segment of Knut Hamsun's novel "Markens Grøde".

Working to challenge the nationwide media is also an important aspect of The Resource Centres work, as well as working with the central authorities and schools. The media network is a very important channel. The challenge to influence society and change the general attitudes towards indigenous peoples and Sámi people is a huge task. It is not only a challenge to get society to tolerate the Sámi people and their culture, but also to understand and accept that they are equals.

According to Mr. Varsi, The Norwegian Constitution and the Sámi Legislation must be used as a basis to develop an equal right to the Sámi culture and language. In order to give legislation the proper content, institutions must be established to develop them. The establishment of new Sámi institutions, such as a Sámi court, are often perceived as threats to the Norwegian hegemony. Mr. Varsi gave examples of some expressions from Norwegian politicians who have been opposed to such institutions because, according to these politicians, they would lead to segregation and finally a separate Sámi national state. Mr. Varsi also emphasized that never before has there been established so many Sámi institutions as in these recent years, and never before have the Sámi people been so integrated in the Norwegian society as they are at the present time.

Mr. Varsi showed the conference audience a video of Mikkel Eira, one of the most active persons in the Alta/Kautokeino conflict. He directed the hunger strike during the conflict and became a symbol of the Sámi struggle. The Norwegian Broadcasting Company (NRK) in their reporting tried to illustrate that Mikkel Eira represented a sub current within the Sámi population. The reporting tried to persuade the viewer that Mr. Eira and his sympathizers also wanted a separate Sámi State.

⁸ <http://www.galdu.org/>

This was the Norwegian Broadcasting Corporation's way of presenting news regarding the Sámi people. Mr. Varsi asked the audience something to the effect of - "On what basis did NRK make this report, and what attitudes did this reporting reflect?"

Mr. Brian Phillips

Canadian International Development Agency (CIDA)

CIDA-TOWARDS PARTNERSHIP WITH INDIGENOUS PEOPLES

Mr. Brian Phillips opened his speech by saying: “*Wachay and God Dag*, my friends. *Tusen takk* to the Sámi people for the warm welcome to their traditional territories. An indigenous elder and friend from the Ojibwe Nation in Canada once taught me that the voice of a land truly lives in its indigenous language and culture, and I feel very confident that the shared glimpses into many unique indigenous landscapes made possible through this Forum will allow our future work together to be all the more productive”.

Mr. Phillips comes from a tiny and remote village in the forest of Northern Ontario, where his family still makes their permanent home. They are of Metis ancestry, and Mr. Phillips has enjoyed a fairly traditional livelihood there for about thirty years, and has become involved in the debate on the impact of large-scale development in their small community. For the last twenty years, he has worked both with and for the Federal government of Canada in the design of rural and indigenous peoples community economic development initiatives on the local, regional, national and international levels. There have been many success stories of sustainable development to celebrate, but still there have been far too many instances where the challenges to sustainable development appear almost insurmountable. Equitable, sustainable development for indigenous peoples can be realized more readily if knowledge of how hard gains have been made are recorded, shared, adapted and replicated wherever possible. This takes collective work, and trust.

CIDA has historically supported good development work involving indigenous peoples. Over the last 30 years they have funded over 200 such projects totaling more than \$30 Million (Canadian), mostly from their Canadian Partnership Branch, local Canada Funds, and Gender Equality Funds. Typically, however, this programming has been ad hoc and implemented by partner organizations; yet despite individual project successes, in-depth knowledge of the projects and issues has largely resided outside of CIDA.

Canadian Indigenous organizations have been involved in a number of these partnership projects:

- The Prinzapolka Social Development Project (\$3Million, 2000-2005), involving Meadow Lake Tribal Council and the Miskitos people in Nicaragua;
- Institution Building for Northern Aboriginals Project (\$ 7 Million, 1996-2005), engaging the Inuit Circumpolar Conference to provide technical assistance to the representational and decision-making institutions for the indigenous peoples in the far north of Russia; ICC has also been supported to help the Mayans of Belize in the development of natural resource co-management strategies;
- Community Oriented Health Care Project, (\$460K, 1999-2002), engaging the indigenous community of Kahnawake to provide technical assistance to health care in five indigenous communities in Argentina.

The objective of the Indigenous Issues Secretariat in CIDA's Policy Branch, (where Mr. Phillips now works) is to help identify opportunities to provide direct support to indigenous peoples in those countries where CIDA have development assistance programming. It is also to promote consideration of indigenous people's development issues in mainstream programming that support sustainable development and poverty reduction. The participation of indigenous peoples and traditional populations in development processes is the fundamental criterion to gauge progress and success for CIDA, as well as other donor agencies and non-governmental organizations, according to Mr. Phillips.

