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Indigenous Policy (IPJ) publishes articles, commentary, reviews, news, and announcements concerning Native American and international Indigenous affairs, issues, events, nations, groups and media. We invite commentary and dialogue in and between issues.

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**Advisory Council:**

Our thanks to all the members of the advisory council who review article submissions:

David Armstrong, Phil Bellfy, JoLee Blackbear, Bennis Blue, Stephen Brandon, Patricia Campbell, Ward Churchill, Shane Day, Larry French, Susan Gorgan, Burke Hendrix, Sheree Hukill, Liliias Jarding, Ezra Rosser, Mickey Poslum, and Stefanie Wickstrom.

**Book Review Committee:**

**IPJ has just established a book review committee. People wishing to review books, often receiving a copy to review, and those wishing to have a book review should send a copy, to David Weiden, Assistant Professor of Political Science and Native American Studies, Metropolitan State University of Denver, King Center 494, Campus Box 43, P.O. Box 173362, Denver, CO 80217-3362, 303-556-4914, [dweiden@msudenver.edu](mailto:dweiden@msudenver.edu).**

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***DEADLINE FOR SUBMISSIONS FOR THE NEXT ISSUE IS MAY 8***

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## INDIGENOUS POLICY PLANS FOR 2014-15 - WE INVITE YOUR HELP AND INPUT

We wish you a fine spring. *Indigenous Policy* journal is available on the web with e-mail notification of new issues at no charge. *Indigenous Policy* puts out two regular issues a year (Summer and Winter), and since summer 2006, what is now a fall issue serving as the *Proceedings of the Western Social Science Association Meeting American Indian Studies Section*. We are seeking additional editors, columnists and commentators for regular issues, and editors or editorial groups for special issues, and short articles for each issue. A new development is that, thanks to long time compilers Jonathon Erlen and Jay Toth, we carry **a regularly updated and searchable data base of Ph.D. Dissertations from Universities Around the World on Topics Relating to Indians in the Americas, compiled from *Dissertation Abstracts*, with recent dissertations also listed separately in each of our regular Summer and Winter issues.**

As *IPJ* is a refereed journal, articles may be posted on a different schedule from the rest of the journal. New articles may go up either at the same time as regular issues, or be added to already posted issues, and may or may not remain up when issues change, until replaced by new articles. Notices go out to our list serve when new issues are posted, and when new articles are posted. **To be added to the list to receive e-mail notice of new postings of issues, and new postings of articles, send an e-mail to Steve Sachs: [ssachs@earthlink.net](mailto:ssachs@earthlink.net).**

Jeff Corntassel and colleagues put together a special winter 2002 issue with a focus on “federal recognition and Indian Sovereignty at the turn of the century.” We had a special issue on international Indigenous affairs summer 2004, on Anthropology, Archeology and Litigation – Alaska Style spring 2012, on Exploring the Governance Landscape of Indigenous Peoples and Water in Canada, Spring 2014, and are about to have additional special issues. **We invite articles, reports, announcements and reviews of meetings, and media, programs and events, and short reports of news, commentary and exchange of views, as well as willingness to put together special issues.**

**Send us your thoughts and queries about issues and interests and replies can be printed in the next issue** and/or made by e-mail. In addition, we will carry Indigenous Studies Network (ISN) news and business so that these pages can be a source of ISN communication and dialoguing in addition to circular letters and annual meetings at APSA. In addition to being the newsletter/journal of the Indigenous Studies Network, we collaborate with the Native American Studies Section of the Western Social Science Association (WSSA) and provide a dialoguing vehicle for all our readers. This is your publication. Please let us know if you would like to see more, additional, different, or less coverage of certain topics, or a different approach or format.

***IPJ* is a refereed journal. Submissions of articles should go to Tad Conner, [conner03@nmsu.edu](mailto:conner03@nmsu.edu), who will send them out for review. Our process is for non-article submissions to go to Steve Sachs, who drafts each regular issue. Unsigned items are by Steve. Other editors then make editing suggestions to Steve. Thomas Brasdefer posts this Journal on the *IPJ* web site: <http://www.indigenouspolicy.org/ipjblog>.**

### GUIDE TO SUBMITTING WRITINGS TO *IPJ*

We most welcome submissions of articles, commentary, news, media notes and announcements in some way relating to American Indian or international Indigenous policy issues, broadly defined. Please send **article**



<http://wssa.asu.edu>.

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A list of Indigenous Language Conferences is kept at the Teaching Indigenous Languages web site at Northern Arizona University: <http://www2.nau.edu/jar/Conf.html>.

The D'Arcy McNickle Center for American Indian and Indigenous Studies at the Newberry Library, in Chicago, has an on going Newberry Library Seminar in American Indian Studies on many Thursdays, 5:30-6:30 pm, as well as other occasional events. All papers are pre-circulated electronically to those who plan to attend the seminar. E-mail [mcnickle@newberry.org](mailto:mcnickle@newberry.org) or call (312)255-3564 to receive a copy of the paper. For more on this and other events at the Newberry Library go to: <http://www.newberry.org/mcnickle/AISSeminar.html>.

**Tribal Self Governance Annual Conference** is May 4-May 8, 2014 Washington, DC, at the Crystal City Gateway Marriott For more information please visit: [www.tribalselfgov.org](http://www.tribalselfgov.org) or <http://www.ncai.org/conferences-events/national-events>.

**Affiliated Tribes of Northwest Indians Mid Year Convention** is May 5-7, 2014 at Grand Mound, WA. For details visit: <http://www.ncai.org/conferences-events/national-events>.

**Native American Fish and Wildlife Society National Conference Impact Week** is May 6-8, 2014 Umatilla Reservation. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

“Alternative Sovereignties: Decolonization Through Indigenous Vision and Struggle” is at the University of Oregon, May 8-10, 2014. For details, go to: <http://blogs.uoregon.edu/alternativesovereignties/>.

**National Indian Gaming Association (NIGA) Indian Gaming 2014**, is May 11-14 2014 at the San Diego Convention Center, San Diego, CA <http://www.indiangaming.org/events/tradeshows/index.shtml>.

The **Thirteenth Session of the UN Permanent Forum on Indigenous Issues**, with Special Theme: “Principles of good governance consistent with the United Nations Declaration on the Rights of Indigenous Peoples: articles 3 to 6 and 46” is May 12-23, 2014, at UN Headquarters in New York. For details go to: <http://social.un.org/index/IndigenousPeoples.aspx>.

**World Indigenous Peoples Conference on Education (WIPC:E)** is in Honolulu, HI, USA, May 19-24, 2014. For more information go to: <http://wipce2014.com>.

**Tribal Interior Budget Council Meeting** is May 22-23, in 2014 Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Annual Symposium on Good Governance** is May 28, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**The Native American Student Advocacy Institute** is May 28-29, 2014 at the University of New Mexico, Albuquerque, NM. For details visit: <http://nasai.collegeboard.org/>.

**The 6th Native American and Indigenous Studies Association Annual Conference** is at the University of Texas at Austin, May 29-31, 2014. For more information about the 2014 meeting go to: <http://conferences.la.utexas.edu/naisa2014/> or <http://naisa.ais.arizona.edu/>.

**21st Annual Stabilizing Indigenous Languages Conference and 5<sup>th</sup> Western Symposium on Language Issues (WeSLI)** may be in June 2014. For details go to: <http://jan.ucc.nau.edu/~jar/AIE/conf.html>.

**Fostering Indigenous Business and Entrepreneurship in the Americas Conference: FIBEA 2014** may be in June 2014. For information and to make submissions contact [fibeam@mgmt.unm.edu](mailto:fibeam@mgmt.unm.edu), or visit <http://conferences.mgmt.unm.edu/fibeam/> or <http://fibeam.anaus.mgmt.unm.edu/defaultENG.asp>.

**The American Indian Teacher Education Conference** may be at the College of Education, Northern Arizona University, Flagstaff, Arizona, in June 2014. For details go to: <http://jan.ucc.nau.edu/~jar/AIE/conf.html>.

**Breath of Life / Silent No More Language Restoration Workshop for California Indian Languages** is at the University of California at Berkeley, USA, June 1-7, 2014, For details visit: <http://www.aicls.org>.

**NAIHC 2014 Annual Convention** is June 3-5, 2014 in Kansas City, MO. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**HHS Secretary's Tribal Advisory Committee Meeting** is June 4-5, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**4th Annual Indigenous Peoples' Rights Course & Field Visit in Costa Rica by Human Rights Education Associates (HREA) and University for Peace (UPEACE), Costa Rica: E-Learning Course Indigenous Peoples' Rights: June 4 - July 15, 2014; Field Visit: Amburi, Talamanca, Costa Rica: 4 - 10 August 4-10, 2014.** For details go to: [http://www.hrea.org/index.php?base\\_id=1457&language\\_id=1](http://www.hrea.org/index.php?base_id=1457&language_id=1)

**2014 NCAI Mid Year Conference** is June 8-11, 2014, in Anchorage, AK. For information visit: <http://www.ncai.org/conferences-events>.

**Native Pride & Spirit: Yesterday, Today and Forever** is June 9-13, 2014 in Albuquerque, NM. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

The **2014 International Conference of Indigenous Archives, Libraries, and Museums** is June 9-12, 2014 at Renaissance Palm Springs, CA. For information, to view past conference programs and/or submit a proposal before the November 15 deadline, visit: <http://www.atalm.org>. Please direct questions to [atalminfo@gmail.com](mailto:atalminfo@gmail.com).

**The Society of American Indian Government Employees (SAIGE)** is a national non-profit organization that advocates for American Indian and Alaska Native federal employees. **SAIGE 11th Annual National Training Program: "Native Pride and Spirit: Yesterday, Today and Forever"** is June 9-13, 2014, at Isleta Pueblo Hotel, Albuquerque, NM. Information is available from the Society of American Indian Government Employees, P.O. Box 7715, Washington, D.C. 20044, <http://www.saige.org>.

**UCLA American Indian Studies Center Summer in Montana** is June 10-14: Child Welfare, Family Law,

and the American Indian Child. For details see: [www.aisc.ucla.edu/news/.../Summer%20in%20Montana%20flyer.pdf](http://www.aisc.ucla.edu/news/.../Summer%20in%20Montana%20flyer.pdf).

**The International Society for Language Studies**, co-sponsored by [Akita International University](http://www.akita-international-university.com), is pleased to announce that we will hold a **conference** from June 13-15, 2014 at Akita International University, in Akita, Japan. The theme of the conference will be “**A Critical Examination of Language and Society.**” For more information go to <http://www.isls.co/index-2.html>.

**Dene (Athabaskan) Language Conference** will be in Prince George, BC, June 18-20, 2014. For more information, please visit: <http://www.uaf.edu/alc/>.

**2014 TESOL Advocacy & Policy Summit** is June 22-24, 2014 in Arlington, Virginia, at Crystal Gateway Marriott, 1700 Jefferson Davis Hwy, Arlington, VA 22202. For details go to: <http://www.tesol.org/events-landing-page/2014/03/20/2014-tesol-advocacy-policy-summit>.

**ATDLE** is June 23 – 26, 2014, in Sacramento, CA. For details visit: <http://atdle.org/>.

**Intertribal Timber Council Annual National Indian Timber Symposium** is June 23-26, 2014 at Couer d'Alene Tribe. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**The Northwest Indian Language Institute Summer 2014** is June 23-July 3, 2014, at the University of Oregon, Eugene, OR. For details go to: <http://pages.uoregon.edu/nwili/>.

**NACA Summer Legislative Summit** is June 24-25, 2014. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Regional RES (Reservation Economic Summit) D.C.** is June 24-26, 2014 in Washington, DC (<http://www.ncai.org/events/2014/06/24/regional-res-reservation-economic-summit-d-c>)

**Sixth International Conference on Climate: Impacts and Responses** is at the University of Iceland, Reykjavik, Iceland, June 27-28, 2014. The Climate Change Conference is for any person with an interest in, and concern for, scientific, policy and strategic perspectives in climate change. It will address a range of critically important themes relating to the vexing question of climate change. Plenary speakers will include some of the world's leading thinkers in the fields of climatology and environmental science, as well as numerous paper, workshop and colloquium presentations by researchers and practitioners. For details go to: <http://on-climate.com/the-conference>.

**Curriculum Development, Lesson Planning and Language Activities for Immersion Classes workshop** is June 30-July 2, 2014 in Albuquerque, NM. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**6<sup>th</sup> International 3L Summer School: Endangered Languages: From Documentation to Revitalization** may be in July 2014. For details visit: [http://www.ddl.ish-lyon.cnrs.fr/colloques/3L\\_2012/index.asp?Langues=EN&Page](http://www.ddl.ish-lyon.cnrs.fr/colloques/3L_2012/index.asp?Langues=EN&Page).

The **2014 National UNITY (United National Indian Tribal Youth) Conference: Technology and Tradition for Today and Tomorrow** is June 28-July 3, 2014 in Portland, OR. **UNITY** also holds occasional training

sessions. For details visit: <http://www.unityinc.org/>.

**Society for the Study of the Indigenous Languages of the Americas (SSILA) Summer Meeting** may be in July 2014 in Ann Arbor, Michigan, LSA Summer Institute. Information about the Institute is available at: <http://lsa2013.lsa.umich.edu>. For information about SSILA go to: <http://linguistlist.org/ssila/AnnualMeeting/AnnualMeeting.cfm>.

**NCAIS Graduate Student Conference at the Newberry Library in Chicago** may be in July 2014. The Consortium offers graduate students from NCAIS member institutions an opportunity to present papers in any academic field relating to American Indian Studies at the Graduate Student Conference. We encourage the submission of proposals for papers that examine a wide variety of subjects relating to American Indian and Indigenous history and culture broadly conceived. For details go to <http://www.newberry.org/>.

**Australex 2014: Endangered Words, and Signs of Revival** may be in Australia, in July 2014. For details go to: <http://www.australex.org/>.

**NCAIS Summer Institute, July 7- August 1, 2014, Recording the Native Americas : Indigenous Speech, Representation, and the Politics of Writing**. For more information go to: <http://www.newberry.org/mcnickle>.

The **Ninth Annual Vine Deloria, Jr. Indigenous Studies Symposium** is at Northwest Indian College, July 10-12, 2014. For details and reservations contact Steve Pavlik, Co-coordinator, Native American Studies, Northwest Indian College, 2533 Kwina Rd., Bellingham, WA 98226 (360)392-4307, [spavlik@nwic.edu](mailto:spavlik@nwic.edu), [www.nwic.edu](http://www.nwic.edu).

The **Fifth American Indian / Indigenous Teacher Education Conference** is scheduled right now for July 10-12, in Flagstaff, AZ. The web site will soon be up. Meanwhile, contact: Jon Reyhner, Ed.D., Professor of Bilingual Multicultural Education, Northern Arizona University, Flagstaff, Arizona 86011, [Jon.Reyhner@nau.edu](mailto:Jon.Reyhner@nau.edu), <http://jan.ucc.nau.edu/~jar>.

**NACA Emerging Native Leaders Summit** is July 15-17, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Tribal Technical Advisory Group** is July 16-17, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**First Stewards Symposium** is July 21-23, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Tribal Interior Budget Council Meeting** is July 22-23, 2014 in Billings, MT. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Native American Finance Officers Association 2014 Bond Summit** is July 24 on New York, NY. For more information visit: [www.nafoa.org](http://www.nafoa.org).

**Department of the Interior (DOI) & Indian Health Service (IHS) Tribal Self-Governance Advisory**



**Committee Meeting** is July 29-31, 2014 in Washington, DC (<http://www.ncai.org/events/2014/07/29/doi-ihs-tribal-self-governance-advisory-committee-meeting>).

**49th International Conference on Salish and Neighboring Languages** may be in August 2014, at the Coeur d'Alene Casino in Washington state (<http://www.cdacasino.com/>). More information is available at: <http://icsnl.org/>.

**Puliima National Indigenous Language and Technology Forum 2014** may be in August 2024, in Melbourne, Australia. For details go to: <http://www.puliima.com>.

**CIDLeS Summer School 2014: Coding for Language Communities** is August 11th - 15th. The Summer School will take place within the "[Parque Natural das Serras de Aire e Candeeiros](#)" in or near Minde, Portugal. For more details visit: <http://www.cidles.eu/summer-school-coding-for-language-communities-2014>.