The manner of indigenous participation needs to value and encourage the fullest articulation of the indigenous knowledge systems involved if it is to avoid tokenism, paternalism and other mistakes of the past. Indigenous knowledge is a crosscutting theme that also affects other CIDA domains, such as gender equality, education, human rights, children's rights, governance, environment, and natural resources.

Thus, the most effective means of protecting indigenous knowledge lies in the indigenous people's own willingness to articulate their identity and to develop culturally appropriate institutional capacity, as well as to collaborate in the work of national and international fora grappling with similar issues. But this effort should not and need not be all 'head wind and up river' for indigenous peoples, nor should it be made in isolation or without resources.

The UN Permanent Forum on Indigenous Issues, the World Intellectual Property Organization (WIPO), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement), the UN Convention on Biological Diversity, among others, are sufficient to protect indigenous knowledge systems and collective ownership. Much of CIDA's work on sustainable development and poverty reduction, however, takes place closer to the grass roots, through country and sectoral programs and locally managed projects across the developing world. Mr. Phillips talked briefly about a few of the tools available and events supported by CIDA that are of particular interest to indigenous peoples.⁹

The Indigenous Peoples Partnership Programme (IPPP) is a pilot responsive fund (\$10 Million, four years), which was launched in 2003 to match the expertise of Canadian Indigenous entities with the development capacity requirements of indigenous peoples in Latin America and the Caribbean (LAC) and to help reduce poverty. IPPP was announced at the Summit of the Americas, which held in Canada in March 2001, the intent of which is to respond to the increasing domestic and international pressure for development among the 45 million indigenous peoples of the Americas. The purpose of the IPPP is to apply a flexible mechanism to a complex dimension of poverty reduction programming, to support the international development services of indigenous Canadians, and support the key themes of the Summit of the Americas: connectivity, inclusion of marginalized groups, development of human potential and youth, and the increased and substantial engagement of Canada in the international dialogue on indigenous rights and development.

⁹ All can be found on their web site: www.acdi-cida.gc.ca

The IPPP announcement was followed by extensive consultation on program priorities and implementation considerations with indigenous people's organizations across Canada and LAC. It issued its first call for proposals in March 2003. IPPP has three main themes:

- 1) Development- excellence in co-operation between indigenous Canadian entities and indigenous peoples entities in LAC;
- 2) Knowledge - a commitment to excellence in learning: IPPP will support research and activity that builds or enhances knowledge that is identified by indigenous peoples as important to their development, and make effective linkages between indigenous/traditional knowledge systems and modern technology, and expand indigenous to indigenous communications and networking.
- 3) Youth - a commitment to excellence in future leadership: IPPP will support leadership development among indigenous youth across the Americas, and strengthen the existing institutions that serve them; it will also facilitate the exchange of ideas on matters of common concern, such as indigenous knowledge, language and cultural revitalization, and economic development.

Indigenous Issues Extranet Site (INNET) is a dynamic interactive site for registered members around the world who are interested in development matters for indigenous people. Mr. Phillips encouraged the audience to join and participate.¹⁰

CIDA is supporting indigenous peoples participation in a number of international events important to indigenous peoples development and indigenous knowledge protection, including:

- World Summit of Indigenous Entrepreneurs (Toronto, August, 2003);
- World Parks Conference (Durban, September, 2003);
- XII World Forestry Congress: Forests, Source of Life (Quebec City, September, 2003);
- Biodiversity and Health: An International Symposium (Ottawa, October, 2003);
- Global Forum on Indigenous Peoples and the Information Society/ World Summit on the Information Society (Geneva, December, 2003). The Aboriginal Canada Portal Working Group, composed of nine federal government departments including CIDA and six national aboriginal organizations, is working to help make this proposed event a reality.¹¹

In closing, Mr. Phillips view was that any failure to value and encourage the fullest participation of indigenous peoples in development planning and equitable implementation undercuts the very sustainability we espouse: "We are beggared by the loss of opportunity and diversity, and we lose ground in our pursuit of the Millenium Development Goals." As an indigenous woman from Australia said, " If you have come to help me, you can go home again. But if you see my struggle as part of your own survival then perhaps we can work together." The Chair of the UNPFII, at the second session in New York in May 2003, said that our global data gathering systems, in respect to indigenous peoples, are imperfect. But we are likely to agree that indigenous peoples, in far too many cases, suffer at the lowest level of any and all quality of life indicators we might name. For development agencies like CIDA, the priority, then, is to work collaboratively where the collective need is greatest. Despite the wonderful diversity of voices in this development dialogue, we share

¹⁰ <http://acdi-cida.gc.ca/innet>

¹¹ For more information: www.aboriginalcanada.gc.ca

the same planet. As Geronimo, the great Sioux leader reminds us, "The sun, the darkness, the winds, are all listening to what we say."

And he ended his speech with: "*Gitchi-chi-migwetch, tusen takk*, my friends."

Mr. Georges Midre

Maya Competence Building

REPORT FROM GUATEMALA

Mr. Midre is a professor of Sociology at the University of Tromsø. He has been working with questions about the Maya people for many years. Mr. Midre gave us a “Report From Guatemala” at the Forum conference.

In 1997, The Maya Competence Building programme (MCB)¹²-a Norwegian programme- was established with a grant from the Norwegian Council for Higher Education’s Programme for Development Research and Education. In the aftermath of signing of the general Peace Agreement in 1996, the central idea was to establish a follow-up programme at the University of San Carlos. One central aim was to help students of indigenous background enter university careers by offering fellowships for graduate- and postgraduate studies. Another aim was to deepen the general knowledge at the University of San Carlos about the situation of the indigenous peoples of Guatemala specifically, and to deepen knowledge about other peoples in the world, generally. A link between Mayan students and researchers and Sámi students and researchers was seen as especially important.

The proposal received a grant of 6 million NOK for the first period of 1998-2001 and a similar amount for the 2002-2006 years.

Conclusion:

- The research activities on inter-ethnic issues in Guatemala have been stimulated and productivity regarding publication is high.
- A significant number of scholarships in inter-ethnic studies have benefited Mayan- and non-Mayan students.
- The role of our co-operating unit at the San Carlos University – Institute of Inter Ethnic Studies – has been greatly strengthened within the university system and in Guatemalan society.
- The MCB has contributed to sustaining an interest in Guatemala and Central America among Norwegian postgraduate students.
- Efforts concerning the recruitment of students with indigenous background must be sustained and strengthened.

¹² <http://www.idei.usac.edu.gt/mayacompet.html>
<http://fm.siu.no/NufuProjects/FMPro?-db=project.fp5&-lay=presentation%5fweb&sortfield=proID&programID=NUFU&partner%20%3a%3acountry=Guatemala&partner%20%3a%3auniName=%22%22&subjectArea%3a%3amainLookUp=%22%22&-max=10&-find=&-Format=projectdetalj.htm>
<http://siu.no/nufu/>

Ms. Sidsel Saugestad

Forum for Development Cooperation with Indigenous Peoples

LAND CLAIMS IN SOUTHERN AFRICA

Ms. Saugestad is the chairperson of the board in the Forum for Development Cooperation with Indigenous peoples and is a professor in anthropology at The University of Tromsø. In her speech at the Forum conference she commented on two court cases in Southern Africa. South Africa and Botswana demonstrate two contrasting and interesting cases in the debate over indigenous land rights.

Ms. Saugestad began by introducing the success story about the settlement that gave a substantial section of the Kalahari Gemsbok National Park back to the Khomani (southern San People) in South Africa in 1999.¹³ She quoted a comment on the event: “The Agreement contains a powerful statement on the rights of indigenous peoples made by Africa’s most powerful country, which will no doubt reverberate throughout Africa and be noted in the United Nations forum”.

Four factors contributed to the success:

1. The justice of the cause. It was possible to trace the descendants of those evicted from the park, some as late as the 1960s. Some were squatters near the park; others were living scattered through Northern Cape.
2. The able work by a support organization, the South African San Institute (SASI) and South African human rights lawyers.
3. The political climate in South Africa after a newly won liberation, and a Minister of land affairs who recognized the historic and symbolic significance of the San claim.
4. It was backed up by the growing concern for indigenous affairs in the international community, for instance the UN.

The settlement of the Kalahari Gemsbok Park represented a gesture that is not likely to be repeated often in South Africa. And it should also be noted that the Khomani Community Property Association has run into a few problems that are predictable when assets are returned to people long deprived of any kind of control over resources. Nonetheless, this should not diminish the broader message of the case: restitution.

Ms. Saugestad then turned to the situation in Botswana. Due to Botswana’s proximity to South Africa, and more importantly, the similarity in the issues these cases raised, many believed that in 1999 there might be a spill-over effect from South Africa into the case in Botswana that has been pending for some time: The question of settlement within the Central Kalahari Game Reserve.