**CIDLeS Summer School 2014: Community-driven Language Documentation** is August 18th - 23th in Minde, Portugal. For information go to: <http://www.cidles.eu/summer-school-community-driven-language-documentation-2014/>.

**Native American Finance Officers Association 2014 Fall Finance & Tribal Economies is Conference** September 8-10, 2014 Location TBD. For more information visit: [www.nafoa.org](http://www.nafoa.org).

**2nd International Indigenous Peoples Corn Conference**, September 8 – 9, 2014 and 40th Anniversary International Indian Treaty Council Conference September 10 – 12, 2014, Oklahoma. For information visit: <http://www.iitc.org/news-updates/>.

**NICWA Training Institutes**-Positive Indian Parenting -ICWA Basics -Advanced ICWA is in Portland, OR, September 8-10, 2014. For details visit: <http://www.nicwa.org>.

**HHS Secretary's Tribal Advisory Committee Meeting** is September 10-11, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Foundation for Endangered Languages EL XVIII** is at Naha, on the Ryukyuan island of Okinawa, during 17-20 September 2014. For details visit: <http://www.ogmios.org>.

**NIHB Annual Consumer Conference** is September 22-26, 2014 at Navajo Nation. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**2014 Fall Finance & Tribal Economies Conference** is September 22-23, 2014 at Hard Rock Hotel, San Diego. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

The **United Nations high-level plenary meeting of the General Assembly: the World Conference on Indigenous Peoples** is September 22-23, 2014, at UN Headquarters in New York City. The main objective of the World Conference on Indigenous Peoples is to share perspectives and best practices on the realization of the rights of indigenous peoples and to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. For details visit: <http://social.un.org/index/IndigenousPeoples/WorldConference.aspx>.

**National Indian Health Board (NIHB) Annual Consumer Conference** is at Navajo Nation, September 22-26, 2014 (<http://www.ncai.org/events/2014/09/22/nihb-annual-consumer-conference>).

**National Intertribal Tax Alliance 16th Annual Tax Conference** is September 24-25, 2014 in Valley Center, CA. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

The **40th Anniversary International Indian Treaty Council Conference**, will likely be in October 2014. Details will eventually be posted at: <http://www.treatycouncil.org>.

The Indigenous Leadership Development Institute, Inc. (ILDI) is holding the **2014 World Indigenous Business Forum** in Guatemala City, Guatemala, Possibly in October 2014. For details visit: <http://wibf.ca/>.

"**Dialogue on Indigenous Sustainability Implications for our Future**" is October 6-7, 2014 at Tempe Mission Palms Hotel and Conference Center, Tempe, AZ. For details go to: <http://www.aisc.ucla.edu/news>.

**Department of the Interior (DOI) Indian Health Service & IHS Tribal Self-Governance Advisory Committee Meeting** is October 7-9, 2014, is in Washington, DC (<http://www.ncai.org/events/2014/10/07/doi-ihs-tribal-self-governance-advisory-committee-meeting>).

**Salish Kootenai College American Indigenous Research Association Annual Meeting** is October 10-11, 2014 in Pablo, MT. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**NIEA 2014 Convention & Trade Show** is October 15-18, 2014 in Anchorage AK. For details visit: <http://www.niea.org>.

**45<sup>th</sup> Annual National Indian Education Association Convention and Trade Show** is October 15-19, 2014, in Anchorage, AK. For details go to: <http://www.niea.org/events/overview.php>.

**19th La Cosecha Dual Language Conference** is November 19 - 22, 2014 in Santa Fe, NM. For information visit: <http://www.dlenm.org/>.

**AFN 2014 Conference** is October 23-25, 2014 in Anchorage, AK. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**71st Annual Convention & Marketplace** is October 26-31, 2014 in Atlanta, Georgia. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**45<sup>th</sup> Annual National Indian Education Association Convention and Trade Show** is October 15-19, 2014, in Anchorage, AK. For details go to: <http://www.niea.org/events/overview.php>.

**19th La Cosecha Dual Language Conference** is November 19 - 22, 2014 in Santa Fe, NM. For information visit: <http://www.dlenm.org/>.

The Indigenous Leadership Development Institute, Inc. (ILDI) is holding the **2014 World Indigenous Business**

**Forum** is in Guatemala City, October 27-31, 2014. For details visit: <http://wibf.ca/>.

**Annual, Sunrise Gathering on Alcatraz Island** may be in October or November 2014. For details go to: <http://www.iitc.org/conferences-events/community-events/>.

**STEAM (Science Technology Engineering Arts and Math): The Wisdom of Our Languages & Cultures 40<sup>th</sup> Bilingual Multicultural Education / Equity Conference**, may be, November 2014. For details visit: <http://bmeec.net/>.

**First Nations Language Keepers Conference** may be in November 2015 at the Saskatoon Inn and Conference Centre in Saskatoon, Saskatchewan, Canada. Details area available at: <http://www.sicc.sk.ca/>.

MEES **Australia** in cooperation with the Eduarda Foundation, Inc. may hold the **2014 National Indigenous Health Conference** in November, 2014. For details contact: Mike Edubas: [edubasmike@yahoo.com](mailto:edubasmike@yahoo.com).

**Tribal Interior Budget Council** is November 5-6, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**NACA Annual Conference & Expo** is November 10-13, 2014 in Palm Springs, CA. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**7th Annual Tusweca Tiospaye 2014 Lakota Dakota Nakota Language Summit: "Uniting Our First Nations to Save Our Languages"** is November 12-14, 2014, in Rapid City, SD. For details visit: <http://tuswecatiospaye.org/2014savethedate>.

The 2014 **Lakota, Dakota, Nakota Language Summit** is in Rapid City, SD, November 13-15, 2014. For details go to: <http://www.tuswecatiospaye.org/>.

**Tribal Technical Advisory Group** is November 19-20, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Language revitalization in a Russian & European context: Exploring solutions for minority language maintenance** is December 2, 2014. For information go to: [http://blogs.helsinki.fi/minor-eurus/conference2013/..](http://blogs.helsinki.fi/minor-eurus/conference2013/)

**HHS Secretary's Tribal Advisory Committee Meeting** is December 4-5, 2014 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Intertribal Agricultural Council Annual Convention** is December 8-11, 2014, details TBD. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**A Community on Ecosystem Services Linking Science, Practice & Decision Making** is December 8-11, in 2014 Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**2014 World Indigenous Domestic Violence Conference** is in Cairns, Australia, December 8–10, 2014. For information visit: [www.indigenousconferences.com](http://www.indigenousconferences.com) or email: [admin@indigenoushealth.net](mailto:admin@indigenoushealth.net).

NICWA **Training Institutes**-Positive Indian Parenting -ICWA Basics -Advanced ICWA is in San Diego, CA, December 13, 2014. For details visit: <http://www.nicwa.org>.

**SSILA Annual Winter Meeting** may be in January 2015. For more information <http://linguistlist.org/ssila/AnnualMeeting/AnnualMeeting.cfm>.

**Center for Advanced Research in Language Acquisition, 5th International Conference on the Development and Assessment of Intercultural Competence** may be in January 2015. For information visit: [http://cercll.arizona.edu/development/conferences/2014\\_icc](http://cercll.arizona.edu/development/conferences/2014_icc).

**22nd Annual Stabilizing Indigenous Languages Symposium** may be at the University of Hawaii at Hilo, in January 2015. Information will become available at [www.uhh.hawaii.edu](http://www.uhh.hawaii.edu).

**Eleventh international conference on environmental, cultural, economic and social sustainability** is at the Scandic Copenhagen Hotel, Copenhagen, Denmark from 21-23 January 2015. The On Sustainability knowledge community is brought together by a common concern for sustainability in an holistic perspective, where environmental, cultural, economic and social concerns intersect. For details go to [http://onsustainability.com/2015-conference?utm\\_source=Dan%27s+Promo&utm\\_medium=Email&utm\\_campaign=S15A+Dan%27s+Promo](http://onsustainability.com/2015-conference?utm_source=Dan%27s+Promo&utm_medium=Email&utm_campaign=S15A+Dan%27s+Promo).

The **18<sup>th</sup> Annual National Indian Education Association (NIEA) Legislative Summit** is likely in February 2015, in Washington, D.C. For information go to: <http://www.niea.org/Membership/Legislative-Summit.aspx>.

The **2015 Conference of the National Association of Native American Studies** may be at the **Crowne Plaza Executive Center**, Baton Rouge, LA, in February, 2015. For more information, please visit the following: <http://www.naaas.org/>.

The **United National 2014 Indian Tribal Youth Midyear UNITY Meeting** may be in February 2015. For details go to: <http://www.unityinc.org/>.

**National Association for Bilingual Education 43rd Annual Conference** may be in, February 2015. For information go to: <http://nflrc.hawaii.edu/icldc/2013/call.html>.

**5th International Conference on Language Documentation and Conservation (ICLDC)**: may be at the University of Hawaii at Manoa, Honolulu, HI, February or March 2015. For details visit: <http://events.hellotrade.com/conferences/international-conference-on-language-documentation-and-conservation/>.

**Native/Indigenous Studies Area of the 2015 Southwest Popular Culture/American Culture Association (Formerly the Southwest/Texas Popular Culture/American Culture Association) 36th annual meeting** is February 11-14, 2015 in Albuquerque, NM. Further details can be found at: <http://swtxpca.org/https://mail.msu.edu/cgi-bin/webmail?timestamp=1187041691&md5=r%2B8zeYT8m2RajaxaGpmkeQ%3D%3D&redirect=http%3A%2F%2Fwww.swtexaspca.org%2F> .

The **NCAI 2015 Executive Council Winter Session** is February 23-25, 2015 at the L'Enfant Plaza Hotel, Washington, DC. For details go to: <http://www.ncai.org/Conferences-Events.7.0.html>.

**The 4th International Conference on Language Documentation and Conservation (ICLDC): Enriching Theory, Practice, & Application** is February 26-March 1, 2015, at Ala Moana Hotel, Honolulu, HI. For details visit: <http://icldc-hawaii.org>.

**SWCOLT** is in Colorado - Denver, OMNI Interlocken, February 26-28, 2015. For information go to: <http://www.swcolt.org/>.

**The 38<sup>th</sup> Annual California Conference on American Indian Education** may be in March 2015. For more information contact: Achel McBride: (530)895-4212 x 110, Irma Amaro: (707)464-3512, or Judy Delgado at 916-319-0506, [judelgado@cde.ca.gov](mailto:judelgado@cde.ca.gov), or go to: <http://www.aisc.ucla.edu/admin/gcal.shtml>.

**The 10<sup>th</sup> Annual Conference on Endangered Languages and Cultures of the Americas** may be at the University of Utah, Salt Lake City, UT, in March 2015, put on by the Center for American Indian Languages, at the University of Utah, which also runs a series of workshops. For details go to: <http://www.cail.utah.edu>, or contact Jennifer Mitchell: [cail.utah@gmail.com](mailto:cail.utah@gmail.com).

**Nineth Heritage Language Research Institute: Heritage Speakers and the Advantages of Bilingualism** may be in March 2015 at UCLA. For details go to: <http://nhlrc.ucla.edu/>.

**Thirs International Conference on Heritage/Community Languages** may be in March 2015 at UCLA, Los Angeles, CA, For details visit: <http://nhlrc.ucla.edu/>.

**TESOL: Explore – Sustain – Renew** may be in March 2015. For details go to: <http://www.tesol.org/>.

**National RES (Reservation Economic Summit) Las Vegas** is March 9-12, 2015 in Las Vegas, Nevada (<http://www.ncai.org/events/2015/03/09/national-res-reservation-economic-summit-las-vegas>).

**Association for Supervision and Curriculum Development 69th Annual Conference** is March 15–17, 2014, in Los Angeles, CA. For information visit: <http://www.ascd.org/conferences.aspx>.

**National RES (Reservation Economic Summit) Las Vegas** is March 17-20, 2015 in Las Vegas, Nevada (<http://www.ncai.org/events/2014/03/17/national-res-reservation-economic-summit-las-vegas>).

**Massachusetts Association of Bilingual Education Cross-Cultural Connections** is March 22, 2015, in New Haven, CT. For information visit: <http://www.massmabe.org/>.

**National Johnson O'Malley Association Conference** is March 25-7, 2014 in Denver, Colorado. For Details go to: <http://www.njoma.com/>.

**The National Association for Ethnic Studies (NAES) 43rd Annual Conference** may be in April 2015 For details contact National Association for Ethnic Studies (NAES), Department of Ethnic Studies, Colorado State University, 1790 Campus Delivery, Fort Collins, CO 80523-179, [www.ethnicstudies.org](http://www.ethnicstudies.org).

**The 11h Giving the Gift of Language: A Teacher Training Workshop for Native Language Instruction and Acquisition** may be in April 2015. For information visit: <http://www.nsilc.org/index.htm>.

**Alaska Native Studies Conference 2014** may be in April 2015 at the University of Alaska Anchorage campus. For details go to: <http://alaskanativestudies.org>.

**American Indian Cultures and Literatures area of the PCA/ACA (Popular Culture Association/American Culture Association) National Conference 2015** may be in April, 2015. For details. Visit: <http://www.pcaaca.org/conference/national.php>.

The **Western Political Science Association (WPSA) 2015**, April 2, 2015 - April 4, 2015Caesars Palace, Las Vegas, Nevada, will likely include one or more **Race, Ethnicity an Politics panels** that could include Indigenous issues. For details go to: <http://wpsa.research.pdx.edu/>.

**Tenth Annual Southeast Indian Studies Conference** is April 10-11 2015, at **University of North Carolina at Pembroke**. For more information contact Alesia Cummings at (910)521-6266, [alesia.cummings@uncp.edu](mailto:alesia.cummings@uncp.edu) or Dr. Mary Ann Jacobs, (910)521-6266, [mary.jacobs@uncp.edu](mailto:mary.jacobs@uncp.edu), <http://www.uncp.edu/sais/>.

**Washington Association of Bilingual Education: Culture and Content Connections: Keys to Academic Success** is April 11 – 12, 2015, in Tacoma, WA. For details go to: <http://wabewa.org/>.

**Native American Finance Officers Association's 32nd Annual Conference** is April 14-15, 2015 at the Roosevelt Hotel New Orleans, LA. For more information visit [www.nafoa.org](http://www.nafoa.org).

**National Indian Child Welfare Association 33rd Annual Protecting Our Children National American Indian Conference on Child Abuse and Neglect** is April 19-22, 2015 in Portland, Or. For Details go to: [www.nicwa.org](http://www.nicwa.org).

NICWA **Training Institutes**-Positive Indian Parenting -ICWA Basics is in Portland, OR, April 23-24, 2015. For details visit: <http://www.nicwa.org>.

**The NCAI 2015 Mid Year Conference** is in June, 2015. For details go to: <http://www.ncai.org/Conferences-Events.7.0.html>.

**Regional RES (Reservation Economic Summit) D.C.** is June 15-17, 2015 in Washington, DC. For more information go to: <http://www.ncai.org/conferences-events/national-events>.

**Language is Life Biennial Conference** may be in September 2015. For details, visit: <http://www.aicls.org/>.

**Eighth Minnesota Indigenous Language Symposium** may be in September 2015. For details go to: [http://www.grassrootsindigenoustmultimedia.org/index.php?option=com\\_content&view=article&id=69&Itemid=137](http://www.grassrootsindigenoustmultimedia.org/index.php?option=com_content&view=article&id=69&Itemid=137).

**National Indian Health Board (NIHB) Annual Consumer Conference** is in the Nashville, TN Area, September 21-22, 2015 (<http://www.ncai.org/events/2015/09/21/nihb-annual-consumer-conference>).

The Indigenous Leadership Development Institute Inc. (ILDI), O'ahu, Hawaii, is host for **World Indigenous Business Forum 2015**, possibly in October 2015. for details go to: <http://wibf.ca/>.

**72nd Annual Convention and Marketplace** is October 18-23, 2015, in San Diego, CA. For details go to: <http://www.ncai.org/Conferences-Events.7.0.html>.

**Eleventh Native American Symposium** and a performance event may be in November 2015, possibly at Southeastern Oklahoma State University in Durant, Oklahoma. For details visit [www.se.edu/nas/](http://www.se.edu/nas/), or contact Dr. Mark B. Spencer, Department of English, Humanities, and Languages, Box 4121, Southeastern Oklahoma State University, Durant, OK 74701-0609, [mspencer@se.edu](mailto:mspencer@se.edu)

The 2015 **Lakota, Dakota, Nakota Language Summit** is in Rapid City, SD, November 19-21, 2015. For details go to: <http://www.tuswecatiospaye.org/>.

**USHRN Bi-annual Human Rights Conference** may be in December 2015. For more information and registration: <http://www.ushrnetwork.org/>.

The NCAI **2016 Executive Council Winter Session** is February 22-24, 2016, in Washington, DC. For details go to: <http://www.tuswecatiospaye.org/>.

**SWCOLT** is at the East West Center, University of Hawaii, Honolulu, HI, in March 2016. For information go to: <http://www.swcolt.org/>.

**NIEA 2015 Convention & Trade Show** is October 13-17, 2015 in Portland, OR. For details visit: <http://www.niea.org>.

**National Indian Child Welfare Association's (NICWA) 34th Annual Conference, Protecting Our Children National American Indian Conference on Child Abuse and Neglect** is April 3-6, 2016 in St. Paul, Minnesota (<http://www.ncai.org/events/2016/04/03/nicwa-annual-conference>).

**National Indian Health Board (NIHB) Annual Consumer Conference** is in the Tucson, AZ Area, September 19-23, 2016 (<http://www.ncai.org/events/2016/09/19/nihb-annual-consumer-conference>).

**NIEA 2016 Convention & Trade Show** is October 4-8, 2016 in Reno, NV. For details visit: <http://www.niea.org>.

**National Indian Health Board (NIHB) Annual Consumer Conference** is in the Billings, MT Area, September 25-29, 2017 (<http://www.ncai.org/events/2017/09/25/nihb-annual-consumer-conference>).

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**SPECIAL ISSUE**

**Developments and Challenges of the UN Declaration on the Rights of Indigenous Peoples Five Years On:  
Insights on Biodiversity and Case Studies in Bangladesh, Brazil, Japan, and Uganda**

Edited by Claire Wright, Alexandra Tomaselli, and Silvia Ordóñez Ganoza

Claire Wright, Alexandra Tomaselli, and Silvia Ordóñez Ganoza, "An Introduction to the Special Issue"

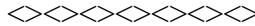
Federica Cittadino, "Applying a UNDRIP Lens to the CBD: A More Comprehensive Understanding of Benefit-Sharing"

Yoko Tanabe, "The UN Declaration of the Rights of Indigenous Peoples and the Ainu of Japan: Developments and Challenges"

Dr. Eva Gerharz, "Recognising Indigenous People, the Bangladeshi Way. The United Nations Declaration, Transnational Activism and the Constitutional Amendment Affair of 2011"

Norman Mukasa, "The Batwa Indigenous People of Uganda and Their Traditional Forest Land: Eviction, Non-Collaboration and Unfulfilled Needs"

Sayuri Fujishima "The Legality of the Belo Monte Hydroelectric Construction From the Perspective of Indigenous Land Rights"



**DEVELOPMENTS AND CHALLENGES  
TO THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES FIVE YEARS ON:  
INSIGHTS ON BIODIVERSITY AND CASE STUDIES  
IN BANGLADESH, BRAZIL, JAPAN AND UGANDA**

**AN INTRODUCTION TO THE SPECIAL ISSUE**

Claire Wright

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After many years of drafts and negotiations, the United Nations Declaration on the Rights of Indigenous Peoples (hereafter 'UNDRIP') was adopted on the 13th of September 2007. Building on the scope offered by other international instruments such as the ILO Convention N° 169, the Declaration enshrines both the individual and collective rights of indigenous peoples: including the right to self-determination, the right to education, the right to development, land and natural resource rights, intellectual property rights, cultural rights, and the right to treaty recognition (Allen & Xanthaki, 2009). The adoption of the Declaration undoubtedly constitutes an important



victory for indigenous peoples around the world and a result of years of efforts to gain recognition and respect for their rights as peoples. UNDRIP has been met with both high expectations over its potential impact and considerable concern over some States' initial reticence to ratify it and implement in practice. In order to be meaningful, the resulting debate should be fuelled by theoretical considerations, real-life experiences, practical guidelines, and – most importantly – the participation of indigenous peoples themselves.

In this special issue, we hope to contribute to this important debate. In the following pages we present five articles researched and written by scholars working on the implementation of UNDRIP at international level as well as the situation of indigenous peoples in different rather under-researched corners of the world: Bangladesh, Brazil, Japan, and Uganda. Working from different perspectives and scholarly disciplines, the articles presented here highlight both the opportunities presented by the Declaration in terms of the protection of indigenous peoples' cultural and territorial rights and the difficulties faced in implementing specific clauses at the national level. The evidence in this issue suggests that the “boomerang” pattern of using international allies and legal instruments to exert pressure over unwilling national governments leads to mainly symbolic rather than substantive victories (Keck and Sikkink 1998). Nonetheless, there is also plenty of evidence to suggest that the UNDRIP itself has opened up new avenues for the protection of specific rights and therefore what is needed are guidelines for its successful implementation.

Offering a legal perspective on the potential of the UNDRIP, Federica Cittadino (University of Trento-EURAC) shows that the Declaration constitutes an important step forward for two reasons: on the one hand, because it is one of the most comprehensive legal frameworks on indigenous peoples' collective and individual rights; and on the other because it can be used as a powerful instrument to clarify the scope of the clauses of the Convention on Biological Diversity that affect indigenous peoples. Offering a more holistic approach to the question of indigenous rights, Federica shows how they are intrinsically linked to the protection of biodiversity and benefit-sharing, an additional and beneficial consequence of the UNDRIP. Despite the generally optimistic perspective, the article highlights that the lengthy process to adopt the Declaration reflects how the question of the respect for human rights and indigenous peoples is a difficult one for many States as well as the importance of offering guidelines to ensure that the UNDRIP is implemented in practice.

The other articles in the edition are country-based case studies, offering both encouraging and discouraging evidence on the potential impact of the UNDRIP in relation to both cultural and territorial rights.

Referring to the case of the Ainu People in Japan, Yoko Tanabe (University of London) highlights the important role of the UNDRIP in their recognition as an indigenous people by the Japanese government. Throughout the text Yoko describes the government's historical policies towards the Ainu and the sudden change in the context of the momentum gained by the Japanese indigenous movement coupled with the impact of the UNDRIP. Indeed, in 2008 the National Diet of Japan recognized the Ainu as an indigenous people for the first time, constituting an enormous victory in the context of the government's ratification of the Declaration. Nevertheless, Yoko explains that as a result of generations of inequality and assimilation policies, the Ainu people still face many difficulties due to the political context in which indigenous issues are framed.

On the other hand, Eva Gerharz (Ruhr-Universität Bochum) refers to the expectations created by the Declaration throughout the world and the frustration of these expectations in the case of Bangladesh, where indigenous peoples expected the new discourse to improve their bargaining position over the national government which had in the past limited their political demands. In this sense, Eva refers to the Constitutional Amendment of 2011 as a lost “window of opportunity” when the Bangladeshi government rejected a demand for the constitutional recognition of indigenous people. Consequently, the article traces the emergence of indigenous activism in Bangladesh,

outlining the largely “constraining” socio-political changes in recent years and analysing the political process that led to the rejection of the demand for recognition in the Constitution. Essentially, Eva’s research contests the “boomerang” paradigm prevalent in social science studies on transnational activism and domestic legal systems.

In the same way, Sayuri Fujushima (Brazil) outlines frustrated expectations in Brazil. Referring to the “Belo Monte” project to build a hydroelectric dam along the Xingu and Iriri rivers, an area well-known for its biological diversity and for being home to various indigenous territories, Sayuri highlights the importance of the free, prior, informed consent established in UNDRIP being applied and the difficulties in doing so. The article describes how the Belo Monte project has given rise to several debates, including its impact on indigenous peoples in the region, as a result of the potential environmental impact on their territories. Despite the 2011 ruling by the Inter-American Commission on Human Rights to suspend the dam construction, the Brazilian government is going ahead with its plans, contravening UNDRIP’s requirement to consult indigenous people, with potentially catastrophic consequences. Fujushima’s article reminds us that international standards such as the UNDRIP are only effective when successfully applied in real situations, which is made more difficult by recent authoritarian experiences and a negation of multicultural democracy in practice.

Finally, with reference to the Batwa people in Uganda, Norman Mukasa (Universidad de Deusto) demonstrates how the UNDRIP could still be a powerful instrument for the protection of indigenous land rights. The study reviews the events, processes, and consequences of the Batwa eviction from their traditional forest land in the early 1990s. A result of this forceful removal, the displaced Batwa have suffered from appalling social and health conditions. Norman’s argument is that measures to redress the harm done to these people should be in compliance with international guidelines. In this sense, the UNDRIP, as an international instrument, acknowledges and offers protection for territory rights in a way that could have changed the plight of the Batwa at the national level.

As a result of the articles presented in this issue we hope to continue the meaningful debate that has taken place on the United Nations Declaration on the Rights of Indigenous Peoples with new perspectives and research by young scholars working in different parts of the world on different indigenous peoples. In this sense it is important to highlight that the articles presented in this issue were presented as papers at EMPI III (the Third Multi-Disciplinary Meeting on Indigenous Peoples) held at la Universidad de Sevilla in June 2012 and organised by the REDEMPI network.<sup>1</sup> The meeting on the issue of UNDRIP was attended by junior scholars, senior scholars, and representatives of indigenous peoples, offering an open and participatory debate on the topic. The five articles here are an excellent and representative selection of the issues covered in Seville.

We would like to thank all of those who have contributed to this special issue, including the editors of the Indigenous Policy Journal, the authors, and the peer reviewers. Furthermore, we would also like to show our appreciation to the members of the REDEMPI network and the organising institutions of EMPI III (Accademia Europea Bolzano (EURAC); Universidad de Sevilla, and, in particular, Pablo Gutierrez Vega; Universidad de Salamanca; and Universidad de Deusto), as well as the Scientific Committee of the EMPI III conference, that guided us in assessing the scientific added-value of each contribution.<sup>2</sup>

### Endnotes

- 1 The REDEMPI network holds an annual meeting on indigenous issues and aims to bring together scholars working on issues relating to indigenous peoples from a multi-disciplinary perspective. For further information please see the website: <http://redempi.blogspot.com>.
- 2 In alphabetical order: Claire Charters, Victoria University of Wellington; Bartolomé Clavero, Universidad de Sevilla; Felipe Gómez Isa, Universidad de Deusto; Rainer Hoffman, Goethe-Universität Frankfurt a.M.; Timo Koivurova, Arctic Centre, University of Lapland; Salvador Marti Puig, Universidad de

Salamanca; and Francesco Palermo, Università degli Studi di Verona, Accademia Europea Bolzano EURAC.

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**APPLYING A UNDRIP LENS TO THE CBD:  
A MORE COMPREHENSIVE UNDERSTANDING OF BENEFIT-SHARING**

Federica Cittadino<sup>1</sup>

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**ABSTRACT**

The special relationship of indigenous peoples with the territories in which they live and the natural resources located therein has been recognized in Principle 22 of the 1992 Rio Declaration on Environment and Development. Given the close link between the preservation of indigenous peoples' ways of life, traditions, and knowledge, on the one hand, and the protection of biological diversity, on the other, this paper argues that the UN Declaration on the Rights of Indigenous can be used as a powerful instrument to suggest an evolutionary interpretation of some of the provisions of the Convention on Biological Diversity (CBD). In particular, indigenous peoples' rights to land, natural resources, traditional knowledge, as well as their right to a healthy and protected environment are analysed in order to provide a more comprehensive interpretation of CBD article 8(j). A careful reading of the above-mentioned rights makes it possible to reinforce the interpretation that while implementing the provisions on access to genetic resources and State-to-community benefit sharing, CBD parties shall take into account the rights of indigenous peoples as affirmed by the UNDRIP. Furthermore, the UNDRIP offers specific indications on the procedural measures needed to implement those rights (free prior informed consent and participation rights). In this respect, it is argued that these procedural mechanisms offer a partial response to the challenges posed by the concrete implementation of the UNDRIP.

**1. INTRODUCTION**

On 13th September 2007 the UN General Assembly passed Resolution 61/295 adopting the text of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>2</sup> The lengthy process that led to the adoption of this declaration demonstrates that respect for the human rights of indigenous peoples is still a very sensitive topic for States (Deer, 2010, Daes, 2011).

The United Nations started to deal with the issue of indigenous peoples' and local communities' rights in the early 1970s,<sup>3</sup> when the Preliminary Report on the Study of the Problem against Indigenous Populations, submitted by José R. Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, defined indigenous peoples as

composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them and, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are

predominant.<sup>4</sup>

It should be noted here that one of the United Nations' first attempts to define indigenous peoples points to native lands and natural resources as very significant factors (Fodella, 2005-2006: 565-594).<sup>5</sup>

The centrality of the rights to land and natural resources goes well beyond the issue of the identification of indigenous peoples. In this contribution, I argue that these rights may have important implications for the protection of biological diversity since they are vital for the interpretation of some of the provisions of the Convention on Biological Diversity (CBD).<sup>6</sup>

The official endorsement of the UNDRIP is a success story for at least two reasons. First, it represents one of the most comprehensive legal documents on the collective and individual rights of indigenous peoples. Second, it can be used as a powerful instrument to clarify the scope of those provisions of the CBD concerning the sharing of the benefits that derive from the exploitation of the traditional knowledge of indigenous peoples. Furthermore, although the Declaration is not legally-binding (Boyle and Chinkin, 2007, Frowein, 1989, Shelton, 2003), I contend that the UNDRIP can have an instrumental role both in protecting the rights of indigenous peoples and attaining the international objectives on biodiversity protection and benefit-sharing.

The role of indigenous peoples in the preservation of biological diversity is of fundamental importance. Many indigenous peoples are highly dependent on the environment in which they live for their very survival. Moreover, their traditional knowledge embodies a wealth of customs and practices, whose loss would be detrimental to the full use of certain plant and mineral varieties. Accordingly, Principle 22 of the Rio Declaration on Environment and Development recognises that indigenous peoples “have a vital role in environmental management and development because of their knowledge and traditional practices” (Maggio, 1997-1998, Heinämäki, 2009).<sup>7</sup>

This special environmental role also stems from the unique relationship that indigenous peoples hold with their territories. As stated in a judgement of the Inter-American Court of Human Rights (hereinafter IACtHR) on the *Awat Tingni v. Nicaragua* case,

[f]or indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.<sup>8</sup>

Furthermore, according to a recent FAO report, indigenous lands nowadays host approximately 80 per cent of the world's remaining biodiversity (FAO, 2009). Therefore, the preservation of biodiversity at the global level should start where indigenous peoples live in harmony with nature.

Given the close link between the preservation of indigenous ways of life, traditions, and knowledge and the protection of biological diversity, I therefore maintain that not only does the UNDRIP represent an outstanding step forward towards the recognition of the rights of indigenous peoples, but it can also be used as a powerful instrument to offer an evolutionary interpretation of some of the provisions of the CBD.<sup>9</sup>

In order to illustrate my arguments, this contribution is divided into four main sections. In the first section, I analyse those UNDRIP provisions concerning the rights of indigenous peoples to land and natural resources, traditional knowledge, and environmental protection. While comparing these provisions with the protection granted under the Indigenous and Tribal Peoples Convention of 1989 (Kingsbury, N.d.),<sup>10</sup> this analysis serves a two-fold purpose, namely to provide some basic legal definitions and to clarify the content of the relevant rights. In

the same vein, in the second section, I introduce the rationale behind the concept of benefit-sharing in the academic debate. Subsequently, I examine the content of article 8(j) of the CBD, by highlighting its interpretative gaps. Building on the previous analysis, in the third section, I illustrate the argument for applying a UNDRIP lens to the issue of benefit-sharing in the CBD. My main point is that article 31(3)c of the Vienna Convention on the Law of the Treaties<sup>11</sup> provides a basis for arguing that the rights to land, natural resources, and traditional knowledge under the UNDRIP should serve as interpretative tools in order to operationalize article 8(j) of the CBD when it comes to State-to-community benefit-sharing (Morgera and Tsioumani, 2010). This is in line with the so-called rights-based approach, according to which objectives of the protection of nature must be balanced against human rights (Greiber et al., 2009). The relevance of systemic interpretation is compounded by a wealth of national and international case law that I partially report of in this contribution. In the fourth section, I go beyond the interpretative role of the UNDRIP to address the issue of whether or not and through what means the practical implementation of the UNDRIP can be ensured. Two main options are identified, namely the operationalization of the UNDRIP in the jurisprudence of national and international courts, and a State-led implementation of the UNDRIP with a particular focus on the procedural mechanisms established by the Declaration.