The land claim has been pending for the following reasons and in contrast to the South-Africa case:

1. The government of Botswana rejects the relevance of the International indigenous jurisprudence for issues in Botswana. The official attitude is that no policy should make a distinction on the basis of race or descent, hence there is no discrimination.

¹³ http://www.ditshwanelo.org.bw/index/Current_Issues/Basarwa.htm

2. It has a very different political history: Botswana saw no liberation struggle. It is probably the country in Africa with the smoothest transformation from protectorate to independence, keeping in place almost unchanged the traditional, very formalized hierarchical system of chiefdoms, which was incorporated into a new democratic order based on the rule of the majority.
3. In contrast to South Africa, the role of civil society is very weak, and the liberal segment from which support organizations are recruited, is extremely small, both in absolute and relative number.
4. However, the case is as just as the one of the Khomani in South Africa, and is probably of an even greater symbolic significance.

Ms. Saugestad gave the audience some background information about the situation in Botswana. The Central Kalahari Game Reserve was set-aside in 1991, five years before independence, so as to “protect wildlife and provide sufficient land for traditional land use by hunter gatherer communities”.

By 1985, a government commission started questioning whether people and wildlife could coexist within the Game Reserve. One argument was that the introduction of horses, donkeys, and goats was endangering the natural habitat. Another argument was that it was becoming too expensive to provide services for the few thousand inhabitants scattered over very large distances.

By 1997, a major part of the population was resettled outside of the Game Reserve, which the government of Botswana claims was voluntarily. On the whole, no physical violence was used, but an extremely poor section of the population was faced with a cruel choice: If you stay the government will abandon you. If you stay you will have no access to water, no access to health facilities, and no access to education. If you agree to move, there will be compensation money, cattle, and all imaginable public facilities.

The communities were divided. At the Forum conference in Tromsø two years ago, Kuela Kiema, a former inhabitant from the Central Kalahari Game Reserve, told the conferees that he had agreed to relocation, and gave a deeply moving record of what it had meant to win the argument against those who wanted to stay. Ms. Saugestad quoted: “Yes, I was the winner. But I was the killer of the soul of my people. I won, to lose my land, my only heritage from my forefathers. I won against my will, against my soul. Yes I lost. I lost. It was despair. We are the losers”. This is the nature of the voluntary relocation in 1997.

A few hundred stalwarts remained and what the government had been hinted at in 1997 became a reality in January 2002: water points were closed, transport of water discontinued, and remaining social amenities were withdrawn. Ironically, this was at the same time as a large United Nations conference was convened in the capital, Gaborone, with the theme: “Peaceful and constructive group accommodation in situations involving minorities and indigenous peoples”. During that conference, the issue of removal came up and the government of Botswana insisted that the relocation was essential in order for them to get access to state services such as healthcare.

There can be no doubt that the people in question have “traditionally owned or otherwise occupied or used” the territory in question, uninterrupted, since time immemorial. According to the criteria set out in the ILO convention 169, the Draft Declaration on Indigenous Rights, and numerous other documents, the inhabitants of Central Kalahari should have a right to occupation of that territory. But is the Botswana government bound by these declarations? What does the law say about the situation in Botswana?

A land claim was presented through a Negotiation Team consisting of representatives from the Central Kalahari Settlements, two indigenous organizations: The First People of the Kalahari and the Working Group for Indigenous Populations in Southern Africa (WIMSA)¹⁴, and are supported by Human Rights organizations.

In April 2002 an application was brought to the High Court. The Application sought to order the government to restore the basic and essential services to the residents of the Central Kalahari. It also sought to have those who had been effectively forced to move, due to the termination of services, to return to the Reserve.

The State counsel raised 42 technical objections to the court case, some of which included:

- That the first applicant, Mr. Roy Sesana, could not in terms of the law, bring a case of this nature, as he was not a resident of the reserve,
- That Mr. Sesana had no authority to represent the other 242 residents who were part of the court case,
- That the affidavits filed by the residents were improper in terms of the laws as the founding affidavit had not been correctly signed and sworn to,
- The content of Mr. Sesana’s affidavit was too complex to have been within the knowledge of an illiterate person,
- They were scandalous, vexatious and irrelevant,
- They contained hearsay.

The lawyers of the residents challenged these objections, stating that Mr. Sesana was born in a settlement within the Game Reserve and that he represented himself while the other residents had given their mandate to the Negotiating Team. Moreover, they stated that the facts stated in the affidavit were well within Mr. Sesana’s knowledge and that it was improper for the State counsel to suggest that lack of literacy implied lack of knowledge.