## 2. A FOCUSED ANALYSIS OF UNDRIP PROVISIONS

The UNDRIP owes its novelty not only to its content as a benchmark instrument for the protection of indigenous peoples, but also to the special design of its provisions. UNDRIP articles are not a mere enunciation of rights. In contrast, they are addressed in a very explicit way to those actors that need to ensure the implementation of the rights of indigenous peoples. Just to make an example of this special feature, article 21 of the UNDRIP, establishing the right of indigenous peoples “to the improvement of their economic conditions,” in its paragraph 2 requires States to “take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.”

Even though this construction can appear to be a standard way of conceiving binding instruments, such as treaties, this is certainly not a common feature when it comes to soft law instruments in the field of human rights. It is sufficient to consider the Universal Declaration of Human Rights where rights are enunciated without any explicit reference to State action. Furthermore, the structure of the UNDRIP must be read in light of its article 38, according to which “States...shall take the appropriate measures...to achieve the ends of this Declaration.” This suggests that those States that have adopted the UNDRIP look at the Declaration more as an operational instrument, rather than as a mere catalogue of rights.<sup>12</sup>

If this is true for the Declaration as a whole, it is necessary to verify if the same analysis extends to the rights that are of interest for the present contribution, namely the rights to land, natural resources, preservation of traditional knowledge, and protection of the environment.

The starting point in the field of land rights is the special emphasis that the UNDRIP places on the link between land and the very existence of indigenous peoples. In this respect, article 8, introducing a prohibition to assimilate or destroy indigenous culture, in its paragraph 2(j) requires States to prevent “any action which has the aim or effect of dispossessing them [indigenous peoples] of their lands, territories and resources.” Therefore, indigenous land is seen as an essential prerequisite for the preservation of the specificity and culture of any indigenous people (Gilbert and Doyle, 2011).<sup>13</sup>

The core of land rights is further provided by articles 25-28, 30 and 32, the provisions of which are designed as collective rights.<sup>14</sup> This means that the rights to land and natural resources pertain to the indigenous peoples as a group. The dimension of collective rights, as stated in paragraph 22 of the UNDRIP’s Preamble, is indispensable

for the very existence of indigenous peoples (Gilbert, 2006).

Against this backdrop, while article 25 highlights the “spiritual relationship” between indigenous peoples and land, article 26 describes the content of this right. Although more emphasis is placed on traditional land, this right refers explicitly both to the land that is traditionally owned or occupied and to the territories that are “otherwise used or acquired”. Compared to ILO Convention 169, which in its article 14 refers only to lands “traditionally occupied”, the UNDRIP coverage is therefore much more extensive.

Concerning how concretely the right to land is articulated, again article 26 adopts a broader approach than the ILO Convention,<sup>15</sup> because it states that indigenous peoples “have the right to own, use, develop and control” lands and natural resources, thus avoiding taking a stand on the definition of land rights as property rights or mere rights to use. Furthermore, the right to land can be exercised on the “lands, territories and resources that they possess.” Therefore, the requisite of actual possession allows the UNDRIP not to address the difficult issue of the adjudication of traditional lands that have been historically dispossessed (Gilbert and Doyle, 2011).

Another important element that emerges from reading article 26 in conjunction with article 32 is that the right to land is void if it is not coupled with the right to own, use, and control the natural resources located in the territories of indigenous peoples. According to article 32, land and natural resources are essential declinations of the right to development that is granted to indigenous peoples. In particular, if States want to approve “any project affecting their lands or territories or other resources”, they need to obtain the prior consent of indigenous communities.

Moreover, the UNDRIP places special emphasis on the issue of the subsistence of indigenous peoples. In this respect, article 20 states that indigenous peoples “have the right...to be secure in the enjoyment of their own means of subsistence”, whose deprivation entitles them “to just and fair redress.” The rights to land and resources are therefore mutually interwoven, since the very existence and survival of indigenous peoples is dependent on both of them.

Resources, in addition, are seen by the Declaration in relation to the right of indigenous peoples to health. Article 24 affirms the right “to the conservation of their [indigenous peoples] vital medicinal plants, animals and minerals.”

Furthermore, natural resources are referred to in article 31, which deals with the protection of traditional knowledge as an expression of the cultural heritage of indigenous peoples.<sup>16</sup> Tradition and customs appear in this context as profoundly entrenched with the indigenous ways of life practised within traditional lands.

As a final point, article 29 marks the recognition of the “right to the conservation of the environment and the productive capacity of their [indigenous peoples’] lands or territories and resources.”<sup>17</sup> This may be read both in conjunction with article 20, protecting indigenous means of subsistence, and with article 32 granting a full right to development, that is the right to decide autonomously their priorities in the management of their lands and resources.

As an internal element of coherence, therefore, the UNDRIP suggests a close link between the physical preservation of indigenous lands and the fulfilment of indigenous culture.

### 3. BENEFIT-SHARING IN CBD ARTICLE 8(J)

Indigenous peoples’ concerns have been treated as a specific human rights issue by the United Nations. However,

indigenous-related provisions are contained in a number of other international instruments that are not primarily concerned with human rights, including the Convention on Biological Diversity (CBD).<sup>18</sup>

The CBD has to be framed within the global movement towards sustainable development that started in the early 1970s. In line with this, the Convention pursues three main objectives, namely “the conservation of biological diversity, the sustainable use of its components and the equitable sharing of the benefits arising out of the utilization of genetic resources.”<sup>19</sup>

Although any treaty aims, by definition, to regulate the mutual relationships among its contracting parties, some CBD provisions include a reference to the position of indigenous peoples and local communities. In the Preamble, State parties recognise “the desirability of sharing equitably benefits” with indigenous peoples. Furthermore, article 8(j) of the Convention touches upon the issue of benefit-sharing when indigenous peoples are concerned in the context of in-situ conservation.

This article has been defined as providing “a qualitatively different concept of benefit-sharing as a State-to-community contribution to sustainable development,” which needs to be distinguished from inter-State benefit-sharing (Morgera and Tsioumani, 2010: 150). While the latter concept is conceived as a way of balancing the interests of the States that provide the resources with the interests of the States that accede to them,<sup>20</sup> State-to-community benefit-sharing recognises indigenous peoples and local populations as desirable recipients of the benefits deriving from the use of genetic resources. According to this interpretation, therefore, benefit-sharing can contribute in many ways to the livelihood of local communities by ensuring the welfare of indigenous peoples and local communities any time traditional knowledge is concerned.

There are several rationales behind State-to-community benefit-sharing. First, the fair and equitable sharing of the benefits stemming from access to indigenous peoples’ resources and their traditional knowledge can be regarded as a compensation for removing those resources from local communities’ direct control and exploitation. In the same vein, benefit-sharing aims to compensate indigenous peoples for the environmental or societal damages they suffer due to the deprivation of their resources or the way the appropriation by external actors has been carried out. Second, benefit-sharing can be interpreted as a reward that indigenous peoples should receive for their fundamental role in preserving biodiversity within their territories. Finally, benefit-sharing is a necessary instrument to safeguard the very existence of indigenous peoples, through the protection of their traditional knowledge, their ways of life, and their practices. Indeed, benefit-sharing goes beyond any “reward for the use of such [traditional] knowledge”. Instead, it extends to any incentives to “contribute to the further preservation of traditional knowledge” (Morgera, 2012b).<sup>21</sup>

While this is the general framework to which State-to-community benefit-sharing must be traced back, the concrete interpretation of article 8(j) has posed a number of problems that have stopped it from becoming operational. The formulation of article 8(j) is too weak to suggest an obligation for CBD contracting parties to ensure an equitable and fair sharing of benefits with indigenous peoples. Indeed, this provision is conditioned to the test of the contracting parties’ compliance with relevant national legislation. Therefore, national provisions take precedence over the content of article 8(j). Furthermore, States shall only “encourage” the practice of benefit-sharing with indigenous peoples.<sup>22</sup>

Although the CBD recognises the role of traditional knowledge in the sustainable management of biodiversity,<sup>23</sup> article 8(j) fails to provide a clear indication of how the valorisation of traditional knowledge should be pursued by the contracting parties. The option of benefit-sharing with indigenous peoples is indicated in article 8(j) but it is subject to a series of limitations. The stalemate in the implementation of State-to-community benefit-sharing,

however, is not acceptable, since it impinges both on the very survival of indigenous peoples and on their capacity to contribute to the sustainable management of biological diversity. In the following sections, it will be argued that article 8(j) of the CBD must be read in light of the recent developments in terms of the human rights of indigenous peoples.

#### 4. A NEW INTERPRETATION OF STATE-TO-COMMUNITY BENEFIT-SHARING

The main point I put forward in this contribution is an evolutionary interpretation of article 8(j) of the CBD. The UNDRIP is the cornerstone of this evolutionary interpretation on the premise that operationalizing article 8(j) is not only functional to the objectives of the CBD, such as the sustainable use of natural resources and the fair and equitable sharing of the benefits arising out of their use, but it is also instrumental to the protection of indigenous peoples' rights and ways of life. The UNDRIP is used as an interpretative tool serving a two-fold purpose, namely to clarify the content of article 8(j) and to suggest a way to implement it. While this section sets forth the first part of the proposed argument, that is reinterpreting the content of article 8(j), the following section deals with the issue of implementation.

It has been said that the UNDRIP is not a legally binding instrument per se. However, some elements such as the lengthy negotiations leading to its adoption, as well as the Declaration's structure and the numerous provisions formulating obligations for States ("States shall...") suggest that there is room for the UNDRIP to be applied by States.<sup>24</sup> Apart from its unquestioned role in the path towards the recognition of the rights of indigenous peoples, the UNDRIP can be used to support an interpretation of article 8(j) of the CBD, where the requirement of ensuring the sharing of benefits with indigenous peoples is reinforced by the existence of the rights contained in the UNDRIP. Is this interpretation justifiable? What legal criteria can be used?

From a hermeneutical point of view, the rules of interpretation provided by article 31 of the Vienna Convention on the Law of the Treaties are at hand. As a general rule, when interpreting a treaty, particular attention must be paid to the context, including "any instrument which was made by one or more parties in connection with the conclusion of the treaty."

In 2010 the Conference of the Parties of the CBD<sup>25</sup> adopted the Nagoya Protocol on access and benefit-sharing. It is important to note that even though this instrument has not yet come into force, it has imposed an obligation on parties to adopt "legislative, administrative or political measures, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms."<sup>26</sup> The protocol, therefore, constitutes a fundamental reference for the interpretation of the requirement of benefit-sharing, as stated in the CBD.

As a further example in the context of the CBD, it is interesting to note that the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, adopted by the Conference of the Parties to the CBD (Morgera and Tsioumani, 2010),<sup>27</sup> insist on the importance of benefit-sharing with indigenous peoples, thus going beyond the scope of a restrictive interpretation of article 8(j).<sup>28</sup> Practical principle 4(a) of these guidelines, read in conjunction with its rationale, explains that indigenous peoples and their traditional knowledge can be an invaluable factor in halting the loss of biodiversity and ensuring an "adaptive management". In addition, the operational guidelines related to Principle 4 specify that the benefits generated by adaptive management plans should "go to indigenous and local communities...to support sustainable implementation." Even more importantly, the rationale of Principle 2 (empowerment of local users) explains that sustainability is generally enhanced if Governments recognize and respect the "rights" or "stewardship" authority, responsibility and accountability to the people who use and manage



the resource, which may include indigenous and local communities.

Finally, Principle 12 explicitly refers to the fact that the equitable distribution of benefits should be related to the use of indigenous peoples' resources.<sup>29</sup> The Conference of the Parties, therefore, seems to favour an understanding of benefit-sharing as a reward for indigenous peoples who contribute to sustainable practices in terms of biodiversity management.

Notwithstanding this CBD context, the rules on the interpretation of treaties under the Vienna Convention also provide the basis for an interpretation of article 8(j) of the CBD in light of the UNDRIP. Indeed, the so-called principle of systemic integration under article 31(3)c fills in interpretative gaps by taking into account "any relevant rules of international law applicable in the relations between the parties". Although the overriding priority must be given to the textual and in-context interpretation, article 31(3)c of the Vienna Convention allows for a broader interpretation that comprises those international rules related to the provision to be interpreted. Nonetheless, the integrative rule, as Sands puts it, "is to be interpreted into a conventional norm, not applied instead of it" (Sands, 2001: 49). Therefore, it is necessary to assess whether or not the rights listed in the UNDRIP can be used to interpret the text of article 8(j) by filling its interpretative gaps.

To understand why an environmental treaty should be interpreted in light of a human rights instrument, purely legal, hermeneutical arguments need to be complemented by broader considerations. As a recent IUCN publication has illustrated (Greiber et al., 2009), conservation objectives and the respect for human rights are interconnected by means of numerous chains of causation. The quality of the environment can affect human rights in a number of ways, going from the enjoyment of human rights, to their reinforcement, or their impairment. Conversely, the violation of human rights can have a very negative impact on the conservation of the environment, fostering its destruction.

The recognition of this multiple chain of causation between the environment and human rights is translated into the rights-based approach. This approach aims to balance the different interests at stake when dealing with conservation issues by taking into account the rights of all stakeholders, with a particular attention to the environmental and human rights components. This approach is certainly invaluable for policy makers or management authorities.<sup>30</sup> A further use, however, can be envisaged when it comes to the interpretation of rules.

In the specific case of article 8(j) of the CBD, indigenous peoples are not only beneficiaries of the rule established therein, but, in the broader context of the relevant international law, they must also be considered as holders of human rights, stemming from other international regimes. These rights are listed in the UNDRIP and should be integrated in the interpretation of article 8(j) of the CBD for a correct balance of the rights of the actors involved.

It has been illustrated that benefit-sharing can be framed as an instrument to preserve the traditional knowledge of indigenous peoples. Furthermore, the close link between indigenous knowledge and traditional practices has also been underlined. These practices belong to the lands that have made them possible. Therefore, when benefit-sharing options are to be discussed, indigenous peoples' right to land must be taken into due consideration.

As the Report of James Anaya, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, holds,

according to the international normative consensus, the right of indigenous peoples to lands, territories and natural resources originates in their own customary law, values, habits and customs and, therefore, is prior to and independent of State recognition in the form of an official property title.<sup>31</sup>

The question of whether this right consists of a right to own or simply to use traditional or owned lands is a difficult one. The UNDRIP does not give a definite response to this dilemma. Article 27 of the UNDRIP, however, prescribes that States, “in conjunction with indigenous peoples concerned,” should start a process of adjudication of indigenous territories.<sup>32</sup> Although the process of adjudication is currently at an uneven stage of development in those States where indigenous peoples live, national and international case law represents a useful indicator of the practice of law in the field of indigenous property rights.

Furthermore, national and international jurisprudence is paramount since it has pointed out the interpretative role of the UNDRIP.<sup>33</sup> Two cases, in particular, stand out due to the arguments used and the practical consequences of the decisions taken. In the case of the *Saramaka Peoples v. Suriname*, decided by the IACtHR in 2007,<sup>34</sup> the Court invoked article 32(2) of the UNDRIP establishing the requisite of the free, prior and informed consent of indigenous peoples,<sup>35</sup> to reinforce the argument that indigenous peoples should be consulted prior to any State action that potentially affects their rights. In a similar case, the Supreme Court of Belize went as far as qualifying the obligations contained in the UNDRIP as customary international law and general principles of international law. In particular, the Court gives article 26 of the UNDRIP, that establishes indigenous land rights, “special resonance...reflecting...the growing consensus and the general principles of international law on indigenous peoples and their lands and resources.”<sup>36</sup>

Although these are just cases, they should be framed in a bigger trend of case law that commenced before the UNDRIP was adopted. The jurisprudence of the IACtHR is particularly relevant in this respect (Rodríguez-Pinero, 2011).<sup>37</sup> Therefore, it is very likely that the UNDRIP will reinforce this trend toward the affirmation and recognition of the rights of indigenous peoples. In this respect, the rights established in the Declaration can serve either as a reinforcing argument to redress the rights of indigenous peoples or as an interpretative tool to suggest an evolutionary interpretation of international or national rules affecting indigenous rights that is more favourable to indigenous peoples.

## 5. IMPLEMENTATION OF UNDRIP RIGHTS

Notwithstanding the role of the judiciary, the rights of indigenous peoples can be safeguarded by three main kinds of actors, namely UN bodies, specialised NGOs, and States (Kingsbury, Burger, 2009).<sup>38</sup> Article 42 calls upon the UN Permanent Forum on Indigenous Issues and specialised agencies, as well as States, to “promote respect for and full application of the provisions” of the Declaration. In addition, article 42 highlights the role that the UN system can have in “the realization of the provisions” of the Declaration. In the remaining part of this section, I choose to focus on the role of States since, from an international law perspective, State authorities are responsible for enforcing the rights of indigenous peoples even against the wrongful acts of non-State actors.

As affirmed in the UNDRIP Preamble, States are encouraged to “comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments.”<sup>39</sup> However, this element alone does not say very much about the implementation issue. In this context, the main problem is clearly that the UNDRIP, due to its very nature, does not have a binding character for the States that have adopted it; States are merely encouraged to comply with its provisions.<sup>40</sup>

Once again, it is necessary to go beyond a literal interpretation of the Declaration. Indeed, the “obligatory” language used in many provisions of the UNDRIP, together with the long process culminating in the UNDRIP’s adoption, suggest at least a certain degree of political will by the States endorsing the Declaration to respect the rights of indigenous peoples. Furthermore, the rights announced in the Declaration may have a binding nature on

States insofar as they merely replicate other, already existing obligations.

When it comes to the actual implementation of the UNDRIP, States, according to article 38 of the UNDRIP, “shall take the appropriate measures, including legislative measures, to achieve the ends of” the Declaration. A case in point is that of Bolivia, given that it has recently incorporated the UNDRIP into domestic law (Clavero, 2009).<sup>41</sup> Although this example undoubtedly reveals the firm commitment of some States to the Declaration and the implementation of the rights of indigenous peoples contained therein, initiatives from States in this sense remain rare. Therefore, the reconstruction of the will of States to implement the UNDRIP within their national systems is still tentative.

The lack of actual implementation by States, however, does not diminish the importance of the rights granted by the UNDRIP. As anticipated from the very beginning, some articles are directly addressed to States and contain quite detailed action in the form of obligations. An example of this aspect in the field of land rights is provided by article 27 which prescribes that States “shall establish...a...process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure system.” Another example, related to the protection of the environment, is article 29(2), which prohibits States from discharging any hazardous materials into indigenous lands. A final example could be that of article 30 which, while establishing under certain conditions a general ban on military activities within the territories of indigenous peoples,<sup>42</sup> obliges States to consult with indigenous peoples “prior to using their lands”. Therefore, the content and even the wording of the rights established by the UNDRIP could serve as a model to inspire the national legislator in the future.

Procedural mechanisms, finally, are fundamental tools to ensure that the rights of indigenous peoples are duly protected. In this respect, the UNDRIP foresees the requirement of free prior informed consent (FPIC), which has been described by many scholars as a crucial mechanism for indigenous peoples to exercise the right to self-determination over their lands and resources (Carmen, 2010, Gilbert and Doyle, 2011).

The Declaration requires FPIC to be carried out in three main cases. First, under article 10, the relocation of indigenous peoples can only take place if indigenous peoples have given their consent. Second, under article 29, the storage or disposal of hazardous materials in indigenous territories is subjected to the consent of indigenous peoples. Third, under article 32 the FPIC is conceived as an unavoidable requisite to be met before “any project affecting their [indigenous peoples’] lands or territories or resources” can be approved. In this context, article 28 provides the remedy in case the provisions on FPIC are not observed and result in the damage, occupation, or confiscation of the lands and resources belonging to indigenous peoples.

Therefore, the FPIC as framed by the UNDRIP constitutes a *condicio sine qua non* for protecting the rights of indigenous peoples to land and natural resources. Consequently, States should respect the requirement of FPIC whenever they engage in projects involving indigenous lands, natural resources, or traditional knowledge. This means, in concrete terms, that national authorities are responsible for designing a process, whereby States, local governments, or even private actors can interact with indigenous peoples whenever the rights of the latter are involved.

Covering in detail what such a process should entail goes far beyond the scope of this contribution. However, one last point should be made. The FPIC implies at least three kinds of procedural guarantees. First, indigenous peoples should be heard before a project in their lands is initiated. Second, the consent of indigenous peoples should be obtained by respecting their true will. Finally, indigenous peoples should be able to negotiate the conditions under which any project is carried out.

In this context, the share of benefits deriving from the use of indigenous resources could be included in any development project as a condition for indigenous peoples' resources to be lawfully utilised. The FPIC, thus, may be the missing link connecting the indigenous peoples' right to lands, natural resources, and traditional knowledge with the requirement of benefit-sharing foreseen in article 8(j) of the CBD.

## 6. CONCLUSIONS

The enthusiasm associated with the adoption of the UNDRIP has immediately been followed by legitimate concerns over its impact. The non-binding nature of the declaration has led scholars and practitioners to engage in a fruitful debate on the real possibilities of its implementation and the potential results in terms of the protection of the rights of indigenous peoples.

This contribution has shown that the UNDRIP can serve as a powerful interpretative tool in order to import the rights of indigenous peoples into other bodies of law. Particularly relevant in this sense is the international regime on the protection of biodiversity.

The connection between indigenous peoples and their lands comprises at least two fundamental dimensions. The first one, which I define as the internal nexus between indigenous peoples and traditional lands, implies both that most indigenous peoples rely on the natural resources available in their lands for their survival and also that the cultural identity of indigenous peoples, as an expression of their identity as a community, flourishes only in conjunction with traditional lands. Therefore, the territories of indigenous peoples are the only space in which their very existence can be preserved. Furthermore, the nexus between indigenous peoples and traditional lands may have another dimension, which I define as external since the link between indigenous peoples and their lands is instrumental to the conservation of biodiversity rather than the survival of indigenous peoples and their customs per se. Indeed, the traditional practices and ways of life of indigenous peoples appear to be in line with a sustainable use of natural resources, as prescribed by numerous international regimes and in particular by the CBD.

In this contribution, therefore, I interpreted benefit-sharing as a means to ensure the survival of indigenous peoples, while encouraging them to continue to pursue sustainable practices in the management of natural resources for the benefit of global biodiversity. This interpretation fits with a more comprehensive reading of article 8(j) of the CBD. The stalemate in the implementation of this provision can be overcome through the integration of the rights established under the UNDRIP into the obligations of the CBD State-parties.

It has been shown that rights to land, resources, traditional knowledge, and protection of the environment have characteristics that are extremely innovative for a non-binding human rights instrument like the UNDRIP. The Declaration, in fact, is structured in such a way as to suggest that the rights of indigenous peoples have a strong operative element. The enunciation of indigenous rights is coupled with provisions that articulate States' obligations and offer solutions whenever indigenous peoples' rights are violated. Moreover, the free, prior, informed consent is presented as a central procedural mechanism to ensure that the rights of indigenous peoples are taken into account both by government authorities, at central or local levels, and by non-state actors.

This implies that when States have plans or projects that may affect indigenous peoples' territories they need to consider the rights of the indigenous peoples associated with those lands. In this context, the adjudication process of lands described by the UNDRIP is vital. However, the link between indigenous peoples and territories is not dependent on the formal recognition of States and can be redressed through the judiciary, either at the national or international level.

In practical terms, therefore, States should recognise that the use of genetic resources pertaining to traditional lands must be subject to the free, prior, informed consent of indigenous peoples. Through this mechanism indigenous peoples should first be able to form their consent in an autonomous way and, only after they have been provided with all the necessary information, they should also be granted - on mutually agreed terms - an equitable and fair share of the benefits arising from the utilization of the resources on which they depend. This interpretation is in line with the objectives of the CBD, in so far as it contributes to the conservation of biodiversity. Even though no case has been decided by courts concerning the interpretation of article 8(j) of the CBD, the interpretative role of the UNDRIP has been recently confirmed by national and international case law and can come to a hand in solving the stalemate in the implementation of article 8(j).

In conclusion, it is very likely that the UNDRIP will have a considerable impact on the respect for the fundamental rights of indigenous peoples. This will have important consequences not only for the preservation of indigenous communities per se but also for attaining fundamental biodiversity conservation goals, on which the existence of every form of life on Earth crucially depends.

#### ENDNOTES

- 1 The author wishes to thank Mariachiara Alberton, Senior Researcher at EURAC, Alessandro Fodella, Associate Professor of International Law at the University of Trento, Francesco Messineo, Lecturer in Law at the University of Kent, and Elisa Morgera, Lecturer in European Environmental Law at the University of Edinburgh for their thoughtful inputs and comments.
- 2 UN Declaration on the Rights of Indigenous Peoples, New York, 13 September 2007, UN doc. A/RES/61/295.
- 3 In 1957 the International Labour Organisation (ILO) has already adopted the first international instrument on indigenous peoples, the Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO Convention No. 107, signed in Geneva on 26 June 1957, 328 UNTS 247). In this case, however, the issue of indigenous peoples was tackled from the sectoral perspective of a UN agency dealing mainly with labour rights. Therefore, the social perspective of integration was privileged. Furthermore, ILO Convention 107 has been replaced later on by Convention No. 169, of which this contribution provides a partial account.
- 4 UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Preliminary Report on the Study of the Problem of Discrimination against Indigenous Population in UN doc. E/CN.4/Sub.2/L.566 of 29 June 1972, at para. 34.
- 5 The UN has adopted a self-identification approach on the definition of indigenous peoples, whereby individuals are members of any indigenous communities when they both identify themselves with such communities and are accepted by them. Moreover, what is shared by indigenous peoples is that a solely legal approach to the definition issue may not be exhaustive. An interdisciplinary approach, ranging from anthropology to history, geography, law etc., would frame the debate better. Furthermore, the substantial complexity of a comprehensive definition including all indigenous peoples as such is further corroborated by the magnitude of the numbers involved. According to some recent UN estimates, nowadays there are more than 370 million people spread across about 70 countries all over the world. These peoples live in regions very different context, and usually physically apart, from one another. That is why even indigenous peoples have recognized that a common definition putting together Maya communities and Sami people would be pointless.
- 6 Convention on Biological Diversity, signed in Rio de Janeiro on 5 June 1992, 1760 UNTS 79.
- 7 Rio Declaration on Environment and Development, Rio de Janeiro, 3-14 June 1992, UN doc. A/CONF.151/26 (Vol. I).

- 8 IACtHR, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, at para. 149. This concept has been formulated in similar terms in the final report on human rights and the environment, prepared by Mrs. Fatma Ksentini, Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities within the Commission on Human Rights. Para. 74 reads as follows: “‘This we know, the Earth does not belong to man; man belongs to the Earth. This we know, all things are connected, like the blood which unites one family. Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the thread of life; he is merely a strand in it. Whatever he does to the web he does to himself.’ This letter from Chief Seattle, Patriarch of the Duwamish and Squamish Indians of Puget Sound to United States President Franklin Pierce (1855) underlines the specific relationship of indigenous peoples to the land.”
- 9 UNDRIP preambular paragraph 10 states: “Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.”
- 10 Indigenous and Tribal Peoples Convention (hereinafter referred to as ILO Convention 169), signed in Geneva on 27 June 1989, 72 ILO Official Bull. 59. Together with the UNDRIP, this is the only global instrument dealing with the rights of indigenous peoples. Although the Convention has a more modest coverage in terms of signatories (only 22) and the UNDRIP and ILO Convention 169 are different in nature (the first is a Declaration, the second is a binding Treaty), it is worth comparing them since they are two fundamental steps in what Kingsbury defines as the process of “juridification” of the rights of indigenous peoples.
- 11 Vienna Convention on the Law of the Treaties, signed in Vienna on 23 May 1969, 1115 UNTS 331.
- 12 Article 38 can also be read in conjunction with the last preambular paragraph of the UNDRIP, which defines the Declaration as “a standard of achievement”. The locution “standard of achievement” can corroborate the interpretation according to which the UNDRIP is more than a catalogue of rights. Article 43 further confirms this interpretation, when it states that: “The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples”, meaning that States may design a stronger protection.
- 13 The spiritual link indigenous peoples have with land is also recognized in the jurisprudence of the IACtHR. See, for instance, *Judgement of 17 June 2005, Comunidad Indígena Yakye Axa v. Paraguay*, at para. 154: “land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values.”
- 14 The analysis of articles 28, 29(2) and 32(2) has been purposely excluded from this section. This is due to the fact that some of the provisions related to land rights are directly addressed to States. Therefore, the prescriptions of such articles are connected more to the implementation than to the substantial content of the rights to land, natural resources, traditional knowledge, and protection of the environment. This is why they will be covered separately in section 4.
- 15 Article 15 of ILO Convention 169 reads as follows: “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.” The content of this article appears to be less extensive than article 26 of UNDRIP which refers to direct control instead of mere participation.
- 16 UNDRIP article 31: “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge,...including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora.”
- 17 Concerning the relation between indigenous peoples and the environment, the UNDRIP has failed to explicitly address the issue of the potential conflict between environmental protection goals and the rights

of indigenous peoples. This could be the case, for instance, when a protected area is established and indigenous peoples are disposed of their lands. This case could fall, however, under the provision of article 32(2), which will be analysed in section 4 of this contribution.

18 This aspect is also acknowledged by preambular paragraph 8 of the UNDRIP, which recognises “the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties.”

19 See article 1 of the CBD.

20 According to Morgera and Tsiounami, inter-State benefit-sharing addresses not only conservation concerns, but also development issues of the State that owns the genetic resources accessed by another State.

21 On this point, see also MORGERA, E. 2012b. No Need to Reinvent the Wheel for a Human Rights-Based Approach to Tackling Climate Change: The Contribution of International Biodiversity Law. Edinburgh School of Law Research Paper Series, 15., at 12: “According to the ecosystem approach, benefit-sharing is expected to target stakeholders responsible for the production and management of the benefits flowing from the multiple functions provided by biodiversity at the ecosystem level...This is based on the understanding that where those who control land use do not receive benefits from maintaining natural ecosystems and processes, they are likely to initiate unsustainable practices for short-term gains.”

22 CBD, article 8(j): “Each contracting party shall, as far as possible and as appropriate,...subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.”

23 CBD, article 10(c): “Each contracting party shall, as far as possible and as appropriate...protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.”

24 Although this goes far beyond the purposes of this contribution, it must be mentioned here that some authors contend that the rights affirmed in the UNDRIP are binding on States by virtue of their status of customary rules, independently from the legal nature of the UNDRIP. E. g. see ANAYA, S. J. & WIESSNER, S. 3 October 2007. The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment. JURIST.

25 For the list of signatories, see <http://www.cbd.int/abs/nagoya-protocol/signatories/default.shtml> (last accessed on 18 August 2013).

26 See article 5, Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, adopted in Nagoya on 29 October 2010, Doc. UNEP/CBD/COP/DEC/X/1.

27 See CBD COP Decision VII/12, Annex II.

28 As a general premise, the guidelines at paragraph A(g) specify that: “In considering individual guidelines provided below, it is necessary to refer to and apply the provisions of Article 8(j), Article 10(c) and other related provisions and their development in relevant decisions of the Conference of the Parties in all matters that relate to indigenous and local communities.” Other important soft law instruments to be considered when looking at the CBD context are: The Akwé Kon Voluntary Guidelines, CBD COP Decision VII/16, where particular emphasis is put on indigenous peoples’ right to participation and on the FPIC requirement; Secretariat of the Convention on Biological Diversity, Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilisation, as relevant to the implementation of Article 8 (j) (2002), which are voluntary guidelines prepared by the CBD Secretariat to assist the contracting parties in the implementation of the provisions on benefit-sharing.