The application was dismissed. New proceedings have begun, and a new case will be brought before the High Court, probably in the beginning of February 2004.

The High Court will make a decision on the following issues:

- Whether it was unlawful for the Government of Botswana to terminate basic and essential services to the Residents of the Game Reserve in January 2002
- Whether the Government has an obligation to restore services to the Residents

¹⁴ <http://www.san.org.za/>

- Whether the Residents were in possession of their land and were deprived of such possession forcibly, wrongly, and without their consent
- Whether the Government's refusal to issue Game Licenses to the Residents and to allow them to enter the Game Reserve is unlawful and unconstitutional

This is a case with very high principal significance, and is a sort of Alta-Kautokeino case of Southern Africa. The Negotiation Team, representing the inhabitants of Central Kalahari Game Reserve, is appealing to the international community for moral and financial support in this matter. NORAD is supporting through the Norwegian Church Aid; IWGIA has been supporting these organizations for many years. The Saami Council, in the name of Indigenous People to Indigenous People cooperation, has also recently been more involved in this case.

Mr. Geir Tommy Pedersen

The Saami Council

INDIGENOUS PEOPLE TO INDIGENOUS PEOPLE COOPERATION

Mr. Pedersen is the leader of the Saami Council.¹⁵ The Saami Council is an NGO (and an indigenous-political organization), which was established in 1956 to promote the interests of the Sámi as a nation. Mr. Pedersen was invited to the conference to talk about “Indigenous People to Indigenous People Cooperation”.

Mr. Pedersen started by saying: “We, the Sámi people, are one People, and neither less or more than any other people. We are, as an indigenous people, one of many people, and we have the same value as all other peoples”. He wanted visualized and clarified why cooperation between indigenous peoples internationally is so important.

There can be no doubt that an expressed skepticism, among many indigenous peoples in relation to non-indigenous peoples, has its roots in history, Mr. Pedersen said. There are plenty of examples why indigenous peoples have reasons to be skeptical, especially in relation to the actions of nation states, and he referenced Ms. Saugestad’s speech about the actions of nation states in Southern Africa.

Mr. Pedersen has been working for many years with Sámi culture and other indigenous peoples. Most people have one culture to relate to, but Mr. Pedersen emphasized that as indigenous people, you have to relate to one or several other cultures. This implies, for instance, that indigenous peoples constantly have to relate to a national culture, and at the same time retain and uphold their own culture.

Mr. Pedersen gave an example why cooperation between indigenous peoples is so important: in meetings with other indigenous peoples, indigenous peoples do not have to explain so much to each other. To non-indigenous people you often have to explain what it means to be a Sámi. We are talking about understanding, common aims, goals, and common ways of thinking.

To the Sámi people, the meaning of the word “self-determination” is very important, Mr. Pedersen said. He related this to development work. When one is part of a national state, most people have access to resources. To illustrate this, he told the audience about the difficulties the Saami Council has met by having members from four national states. If the Saami Council wants to have an office relating to NORAD, for example, the office needs to be in Norway, even though the Sámi people live in four national states. These are the issues the Sámi people have to struggle with all the time.

Development organizations have clear goals, and they are often targeted toward one very specific project in one specific area. We do think, and need to think, quite differently when it comes to indigenous issues. The Saami Council has a human rights part, where they actively work to strengthen the human rights of indigenous peoples internationally.

¹⁵ <http://www.saamicouncil.net/>

Mr. Pedersen also talked about the resource situation in the Saami Council. It is hard for the Council to get enough economic resources to work with the projects in developing countries that they believe are important. He ended his speech, and the two-day conference, by telling the audience why he thought indigenous peoples to indigenous peoples cooperation is so important: it is about trust, it is about understanding, it is about respect and it is about self-determination.



Forum for Development Cooperation with Indigenous Peoples
Forum conference 2003: "Indigenous Rights: Focus on the UN system. Cases from Asia"
Program. For more information: <http://www.sami.uit.no/forum>

Wednesday 08.10.2003

20.00: Reception at Kaiskur 4. Kaiskur 4 is located at the harbour between the places of arrival for Hurtigruta (the Coastal ship) and the High-Speed Crafts, close to Roald Amundsens plass, south of Radisson SAS hotel.

Thursday 09.10.2003

Opening of conference

09.00-09.30: Registration, Auditorium Maximum at the Administration building on the University campus.

09.30-09.45: Opening by:
University of Tromsø: Jarle Aarbakke.
Centre for Sami Studies: Bård A Berg.
The advisory board of the Forum: Sidsel Saugestad.

Indigenous Rights: Focus on the UN system

09.45-10.45: Rodolfo Stavenhagen. UN Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples:
"Indigenous human rights in international perspective". Questions.

10.45-11.15: Coffee

11.15-12.15: Martin Scheinin. Member of the Human Rights Committee, established under the International Covenant on Civil and Political Rights:
"Economic sustainability and development as an element of indigenous peoples' rights under the International Covenant on Civil and Political Rights". Questions

12.15-13.15: Lunch.

13.15-14.45: Discussion. Discussant: Henry Minde.

14.45-15.15: Coffee.

15.00-15.15: Book release at Akademisk Kvarter: *Indigenous Peoples Resource Management and Global Rights*

Forum update, Part 1

15.15-16.15: Magne Ove Varsi. Resource Centre for Rights of Indigenous Peoples: *"Challenges in disseminating information on indigenous rights"*.

Brian Phillips. Canadian International Development Agency (CIDA):

"CIDA - Towards Partnership with Indigenous Peoples".

Georges Midre. Maya Competence Building: *"Report from Guatemala"*.

18.00: Dinner at Radisson SAS hotel.

Friday 10.10.2003:

Indigenous Rights: Cases from Asia

- 09.15-10.15: Chandra Roy. Jumma Peoples Network: *"Impact of Development in the Chittagong Hill Tracts: Ways forward"*. Questions.
- 10.15-10.30: Coffee
- 10.30-11.30: Wiveca Stegeborn: *"Understanding Human Rights: Barriers in understanding and communication between the Wanniyala-Aetto of Sri Lanka and the international community"*. Questions.
- 11.30-12.00: Discussion. Discussant Rodolfo Stavenhagen.
- 12.00-13.00: Lunch.

Indigenous Rights: Focus on the UN system, Part 2

- 13.00-14.00: Ole Henrik Magga. Leader of UN Permanent Forum on Indigenous Issues: *"The Permanent Forum and the UN system"*. Questions.

- 14.00-14.30: Coffee

Forum update, Part 2

- 14.30-15.15: Sidsel Saugestad. Forum for Development Cooperation with Indigenous Peoples: *"Land-claims in Southern-Africa: Achievements and Aspirations"*.
Geir Tommy Pedersen. Saami Council: *"Indigenous People to Indigenous People Cooperation"*.
- 15.15-15.30: Closure of the conference.

INTERVIEWS

All interviews by Vivian Aira

Chandra Roy: Ways Forward

Unless you have your land and land rights, you lose your culture

Chandra Roy, 10th of October 2003

Chandra Roy is an indigenous Chakma from the Chittagong Hill Tracts (CHT) of Bangladesh. Roy, who is highly involved in the situation of the indigenous peoples in the CHT, held a very passionate speech about their culture during the conference “Indigenous Rights: focus on the UN system. Cases from Asia”. She also talked about issues such as demography, development, the Kaptai Dam, the settlers, the Peace Accord, development cooperation, violence, lessons learned, and Ways Forward. The conference was arranged by Forum for Development Cooperation with Indigenous Peoples in Tromsø 9th-10th of October 2003.

Chakma is one of the indigenous groups living in the CHT. The collective term for these groups is Jummas, known locally as Jum. The term is based on these groups’ shared form of rotational agriculture, and distinguish the hill people from other people living in the same area. The history of the CHT is very interesting, but also atrocious, and is a history of both independence, colonialism and war.

The story of the Kaptai Dam is similar to the Alta Dam here in Samiland. Between 1959-63 the Government constructed a huge dam in Kaptai on the River Karnaphuli. The indigenous peoples in this area used this land to grow rice, and the rice fields were placed under water. More than 100 000 people were forced to leave the area, and many of them took refuge in India where they still live. Chandra tells me that the same intrusion has happened also in other places, such as Vietnam. Rodolfo Stavenhagen (UN Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples), mentioned the same tribulations in India, Chile and the Philippines. It is heartbreaking to hear how the army came and took the indigenous people and moved them into “perfect” cluster villages, and how Chandra’s own parents also were removed from their ancestral land. Despite the indigenous peoples’ objections to the loss of their land, the Government continued to remove them with armed forces without any kind of compensation (neither emotional nor financial) to the people living in the area.

In 1979, the Government started a settlement programme in the CHT. Settlers were brought in to this area and given the land that used to belong to the indigenous people. The story that follows these settlements is a story of armed forces, violence, killing and attacks in the CHT. The indigenous people were poor and defenceless. They received no help from the army, whose presence was

intended to be for their security. Indigenous people were killed, and many fled the area and country. Even today indigenous people are injured and killed, and their houses set on fire by the settlers.