29 Practical principle 12: “The needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and

sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.” For the purposes of this principle, the resources of indigenous peoples are intended as those resources the use of which can affect indigenous peoples’ lives.

30 This is also true in those cases decided by international courts. Reading treaty obligations in light of the other obligations also in force between the parties is not just an interpretive principle, but also a method of decision. See Article 38, Statute of the International Court of Justice, adopted on 26 June 1945, 33 UNTS 993.

31 Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya in UN doc. A/HRC/15/37 of 19 July 2010, at para. 54.

32 UNDRIP, article 27: “States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.”

33 See the case law of bodies such as the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination. For more details on those cases, see KINGSBURY, B. Indigenous Peoples. Max Planck Encyclopedia of Public International Law., at 5.

34 IACtHR, *Saramaka Peoples v. Suriname*, Judgment of 28 November 2007.

35 The FPIC requisite in the context of UNDRIP will be given in-depth consideration in the following section.  
36 Supreme Court of Belize, consolidated cases *Cal v. Attorney General*, Judgment of 18 October 2007, at para. 131. Significantly, the whole text of para. 131 reads as follows: “Also, importantly in this regard is the recent Declaration on the Rights of Indigenous Peoples adopted by the General Assembly of the United Nations on 13 September 2007. Of course, unlike resolutions of the Security Council, General Assembly resolutions are not ordinarily binding on member states. But where these resolutions or Declarations contain principles of general international law, states are not expected to disregard them. This Declaration —GA Res 61/295, was adopted by an overwhelming number of 143 states in favour with only four States against with eleven abstentions. It is of some signal importance, in my view, that Belize voted in favour of this Declaration. And I find its Article 26 of especial resonance and relevance in the context of this case, reflecting, as I think it does, the growing consensus and the general principles of international law on indigenous peoples and their lands and resources.” Para. 132: “I am therefore, of the view that this Declaration, embodying as it does, general principles of international law relating to indigenous peoples and their lands and resources, is of such force that the defendants, representing the Government of Belize, will not disregard it. Belize, it should be remembered, voted for it. In Article 42 of the Declaration, the United Nations, its bodies and specialized agencies including at the country level, and states, are enjoined to promote respect for and full application of the Declaration’s provision and to follow up its effectiveness” (emphasis is added).

37 Even before the UNDRIP was adopted, the IACtHR has proposed an evolutionary interpretation of the right to property (article 21) under the ACHR (American Convention on Human Rights, signed in San José on 22 November 1969, 1144 UNTS 123). In case *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of 31 August 2001, the Court affirmed that the right to property of indigenous peoples takes the form of a “communal property”, since the ownership is centred on the communities rather than on the individual. This interpretation was successfully confirmed in case *Moywana Village v. Suriname*, Judgement of 15 June 2005: “their [Moywana community’s] concept of ownership regarding that territory is not centered on the individual, but rather on the community as a whole” (para. 133).



- 38 Concerning the role of the UN, the UNPFII and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people can exercise their powers and utilize their - albeit limited - resources both to monitor the situation of the human rights pertaining to indigenous peoples and to promote a dialogue with the countries that violate those rights. An example of more proactive actions could come from outside the UN system. The IUCN's model for making the rights of indigenous peoples more effective relates to the possibility of co-management of protected areas between indigenous people and State or local government authorities. On this, see BORRINI, G., KOTHARI, A. & OVIEDO, G. 2004. *Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation: Guidance on Policy and Practice for Co-Managed Protected Areas and Community Conserved Areas*, Gland, Switzerland; Cambridge: IUCN-The World Conservation Union.
- 39 UNDRIP, preambular para. 15.
- 40 According to some authors, the UNDRIP "reflects pre-existing customary law". E. g. see WIESSNER, S. 2008. *Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples*. *Vanderbilt Journal of Transnational Law*, 41, 1141-1176., at 1165.
- 41 This happened only a few months after the UNDRIP was adopted. Bartolomé Clavero also highlights that the transposition of the UNDRIP into domestic law was at the same rank as the Constitution. Furthermore, other Latin American States have made constitutional reforms following on from the UNDRIP adoption. On this see WIESSNER, S. 2009. *United Nations Declaration on the Rights of Indigenous Peoples.*, available at [http://untreaty.un.org/cod/avl/pdf/ha/ga\\_61-295/ga\\_61-295\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/ga_61-295/ga_61-295_e.pdf).
- 42 UNDRIP, article 30: "Military activities shall not take place...unless justified by a relevant public interest or otherwise freely agreed with or requested by."

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## **THE UN DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES AND THE AINU OF JAPAN: DEVELOPMENT AND CHALLENGES**

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### **ABSTRACT**

The Ainu are an indigenous people who originally inhabited the Japanese island of Hokkaido and the far-eastern region of Russia. The Japanese government had for many years held the position that the Ainu are not indigenous peoples, rather one of the ethnic minority groups. However, in 2008, the National Diet of Japan recognized the Ainu as an indigenous people for the first time. In response to the historic Resolution, the Advisory Council for Future Ainu Policy (ACFAP) was established in August 2008 and Japan's indigenous movement gained momentum. The purpose of this paper is thus two-fold. The first aim is to review the trajectory of Japan's

indigenous policies after the Meiji restoration of 1868. The second aim is to illuminate to what extent the rights of indigenous peoples stipulated in the Declaration are promoted in the current political context, specifically in Hokkaido. By reviewing the final report submitted by the ACFAP in July 2009 and the current discussion within the Council for Ainu Policy Promotion (CAPP), the study posits a future agenda in terms of the implementation of the Declaration at the national level.

## 1. INTRODUCTION

On September 13, 2007, the United Nations Declaration on the Rights of Indigenous Peoples (hereafter ‘the Declaration’) was adopted. After more than two decades of drafting and negotiation, the Declaration embodies the individual as well as collective rights of indigenous peoples: *inter alia*, the right to self-determination, land and natural resource rights, the right to education, the right to development, intellectual property rights, cultural rights, and the right to treaty recognition. The Secretariat of the United Nations Permanent Forum on Indigenous Issues (2009) states that a dynamic relationship between indigenous peoples and the United Nations in recent years has generated at least the following three results: “a) a new awareness of indigenous peoples’ concerns and human rights; b) recognition of indigenous peoples’ invaluable contribution to humanity’s cultural diversity and heritage; and c) an awareness of the need to address the issue of indigenous peoples through policies, legislation and budgets” (United Nations, p.1). Despite the fact that Australia, Canada, New Zealand, and the United States initially voted against the Declaration (the four States subsequently reversed their position and endorsed the Declaration), the epoch-making adoption of the Declaration with a vote of 143 States in favour was a great achievement that reflected indigenous peoples’ longstanding efforts to gain recognition of their rights under customary international law.

The Japanese government had held the position that the Ainu were not an indigenous people for many years. However, following the ratification of the Declaration, the government officially recognized the Ainu as an indigenous people for the first time in its history in June 2008. Several months later, the Advisory Council for Future Ainu Policy (ACFAP) was established and expert members discussed future Ainu policies. Ironically, however, the Ainu had been assimilated into Japanese society during the previous century, having suffered an extreme loss of both culture and language. In addition, most of their ancestral territories have now been lost. Due to generations of endemic social inequality, many of the Ainu are excluded from educational success and find themselves in the lower social and economic echelons of Japanese society (see, for example, Siddle 1996; Oguma 1998; and Takegahara 2008a). In terms of the Ainu language, it is “critically endangered” with less than 15 native speakers (UNESCO Atlas of the World’s Languages in Danger, 2009).

The purpose of this paper is thus two-fold. The first aim is to review the trajectory of Japan’s indigenous policies from the Meiji restoration of 1868 to the present. The second aim is to illuminate to what extent the rights of indigenous peoples stipulated in the Declaration is promoted in the current political context, specifically in Hokkaido. By reviewing the final report submitted by the ACFAP in July 2009 and the current discussion within the Council for Ainu Policy Promotion (CAPP), the study posits a future agenda in terms of the implementation of the Declaration at the national level. The significance of this research lies in shedding light on the politically contested nature of indigenous issues in Japan, which are basically different from indigenous issues in those countries colonised by the Spanish Crown or the British Crown. In the following section, the Japanese government’s indigenous policy since the late 19th century until the present day is described in five periods.

The five key periods studied will constitute the different sections of the study, which are titled as follows: A Brief introduction to the relationship between the Ainu and the Wajin before 1868; Colonisation of Hokkaido since

1868; the Japanese government's Ainu policy since 1945; Japan after the adoption of the Declaration in 2007; and Current Ainu Policy Issues and Challenges. Having defined these periods, the final section of this paper discusses a future agenda in terms of indigenous rights and the implementation of the Declaration at the national level. To begin with, the next section offers a brief overview of the historical relationship between the Ainu and the Wajin (hereinafter used as a term referring to the majority ethnic Japanese, or non-Ainu people) before the annexation of Hokkaido.

## 2. A BRIEF INTRODUCTION TO THE RELATIONSHIP BETWEEN THE AINU AND THE WAJIN

The Ainu people are an indigenous people who originally inhabited the Japanese island of Hokkaido and the far-eastern region of Russia (Foundation for Research and Promotion of Ainu culture, 2000). According to the latest survey conducted by the Hokkaido prefectural government in 2006, the population of the Ainu in Hokkaido stands at 23,782 (Hokkaido Government, 2006). In addition, it is estimated that a considerable number of Ainu people have migrated from Hokkaido to mainland Japan due to discrimination and economic factors, and approximately 2,700 Ainu live in Tokyo (Ainu Association of Hokkaido). According to scientists, the ancestors of the Ainu people on Hokkaido Island date back to the Jomon Era, which is approximately 12,000 years ago (ACFAP, 2009). However, their ancient history still remains undiscovered because it was predominantly passed down as an oral tradition, and historical documents on the Ainu were written only from the perspective of Japanese people.

Historical records attest to the history of contact between the Emishi (蝦夷) and the Japanese Imperial Court (central government), which dates back to at least the 8th century (Emori, 2008). As the Chinese character 夷 signifies “the eastern barbarians” in the concept of Sinocentrism, the term “Emishi” was generically used to refer to people who lived in the regions north of Tohoku, including the current Hokkaido, and were not under the dominion of the Imperial Court. Although there is no convincing evidence that the Emishi and the Ainu were related, the final report of the Advisory Council mentions that “some linguistic connections with the Ainu can be observed in the Nihon Shoki (Chronicles of Japan written in 720) and other old documents, where some Emishi names and place names in the Tohoku region might be derived from the Ainu language” (p.9). In the late 12th century, the Emishi was referred as the Ezo.

At the end of the 12th century, Minamoto no Yoritomo seized political as well as military power, and established the Kamakura Shogunate (Kamakura-bakufu, circa 1185-1333). He was appointed as Sei-i Taishōgun (征夷大将軍), the Great General, by the Emperor in 1192 and became de facto leader of Japan. Hokkaido at that time was called Ezogachishima (蝦夷力千島) and was a penal colony of the Kamakura bakufu to which Wajin criminals were exiled. Ando clan, a samurai family who governed northernmost region under the feudal system, was in charge of resettling those criminals and gradually exerted influence on those people in Hokkaido (FRPAC, 2013b). According to Suwa Daimyujin Ekotoba, which was written in the mid-14th century, people in Hokkaido were categorised into three groups depending on regions, namely Hinomoto (日の本), Karako (唐子), and “Watarino-tō (渡党)”. The former two groups were not akin to the Wajin and could have been Ainu people. Ando clan and the Wajin settlers to Hokkaido started to trade with the Ainu for goods, such as sea otter fur, eagle feather, kelp, and dried salmon and gained wealth (FRPAC, 2013b). As can be seen, the Wajin often saw the Ainu as an entirely different people or barbarians, and they were initially good trade partners (Takakura, 1943). It is known that the Hokkaido Ainu had a trade route with China and exchanged goods with neighbouring peoples in the North, including the Sakhalin Ainu (Asahikawa city museum, 2010). Yet their amicable relationship ended by the mid-15th century as their trade expanded and the influx of Wajin settlers increased. It finally culminated in the Ainu people's rebellion in 1457, known as Koshamain's revolt. After this revolt, several battles broke out intermittently between two ethnic groups for a century.

In the early 17th century, powerful Ainu leaders ruled their respective regions, but a unified “Ainu nation” did not emerge in Hokkaido. At that time, the Tokugawa Shogunate (Edo-Bakufu, 1603-1867) was established in Edo (the current Tokyo), and the Matsumae, a feudal lord who governed the south of Oshima peninsula, Hokkaido, obtained an exclusive trade right with the Ainu from the first Shogun, Ieyasu, in 1604. Following the creation of Wajin settlements in the Oshima peninsula, the Matsumae restricted Wajin from entering into Ezochi (the rest of Hokkaido or Ainu settlements)<sup>1</sup>. In the Japanese feudal system during the Tokugawa period, a fief (chigyō), which was granted by a feudal lord to his vassals, was an important source of income and it usually consisted of land or paddy fields (ACFAP, 2009, p. 4). However, Hokkaido’s climate was not suitable to grow rice. Hence, as an alternative for chigyō, the Matsumae granted their own upper-class vassals the right to trade with the Ainu at trading posts, Akinaiba, once a year. This was called the Akinaiba chigyō system. Since the Matsumae banned Ainu people from engaging in free trade with other Wajin, they were forced to sell goods to Matsumae vassals to their disadvantage. In line with the growing distrust toward the Matsumae amongst the Ainu, Shakushain, the powerful Ainu chief in the Hidaka region (the current Shizunai), led the revolt against the Matsumae in 1669. The united Ainu force fought well, but once Shakushain was foully murdered by the Matsumae at the postwar truce, the Ainu surrendered to the Matsumae (FRPAC, 2013b). After this revolt, the Wajin established a position of superiority vis-a-vis the Ainu.

In the early 18th century, the Akinaiba chigyō system evolved to the Basho ukeioi system. Under this system, the Matsumae vassals entrusted their trade rights with the Ainu at akinaiba to Wajin merchants. For reaping a high profit margin, the merchants expanded their business and started to manage fishing places. The Ainu were exploited as their workers and fell into poverty. In 1789, they were defeated in the last big rebellion of Kunashiri and Menashi and in 1799 they came under the control of the Tokugawa Shogunate (Takakura 1943, and Emori, 2008). The Shogunate tried to trade with the Ainu directly and even promoted “the Japanisation” of the Ainu. However, their attempts met opposition from the Ainu and did not succeed. As the relationship between the Ainu and the Wajin drastically changed in the mid-19th century, the term Ezo (“蝦夷”) which had been used for centuries was changed: the Edo-Bakufu started to use the term “Dojin (“土人” Natives) to refer to the Ainu. Emori (2008) explains that the Bakufu probably changed the name in order to distinguish between foreigners (Europeans and Americans) and the Ainu, because the former were also called I (“夷”) or Ijin (“異人”), which became confusing in official documents (p.374). In any case, both the terms Ezo and Dojin carried discriminatory connotations and these terms reflected the fact that many Japanese people regarded the Ainu as barbarians.