The Peace Accord from 1997 is a very important document for the indigenous peoples in the CHT. It suggests self-rule and indigenous controlled institutions (such as a Regional Council). Yet, there are still conflicts between the settlers and the indigenous peoples regarding land rights and withdrawal of armed forces. Chandra talks optimistically about the Ways Forward towards a peaceful future for the indigenous people in the CHT and expresses hope that an implementation of the Peace Accord can be of constructive assistance. It is important that indigenous peoples can participate and be consulted in the further process. She also hopes that indigenous peoples' ownership of their land can help creating confidence and build capacity.

Furthermore, Chandra speaks affectionately about the Sami people and how well they are organized. The Sami Parliament and the education system (especially regarding language) are pioneering examples for other indigenous peoples. When I ask her whether the Sami people are known in Bangladesh, she answers "yes" with a big smile. According to her, the indigenous peoples in the CHT see the Sami people as their sisters and brothers, and adds that the Sami people can be of great help to them as all indigenous peoples are related and connected in so many ways. Chandra intends to ask the Sami Council (established in 1956 to promote the interests of the Sami as a nation) to visit the CHT, since the Sami Council is powerful and plays an important role also internationally. It is important that the Sami people use their power to help other indigenous peoples in developing countries. Chandra concludes in a serious tone that what is essential to our Ways Forward in the future is cooperation, help and support among indigenous peoples worldwide.

Rodolfo Stavenhagen: Indigenous Human Rights

I am here to learn more about how the Finnmark Act will effect the human rights of the Sami people

Rodolfo Stavenhagen, 9th of October 2003

Rodolfo Stavenhagen is the United Nations' Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples. During the Forum for Development Cooperation with Indigenous Peoples conference in Tromsø, 9th-10th of October 2003, Stavenhagen gave a talk on Indigenous human rights in an international perspective. Here, he spoke about the slow progress within the UN system regarding indigenous peoples' rights and self-determination, the Draft Declaration on the Rights of Indigenous Peoples, The Permanent Forum on Indigenous Issues, and his own mandate in the UN system.

This is the first time the UN Special Rapporteur visits Samiland, and naturally the Sami people had great expectations to his visit. Stavenhagen visited Norway in order to attend the Forum conference 2003, invited by the University of Tromsø and particularly by the Centre for Sami Studies. He also had an invitation from the Sami Parliament, which he visited after the conference. Stavenhagen's visit was not, as such, an official mission as the UN Special Rapporteur. The Sami Parliament will, however, invite him back to Norway next year in order to make a Special Report on the Sami people to the UN Human Rights Commission. Stavenhagen hopes to be able to accept such an invitation and return to Norway on an official mission, although he cannot yet say when this would take place. Normally, an official mission to a country results in a Special Report. Although the present visit will not result in such a Report, the information obtained during this stay will be part of his annual report to the Human Rights Commission next year. Stavenhagen feels that Norway would be very attentive should a Special Report be made on the Sami people. According to him, Norway has always taken UN reports very seriously, and cooperated with the UN system in terms of their directions regarding human rights.

The purpose of Stavenhagen's visit is to learn more about the Sami people and their relationship with the state, the issues of the Finnmark Act, land rights and rights to natural resources. He is aware that the question of land rights is presently discussed in relationship to the Finnmark Act. He tells me that the United Nations has established some general principles regarding the land and land rights of indigenous peoples, and that the Norwegian state has ratified a number of international conventions, such as the ILO Convention 169. It is up to the Norwegian state to interpret and decide how these international standards should be applied nationally with regards to the land rights of the Sami people, and Stavenhagen is keen to know more about how this is done. As he says, "obviously, when a country ratifies an international treaty, it is important that they implement this treaty". When I tell him that the Sami people consider the Convention 169 as an important legal instrument in issues of land rights, Stavenhagen stresses the importance of this convention to be implemented in the national states that have ratified it. It is equally important that the courts and administration are aware of the Convention. Every country that has ratified Convention 169 should implement and use it, and not find ways around it. He continues, "actually, Norway was the first country to ratify Convention 169 back in 1990, that's already almost fourteen years ago. That has given the country time enough to find ways to implement it."