Oguma (1999) points out that the Ainu policy during the Tokugawa Shogunate was formulated in response to Russia’s territorial expansion after the late 18th century. Hence, the Edo-Bakufu signed the Treaty of Shimoda with Russia in 1855 in order to establish the border between the Etorofu Island and the Urup Island in the Kurile Islands. In the treaty negotiations, the Edo-Bakufu insisted that the Etorofu belonged to Japan because the Ainu, natives who inhabited the Etorofu, were Japanese and Russia acknowledged it (Oguma, 1999, p.51). Two decades later, in August 1875, the Treaty of Saint Petersburg was signed between Japan and Russia. As a result, Japan abandoned its claim to the [Sakhalin island](#) in exchange for the other [Kuril islands](#), from Urup island to Shumshu island. However, those Ainu who had lived in Sakhalin island and the Kuril islands were excluded from the treaty negotiation and the border demarcation process which were of great importance for them. They were given three years to make the choice of nationality, whether to become a Japanese citizen or a Russian citizen. The reality, however, was that the decision was made against Ainu people’s will. For instance, at the end of September 1875, 841 Sakhalin Ainu (equivalent to 35% of the whole Sakhalin Ainu population) were forced to immigrate to the Soya region of Hokkaido, which is the opposite bank from the southern tip of Sakhalin island (Emori, 2008, p.407). However, since Soya is located close to Sakhalin, Japanese officials feared that these Ainu might cause international border issues, and again forced them to move to Tsuishi-kari (the current Ebetsu city) in June 1876. Their new life in Tsuishi-kari was full of difficulties. Due to several outbreaks of infectious diseases amongst

them, more than 300 Tsuishi-kari Ainu people died by 1887, and most of them returned to South Sakhalin after the ratification of the Treaty of Portsmouth between Japan and Russia in 1905 (Emori, 2008, p. 412). Due to limitations of space, the thorny paths which the Kuril Ainu and the Sakharin Ainu tread cannot be discussed here. However, the Ainu people were affected by the political and military competition between Japan and Russia, which continued even after the World War II.

### 3. COLONISATION OF HOKKAIDO SINCE 1868

The history of modern Hokkaido started with the Meiji Restoration of 1868, when the Tokugawa Shogunate was overthrown by anti-Shogunate forces and the Meiji government was established under the rule of the Emperor. During the course of this restoration, the northern island Ezochi which the Ainu originally inhabited was renamed Hokkaido (the literal meaning is “northern sea route”) and officially incorporated into Japan. From the outset, the Meiji government proclaimed its policy to modernize the nation and adopted Western culture and systems. For example, apart from sending government-sponsored students abroad, a total of 2690 foreign experts, oyatoi, were employed by the government between 1668 to 1889 (1975, Centre for East Asian Cultural Studies for UNESCO). Of the workers of the Hokkaido Development Commission (Kaitakushi), 11.4% were oyatoi and Americans accounted for 61.6%. The colonization of Hokkaido would not have been completed at such a fast pace without the contributions of these experts.

As has been highlighted, Japan underwent considerable political and social changes in the late 19th century, and became a World Power with strong military and modern technology in the early 20th century. However, as far as the Ainu were concerned, a set of new policies were developed and the Ainu people’s traditional way of life was gradually restricted. For instance, pursuant to the provisions of the Census Registration Act of 1871, the Ainu were incorporated into Japan as *heimin*, or ordinary Japanese citizens (Takakura 1943). However, while the Hokkaido Development Commission forced the Ainu to have a Japanese family name in the process of this Census registration,<sup>2</sup> in 1878 the Commission issued an order to use the term “Former Natives 旧土人”<sup>3</sup> to designate the Ainu. Acknowledging the fact that the term “Former Natives” implied that they were second-class citizens or uncivilised people, there was a visible distinction between the Ainu and majority citizens in practice. The Commission also strictly prohibited traditional Ainu culture and customs, such as women’s tattoos and men’s earrings, claiming that they were *rōsyū* (bad habits).

In 1872, two regulations which directly affected Ainu peoples’ land ownership were promulgated: Regulation for the Lease and Sale of Hokkaido Land and Land Regulation Ordinance.<sup>4</sup> Siddle (1996) notes that these regulations were “grounded in a doctrine of Hokkaido as *terra nullius*, in which indigenous land use was clearly not recognised as ownership” (p.56). Article 7 of Land Regulation Ordinance states that “the mountains, forests, rivers and streams where formerly the natives fished, hunted and gathered wood shall be partitioned and be converted to private (*jinushi*) or collective (*murauke*) ownership” (cited in Siddle, 1996, p.56). By using the doctrine of *terra nullius*, the new government successfully dispossessed the Ainu peoples of their lands. This justification is exactly the same as the doctrine of *terra nullius* used by other colonial powers to dispossess indigenous peoples of their lands and sovereignty (see Thornberry 2002; Anaya 2004; and Xanthaki 2007). Indigenous lands were encroached without their consent. As seen in these regulations, the incorporation of the Ainu into Japan was earnestly pursued and later strengthened by the Former Natives Protection Act (hereafter, “the Protection Act”). At that time, the Ainu lived in extreme poverty due to the dispossession of their lands and the government’s regulations on traditional fishing and hunting. In addition, as the contact between Wajin settlers and the Ainu increased, epidemic diseases, such as tuberculosis and syphilis, spreaded to the Ainu community and devastated its population. For three decades from 1873 to 1903, the proportion of the Ainu population vis-à-vis the entire population of Hokkaido declined from 14.63% to 1.65%, and the Ainu became the minority in many communities (cited in Emori, 2008,



p.429). It could be said that this was the flip side of the coin of Japan's modernisation. In this context, the Protection Act, which shared some similarities with the Dawes Act of 1887 (Tomita, 1989&1990), was promulgated by the Imperial Diet in 1899 in the name of saving these impoverished Ainu.

The Protection Act focused on areas such as agriculturalisation, education, and health services. Article 9 specifically stipulates the creation of Former Native Schools at national expense in Ainu Villages (Hokkaido Former Native Act, 1899). Around the turn of the century, the Ministry of Education issued the 1900 Elementary School Order which established the period for compulsory education for Japanese children at four years. In an ordinary primary school, children were to learn moral education, Japanese language, arithmetic, and physical education. In addition, other subjects, such as drawing, singing, handicraft, and sewing (for girls) could be added to the curriculum if appropriate. However, for Ainu children, the Hokkaido prefectural government promulgated separate regulations in 1901: Regulations for the Education of Former Native Children. Following these Regulations, some twenty-three elementary schools were established between 1901 and 1907 in Hokkaido (Ogawa, 1992, p. 199). In areas where a small number of Ainu coexisted with the Wajin populations, Ainu children attended Wajin schools but were segregated from Wajin students. The school enrolment ratio of Ainu children increased rapidly, from 17.9 % in 1895 to 84.2 % in 1907 (Ogawa, 1992, p.201). However, first and foremost, the education that Ainu children received was principally assimilation-oriented and inferior to the one received by Wajin children. The government officials set the Ainu students' targets at the level of the third grade Wajin students (Emori, 2008, p.446), meaning that the expectations of the educational results of the Ainu was low from the outset. These unequal measures were abolished in 1907, when the Ministry of Education revised the 1900 Elementary School Order and extended the period of compulsory education to six years (see Table 1, cited in Ministry of Education, Japan). Following this Order, the Hokkaido Prefectural government abrogated the 1901 Regulations and announced new regulations for the Ainu: an additional two-year of schooling (six years in total) and additional subjects, i.e. Japanese history, geography and science (including agriculture) (Ogawa, 1992, p.219).

Table 1 School Curriculum under the 1907 Elementary School Order

| Subject                   | Grade 1<br>(hours<br>/week) | Grade 2<br>(hours<br>/week) | Grade 3<br>(hours<br>/week) | Grade 4<br>(hours<br>/week) | Grade 5<br>(hours<br>/week) | Grade 6<br>(hours<br>/week) | Total<br>Hours        |
|---------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------|
| Moral Education           | 2                           | 2                           | 2                           | 2                           | 2                           | 2                           | 12                    |
| Japanese Language         | 10                          | 12                          | 14                          | 14                          | 10                          | 10                          | 70                    |
| Arithmetic                | 5                           | 6                           | 6                           | 6                           | 4                           | 4                           | 31                    |
| Japanese History          | 0                           | 0                           | 0                           | 0                           | 3                           | 3                           | 6                     |
| Geography                 | 0                           | 0                           | 0                           | 0                           |                             |                             |                       |
| Science                   | 0                           | 0                           | 0                           | 0                           | 2                           | 2                           | 4                     |
| Drawing                   | 0                           | 0                           | 1                           | 1                           | Boys 2<br>Girls 1           | Boys 2<br>Girls 1           | Boys 6<br>Girls 4     |
| Singing                   | 4                           | 4                           | 1                           | 1                           | 2                           | 2                           | 14                    |
| Physical Education        |                             |                             | 3                           | 3                           | 3                           | 3                           | 20                    |
| Sewing                    | 0                           | 0                           | Girls 1                     | Girls 2                     | Girls 3                     | Girls 3                     | 9                     |
| Handicraft <sup>5</sup>   |                             |                             |                             |                             |                             |                             |                       |
| Total hours<br>(by grade) | 21                          | 24                          | Boys 27<br>Girls 28         | Boys 27<br>Girls 29         | Boys 28<br>Girls 30         | Boys 28<br>Girls 30         | Boys 155<br>Girls 162 |

The 1907 Elementary School Order (21 March, 1907)

Table 1 School Curriculum under the 1916 Regulations for the Education of Former Native Children

| Subject                   | Grade 1<br>(hours/week) | Grade 2<br>(hours/week) | Grade 3<br>(hours/week) | Grade 4<br>(hours/week) | Total<br>Hours |
|---------------------------|-------------------------|-------------------------|-------------------------|-------------------------|----------------|
| Moral Education           | 2                       | 2                       | 2                       | 2                       | 8              |
| Japanese Language         | 11                      | 12                      | 14                      | 14                      | 51             |
| Mathematics               | 5                       | 6                       | 6                       | 6                       | 23             |
| Physical Education        | 3                       | 3                       | 3                       | 3                       | 12             |
| Sewing                    |                         |                         | Girl 2                  | Girl 2                  | Girl 4         |
| Farming                   |                         |                         | Boy 2                   | Boy 2                   | Boy 4          |
| Total Hours<br>(by grade) | 21                      | 23                      | 27                      | 27                      | 98             |

Regulations for the Education of Former Native Children (24 December, 1916)

However, in 1916, the Hokkaido government decided to shorten the total length of schooling of the Ainu, from six to four years, and newly added subjects such as geography, history, and science were taken out of the curriculum.

In addition, the starting age of primary school for Ainu children was raised from six to seven, whilst that of Wajin children remained unchanged (at six years of age). The Hokkaido government justified this measure according to the belief of Social Darwinism that the level of civilisation and the mental and physical development of the Ainu were different from those of Wajin children, hence the special circumstances of the Ainu should be taken into consideration (cited in Ogawa, 1992, p. 221) According to this argument, six years of schooling was too long for the Ainu and likewise, starting school at the age of six was too early for the Ainu. As for the curriculum, it was much more simple than the one Wajin children received (see Table 2, cited in Ogawa, pp.422-425). This special curriculum focused primarily on learning the Japanese language and developing loyalty to the Emperor and the nation. Use of the Ainu language was prohibited in schools, resulting in a sharp decline in the number of those speaking the Ainu language.

According to national statistics, the school enrolment ratio of Ainu children increased rapidly from 44.6 % in 1901 to 96.6 % in 1916 (cited in Emori, 2008, p.445). In this way, the Ainu were systematically assimilated into the Japanese nation as subjects of the emperor. Needless to say, these assimilation policies caused irreparable damage to the Ainu culture and societies, and discrimination toward the Ainu persistently continued. Against this background, the Ainu, especially educated young Ainu, raised their voices against racism and social inequality, and they actively engaged in cultivating their fellow Ainu not to be humiliated by the Wajin. In 1922, in the context of increasing criticism for discriminatory education system against the Ainu children, the Regulations for the Education of Former Native Children were abolished. It was during this period that the Ainu Association of Hokkaido, the largest Ainu organisation in Japan, was established in 1930. In 1937, Former Native schools were merged with normal primary schools and racial segregation technically ended.

It is not within the scope of this paper to compare the trajectory of Japan's policies toward the Ainu with that of other countries around the world. However, as seen in the historical relationship between the Ainu and the Wajin, it is worth noting that the geographical proximity and the circumstances surrounding the Ainu (as well as most of the indigenous peoples in Asia and Africa) is historically different from that of other indigenous peoples, particularly those who were colonised by the European settlers following the "discovery" of the Americas. At least it is fair to say that the Wajin are equally indigenous to mainland Japan, as is the case with the Ainu who are indigenous to Hokkaido. The main issue here is that the balance of power between two neighbours changed over a long period of time, and education played a key role in "civilising" indigenous Ainu people. Based on the strong belief in social Darwinism by the end of the WWII, they were considered "backwards" or "barriers" for Japan's national development. Although the Japanese government did not introduce boarding school system to assimilate Ainu children in Hokkaido, partly due to financial constraints, schools functioned as an apparatus for strategically assimilating them into the Meiji Japan between the late 19th and the mid-20th century. In cooperation with local police, schools also played a decisive role in monitoring the progress of enlightenment activities for both the youth and adults of Ainu communities (Hirose, 1995).

Needless to say, these assimilation-oriented education policies were not just a Japanese phenomenon but rather a global one. Through various forms of education, including missionary schools and residential/boarding schools, indigenous children around the world had been overtly assimilated into colonial culture, while having been denied their cultures, languages, beliefs, and values (see, for example, Abu-Sadd & Champagne 2005; Takegahara 2008a; Cottrell 2010; and Snyder & Nieuwenhuysen 2010). Religious education also played an important role, and Christianity and school education were inextricably linked to the cultural assimilation of indigenous people in the "New World". As Cole (2011) analyses, one explanation for this common policy is that indigenous peoples appeared to constitute a formidable menace to "fledgling nation-states" which sought to strengthen sovereignty over occupied territories and forge a national identity. Similarly, the Government of Meiji Japan consciously made an effort to build a modern nation-state by borrowing policies from the Western Powers (for example, "The

Iwakura Mission of 1871” in Kume, Tsuzuki, & Young, 2009; and also see, JICA Research Institute, 2004) and transformed Japan into a constitutional monarchy with a parliamentary system of government. Japan has been under the Imperial system since around the 7th century, and the Emperor was the sovereign ruler of Japan until 1945. However, the role of the Emperor has shifted over the course of time, as Japan’s political regime swung like a pendulum from Imperial rule to Shogunate rule around the 13th century. When the Meiji Emperor became the head of state, as stipulated in the 1889 Constitution of the Empire of Japan,<sup>6</sup> the government may have had a hidden agenda. Fridell (1976) makes an insightful comment on this point as follows: “the Japanese government systematically utilized shrine worship as a major force for mobilizing imperial loyalties on behalf of modern nation-building” (p.548). Shintoism became an integral part of the government of Meiji Japan, and Emperor worship was incorporated into the “moral education” curriculum for both Wajin and Ainu children. As space is limited, the Ainu people’s struggles during the two world wars cannot be analysed in this paper. However, it is very important to bear in mind that whilst the Ainu were overtly discriminated in a society as “former natives”, they were forced to fight for the sake of the Emperor and many of their lives were lost during these wars.

### 3.1 The Japanese government’s Ainu policy since 1945

On August 15, 1945, Japan made an unconditional surrender and the Second World War came to an end. Consequently, the General Headquarters (GHQ) occupied Japan from 1945 to 1951 and implemented democratic reforms. In the postwar period, whilst Japan achieved a miraculous economic recovery, social discrimination against the Ainu continued and they were excluded from enjoying the fruits of this economic development. In the process of democratization, “the Ainu failed to improve significantly on their pre-war position as an excluded ‘dying race’” (Siddle, 1996, p. 147). It was not until the late 1960s that a dramatic change occurred: civil activist groups, inspired by social movements overseas such as the American Indian Movement, started to protest against the marginalization of the Ainu. In the early 1970s the Ainu problems became increasingly salient, and Hokkaido Utari Welfare Measures<sup>7</sup> were issued by the government. Supported by the national government as well as the Hokkaido government, specific welfare policies to improve the Ainu people’s quality of life were implemented in 1974. As a result, the economic gap between the Ainu and the Wajin was gradually reduced. For instance, the Hokkaido prefectural government has conducted surveys on the living conditions of the Ainu on six occasions since 1972 (1972, 1979, 1986, 1993, 1999 and 2006). In the 1972 survey, the ratio of Ainu people receiving social welfare was 11.57% but it decreased to 3.83% (per mill) in 2006. In the report submitted to the Committee on the Elimination of Racial Discrimination Government of Japan emphasised (August 19, 2008) the Japanese government stated that “the decrease in the public assistance application ratio shows the positive effects of the Hokkaido Utari measures, which include a facility improvement project to ameliorate the overall living environment...and measures for facilitating employment and skill training” (para. 10, p.8). In a similar vein, the educational gap between the Ainu and the Wajin dwindled: the percentage of Ainu students attending high schools increased from 41.6 % in 1972 to 93.5% in 2006 (Government of Japan, 2008).