Rodolfo Stavenhagen has been the United Nation's Special Rapporteur for two and a half years. He has presented two annual reports to the Human Rights Commission and is now working on his third, which will be presented in April 2004. As a Special Rapporteur he has carried out a number of official missions to four countries – Guatemala, The Philippines, Chile and Mexico – and has reported from these visits to the Human Rights Commission. The reports include some general comments on topics covered by the reports themselves, such as land rights and the impact of economic development projects on the human rights of indigenous peoples. Right now he is working particularly on administration of justice issues, with general conclusions and recommendations to the Human Rights Commission.

Stavenhagen thinks that the Sami people have achieved much in their struggle for recognition in Norway. Some very important legal measures have been taken, and the relationship between the Norwegian state and the Sami people is considered worldwide as a model relationship between the indigenous peoples and the national state. As such, other indigenous peoples and states may learn from what happens in Norway. The institution of the Sami Parliament is rather unique compared to what is happening in other countries, such as in Latin America. There, they generally have the classic liberal democracies with political parties, where the indigenous peoples have equal rights to everyone else. They may elect representatives through the political party system to the national parliament or to local government, but there are no specific parliaments of indigenous peoples.

Stavenhagen has hopes and expectations to The Permanent Forum on Indigenous Issues, and believes that this forum is very important for the indigenous peoples in order to organize and bring out certain discussions and make recommendations for the Economic and Social Council in the UN. His hope is that it uses its mandate to make special recommendations regarding the activities of the UN, such as regarding the environment, economic and social development, as well as international cooperation. These are very important issues to discuss within the UN system, especially from an indigenous peoples' point of view, and in the light of indigenous human rights.

Brian Phillips: Partnership with Indigenous Peoples

We share the same planet, despite the wonderful diversity of voices in this development dialogue

Brian Phillips, 9th of October 2003

Brian Phillips is a senior adviser on indigenous peoples issues in Canadian International Development Agency (CIDA). His speech on the Forum for Development Cooperation with Indigenous Peoples in Tromsø, 9th to 10th of October 2003 was named “CIDA – Towards Partnership with Indigenous Peoples”. Phillips talked engaged about CIDA and their projects regarding indigenous peoples. Phillips works in the Indigenous Issues Secretariat in CIDA and their task is to provide direct support to indigenous peoples. Ways to accomplish this is to support sustainable development and poverty reduction.

Over lunch on Friday during the Forum Conference 2003, I had the possibility to ask Brian Phillips some questions about CIDA in general and Canada’s relationship to indigenous peoples in special. Canada is known as a pathfinder concerning indigenous peoples self-determination at home and are a leading country regarding to support development among indigenous peoples in developing countries. I asked Phillips why Canada pays so much attention to indigenous peoples, both home and in developing countries. Phillips told me that their history and former colonial thinking regarding indigenous peoples is some of the reasons. It is a way to look ahead and apologize to the indigenous peoples for the injustice they have experienced historically. To use indigenous peoples expertise and capacity to implement level of trust is CIDA’s future goals.

Canada is a donor country and the country’s philosophy is: What we are doing in the world should reflect what we are doing at home. It is significant that indigenous issues are under indigenous control, Phillips emphasizes. It is important to integrate indigenous knowledge in both project planning and implementation, and Phillips use examples from existing projects in the CIDA system, such as The Indigenous Peoples Partnership Programme (IPPP). Intercultural dialogue and knowledge is an important ongoing long processes, and are preferred in the CIDA programs. To integrate traditional knowledge, culture based education systems and education training (such as language), benefits both the indigenous peoples in every nation and the indigenous peoples worldwide. Phillips is optimistic if this can be based on respect for the indigenous peoples, and thinks that awareness and understanding is fundamental for a future common collaboration between indigenous peoples and the respectively states and nations.

During his speech the day before, Phillips invited all indigenous peoples in the world to work together and used the great Sioux leader Geronimo to explain what he hoped for in a hopefully upcoming dialogue between indigenous peoples and organizations and authorities in developed countries: “The sun, the darkness, the winds, are all listening to what we say.” When I ask him how he thinks that indigenous peoples around the world can cooperate to help each other regarding self-determination and struggling for survival, he tells me that primary we all have to find a good model for doing this. Collaboration and knowledge is important and should operate on all levels. It is important to find out who can represent on the different levels, such as questions concerning youths, women etc. It is essential to bring for example indigenous youths together, and youths should travel to other parts of the world in order to experience how other youths is working to ensure their issues. Partnership and network systems among indigenous organizations are the way to walk in the future for development cooperation among indigenous peoples. Developed countries, such as Canada and other rich countries (who has their own indigenous expertise), has an exceptionally responsibility and a solidary obligation to contribute, cooperate and help the indigenous peoples in developing countries.