However, in essence, the Japanese government maintained its position that Japan is a homogeneous nation until quite recently. For instance, in the 1980s, Yasuhiro Nakasone, the then Prime Minister, referred to Japan as “an ethnically homogeneous nation (Tan-itsu-minzoku-kokka)” and stated that there is no racial discrimination against ethnic minorities who hold Japanese citizenship (AP News, October 22, 1986). At that time, it was still common for Japanese policy makers and even the Prime Minister to make discriminatory and ethnocentric statements in public. Hence, in response to Nakasone’s ethnocentric remark, Ainu organisations expressed a strong protest which led to an apology by the Prime Minister apologised in the form of a letter. It seemed that the Ainu problem gained some momentum in 1986 but the Japanese government did not even recognise the Ainu as “a minority group” of Japan in the second periodic report on the International Covenant on Civil and Political Rights (ICCPR) submitted to the Human Rights Committee (March 24, 1988). It was not until 1991 that the Ainu were referred to as a

minority who possess their own culture, religion, and language, according to Article 27 of ICCPR.

Following the recognition of the Ainu as a minority group, a major political shift occurred in 1993 when the Liberal Democratic Party (LDP), which had been the sole ruling party of Japan since 1955, lost the election of the House of Representatives. In the following year, on June 30 1994, the Japan Socialist Party (JSP), the New Party Sakigake (NPS), and the LDP formed a ruling coalition under Prime Minister Murayama of the Japan Socialist Party. The most surprising news was that Mr. Kayano, a distinguished Ainu researcher, ran for election with the JSP and became the first-ever Ainu Diet member. This political momentum created a favourable environment for the Ainu. Under the coalition government, in 1995, the Advisory Council for Future Utari Policy was set up under the Prime Minister’s Office for the first time. As a result of this Council, the Former Native Protection Act of 1899 was abolished, and the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (hereafter the “Law for the Promotion of the Ainu Culture”) came into force in July 1997. Up until the present day, the Law for the Promotion of the Ainu Culture is the sole domestic law concerning Ainu people in Japan.

Then, pursuant to this law, the Foundation for Research and Promotion of Ainu Culture (‘FRPAC’) was established in November 1997. It is the sole public utility foundation designated by the Hokkaido Development Agency (current Ministry of Land, Infrastructure and Transport and Tourism) and the Ministry of Education, Culture, Sports, Science and Technology. As Article 1 of the Act states that “this law aims to realize the society in which the ethnic pride of the Ainu people is respected and to contribute to the development of diverse cultures in our country”, the Foundation’s main focus is Ainu culture. Hence, it is fair to say that this law only serves for the promotion of Ainu culture, but not for the recognition of broader indigenous rights. Despite this limitation, the enactment of the Law for the Promotion of the Ainu Culture was a tremendous step towards acknowledging the uniqueness of the Ainu people (see Table 3 for summary of Ainu policies and related measures).

Another great victory was that the Sapporo District Court claimed the illegality of a dam construction in a sacred Ainu place in Nibutani town, Hokkaido. The District Court recognised that the Ainu people had established a unique culture in Hokkaido before the arrival of the Japanese and therefore their rights should have been given consideration under Article 13 of Japan's Constitution which protects the rights of the individual as well as under the ICCPR (Kayano et al. v. Hokkaido Expropriation Comm., 1997). This occurred in March 1997, four months before the abolition of the Former Native Protection Act. The significance of this court decision lies in affirming the Ainu people’s indigenous cultural rights and in giving consideration to these rights whilst referring to Article 13 of Japan's Constitution and Article 27 of the ICCPR (Iwasawa, 1998). It could be said that this historical lawsuit over the Nibutani Dam heralded a new chapter in Ainu history.

Table 3. Summary of Ainu Policies and Relevant Laws and Measures

| Main focus (organisation in charge/focal point)                         | Basic Policies                                                                                                                         | Related laws and measures                 | Operating Fund (subsidy) from                                                                                                                                                 |
|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Promotion of Ainu Culture (The Foundation for Research and Promotion of | 1.Promotion of comprehensive and practical research on the Ainu<br>2.Promotion of the Ainu language<br>3.Promotion of the Ainu culture | Law for the Promotion of the Ainu Culture | National government (Ministry of Land, Infrastructure and Transport and Tourism, Ministry of Education, Culture, Sports, Science and Technology), and the Hokkaido Government |

|                                                                                                          |                                                                                                         |                                 |                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ainu Culture)                                                                                            | 4.Dissemination of knowledge of Ainu traditions<br>5. Revival of Ainu traditional life style (IWOR)     |                                 |                                                                                                                                                                                                                                                                                                              |
| Improvement of Hokkaido Ainu peoples' lives (The Hokkaido Government/ Office of Ainu Measures Promotion) | 1.Lifestyle stability<br>2.Enrichment of education<br>3.Employment stability<br>4.Promotion of industry | Hokkaido Utari Welfare Measures | National government (Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labour and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure, Transport and Tourism), and the Hokkaido Government |

(Data compiled by author from the websites of FRPAC and Hokkaido Government)

#### 4. JAPAN AFTER THE ADOPTION OF THE DECLARATION IN 2007

On June 6 2008, roughly 9 months after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (henceforth “Declaration”) in September 2007, the National Diet of Japan (the House of Representatives and the House of Councillors) unanimously adopted the Resolution to Recognize the Ainu as an Indigenous People on June 6 2008. The Resolution acknowledged past wrongs against Ainu people in the process of Japan’s modernisation despite the fact that they were equal Japanese citizens under the law. Subsequently, the government recognised the Ainu as an indigenous people, and decided to follow the Resolution, which demanded the implementation of comprehensive Ainu policy measures. Considering the historical trajectory of Japan’s Ainu policy since the late 19th century, this is a historic resolution for this people. However, at the same time, the adoption of the Resolution seems rather abrupt because the government had not expressed concerns on the issue of the Ainu’s “indigeneity” for a long time.

On this matter, the G8 Hokkaido Toyako Summit may offer the key to understanding the government’s sudden policy change. The Resolution mentions “it is significant that the G8 summit, which is also called the Environmental Summit, is going to be held this year in Hokkaido, where the Ainu people have originally inhabited and coexisted with nature”. At that time, the Japanese government was preparing to host the G8 summit in July 2008 and probably expected that the Ainu people would take advantage of the opportunity to lobby the member countries toward recognising their indigenous rights. The idea was that the Japanese government and politicians might be afraid of being criticized by other G8 member states over Ainu issues and suffering a sense of shame over its internal affairs. Consequently, some Diet members organised a bipartisan society for establishing Ainu people’s rights in March 2008. Hiroshi Imazu, a member of the House of Representatives, was a chief organiser and Yukiko Hatoyama, who later served as Prime Minister of Japan between September 2009 and June 2010, was also one of the members of this society. According to the Ainu Peoples Resource Centre (15 May, 2008), Imazu reported on his official website that the bipartisan society stated an urgent need to recognise the Ainu as indigenous people of Japan in order to show its commitment to the UN Declaration. He also mentioned that it would be in line with Japan’s national interest to make an international declaration to the effect that the Ainu are indigenous people at the G8 summit.

For their part, Ainu activists collaborated together and convened the 2008 Indigenous Peoples Summit in Biratori town, Hokkaido prior to the G8 Summit. According to the report published by the Indigenous Peoples Summit in the Ainu Mosir 2008 Steering Committee, more than 600 participants gathered from Japan and abroad, including

Australia, Bangladesh, Canada, Guam, Guatemala, Hawai'i, Mexico, New Zealand, Nicaragua, Norway, the Philippines, Taiwan, and the United States (IPS Steering Committee, 2008a). Victoria Tauli-Corpus, the then Chair of the UN Permanent Forum on Indigenous Issues and other distinguished indigenous experts were invited to this alternative Summit. From July 1 to July 4, they discussed important indigenous issues such as the environment, history, culture, education, and the reparation of indigenous rights. As a result of this international conference, they adopted the Nibutani Declaration of the 2008 Indigenous Peoples Summit in Aino Mosir (IPS Steering Committee, 2008b). This Declaration highlights global environmental, economic, and development issues and calls for G8 nations to respect mother earth and indigenous knowledge, philosophies, culture, and traditional way of life for sustainable development. Amongst the proposals to the G8, the first point they made was to “effectively implement the United Nations Declaration on the Rights of Indigenous Peoples and use this as the main framework to guide the development of all official development assistance (ODA), investments and policies and programmes affecting Indigenous Peoples”. It should be noted that the recent policy changes would never have occurred in such a short time without the efforts of indigenous peoples as well as that of civil societies. In collaboration with international indigenous organisations, Ainu-related NGOs have actively engaged in lobbying the government and the UN to claim their indigenous rights. The alliance of international civil society and indigenous groups has accelerated the wider endorsement of the UDRIP in recent years.

In August 2008, following the Diet's historic Resolution, the Advisory Council for Future Ainu Policy was formally established. Amongst the eight members of the Council, Ainu represented only one seat and the other members were professors, the governor of Hokkaido, human rights specialists, and an administrative director of a cultural organisation. These expert members discussed future Ainu policy on a monthly basis from August 2008 to July 2009. Each session covered various issues that were discussed from anthropological, historical, political, economic, educational, cultural, and human rights perspectives. During the second and third sessions, the Council members visited Hokkaido to hear the voice of Ainu and they also met Ainu people in Tokyo. The main items on the Council's agenda included indigenous people's rights to culture, language, education, and to development and political participation. In terms of the socio-cultural status of the Ainu, there are still gaps between Ainu and non-Ainu in Hokkaido. In addition, the Council specifically highlighted the situation of Ainu people who live outside Hokkaido and suggested a new measure for them. Two Ainu-related organisations submitted their recommendations to the Council, and both proposed to designate Ainu as an official language. Specifically, one of the groups addressed the need for establishing Ainu ethnic schools for teaching the Ainu language, culture and arts for children and young adults. This group underlined the importance of creating a multilingual and multicultural society in Japan, and criticised the lack of a perspective for ethnic minorities in public education.

The Council submitted its final report in July 2009. The main recommendations the Council made are as follows: “1) Promotion of the public understanding; 2) Measures for culture in a broader sense; and 3) Establishment of an organizational framework for future Ainu policy” (ACFAP, 2009, pp.24-30). The first point underlines the importance of school education in order to raise awareness about the history and culture of the Ainu amongst students. In particular, universities are encouraged to promote research on educational materials and pedagogical methods suited to children's levels of development in order to apply the findings in classroom settings. The report requests short-term measures such as the enhancement of textbook contents, enlargement of distribution of supplementary reading material, enrichment of teacher training on the Ainu and so forth. Improving school environments is also recommended so that students can learn about the history and culture of the Ainu by the end of compulsory education. In connection to the second point, the Council recommended measures, such as the establishment of an area symbolizing the coexistence of ethnic groups. The major difference between the 1995 Expert Council and the 2008 Council is that the latter put more emphasis on the economic, social, and cultural rights of the Ainu (See, APPENDIX A). In addition, the language issue is considered to be a top priority in the promotion of Ainu Culture. As for the third point, creating national mechanisms for planning is recommended:

more specifically, the Council urges the government to establish consultation and deliberation bodies in order to promote Ainu policy from the Ainu's perspective as well as to monitor the implementation process. Based on these recommendations, the government set up the Department of Comprehensive Ainu Policy within the Cabinet Secretariat in August 2009.

As can be seen, the Council adopted a broad and forward-looking agenda for the future Ainu policy. In particular, with regard to the discussion on "special measures for the Ainu", the Council expressed its view that "it is generally interpreted that this Article allows differentiated treatment for a portion of the population if it is based upon rational reasons in accordance with the nature of things" (ACFAP, 2009, p.21). Article 14 of the Constitution of Japan stipulates that "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin". Therefore, some critics challenged Ainu policy because it would be unfair or even unconstitutional if the Ainu gained a special status and were treated differently. But taking the Council's view into consideration, Ainu policy is now publicly considered constitutional with certain limitations. However, the real issue is that special Ainu measures could only be implemented if the majority population considered this treatment to be "rational" and not in conflict with public interests.

In considering this issue, Kymlicka's theory on multiculturalism and "group-differentiated" rights (1995) will be useful. He discusses how to accommodate the needs of national minority and ethnic groups, and creates three categories of group-differentiated rights as follows: 1. Self-government rights; 2. Poly-ethnic rights; and 3. Special representation rights. Going further into this theory is beyond the scope of this paper. However, with regard to the Ainu's special representation rights, the report points out that setting aside seats for the Ainu people in the Japanese Diet or other governmental body is in conflict with the Japanese Constitution. In addition, it will most likely require an amendment of the Constitution. Since the Ainu population is small, the possibility of a constitutional amendment is remote. The only channel they have for making their voice heard within society as a whole is to become a Diet Member, which also presents further challenges. For instance, the Council did not discuss in detail what kind of criteria would constitute "rational reasons" for special treatment of the Ainu and how to successfully secure the Ainu's special representation rights. In any case in-depth and comprehensive debates will be necessary to obtain public understanding on this type of group-based special measures in future years.

As far as the Declaration is concerned, the Council expressed its complete respect for the document and affirmed its importance. However, it considered the Declaration to be nothing more than "a general international guideline for indigenous policies". For instance, the final report discusses whether the diverse situations of indigenous people around the globe are applicable to the Ainu of Japan:

However, just as the histories and current situations of the world's 370 million indigenous people are enormously diverse, so are the countries in which they live. These individual conditions cannot be ignored as far as the Declaration is concerned. In this respect, Japan should establish its Ainu policy in line with the current conditions of the country as well as of Ainu people themselves, referring to relevant clauses of the Declaration and sincerely listening to the voices of Ainu people living today. (ACFAP, 2009, p.21, emphasis added).

This paragraph could be interpreted as meaning that the Japanese government needs to refer to provisions of the Declaration only if they are relevant to Ainu policy and the current context of Japan. As a matter of fact, the Council's view on the Declaration coincides with that of the Japanese government. When the Resolution was adopted by the Diet in June 2008, the then Chief Cabinet Secretary, Machimura, made the following statement: "Not only will the government further enhance the Ainu policies taken so far, but it will make efforts to establish comprehensive policy measures, in reference to relevant clauses of the UN Declaration on the Rights of Indigenous



Peoples (ACFAP, 2009, p.1, emphasis added)”. The common views of the government and the Council regarding the implementation of the Declaration exemplify Japan’s “skewed” indigenous policy model that treats indigenous rights only from the perspectives of cultural diversity and individual rights.

As shown in table 3, the promotion of Ainu culture and the improvement of the living standards of the Ainu are the two pillars of Japan’s indigenous policy (Government of Japan, May 22, 2013). This policy stance on the part of the Japanese government has been consistent since the General Assembly adopted the Declaration in 2007. At that time, the government reserved the collective rights of indigenous peoples on the grounds that “the concept of collective human rights is not widely recognized as a well-established concept in general international law” (Explanation of Vote, 13 September, 2007). With regard to the right to land and natural resources, a Japanese U.N. diplomat explained that land and resource rights should be “limited by due reason in harmonizing and protecting third-party interests and other public interest” (Explanation of Vote). The Declaration is considered to be the most comprehensive and normative international legal framework that recognizes the concept of the collective rights of indigenous peoples. However, the government seems to turn a blind eye to the collective nature of indigenous rights, such as collective rights to land and natural resources, language, education, and political participation. These rights are more often contested than individual rights in practice and are a politically sensitive issue.

In regard to the issue of the Declaration’s implementation at national level, Lokawua, a member of the United Nations Permanent Forum of Indigenous Issues (PFII), presented her observations as follows: “the declaration has legal relevance and reflects obligations of states under other sources of International Law such as Customary Law and General Principles of Law” (Lokawua, 2009, January). As she pointed out, greater emphasis should be placed on the significance of the Declaration in international law. For instance, the whole text of Article 3 of the Declaration (“Indigenous peoples have the right self-determination.”) reflected Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) which affirm the peoples’ right to self-determination (“All peoples have the right of self-determination.”). Although, according to the two Conventions “peoples” means the entire population of a state, it has been recently understood that the term indigenous “peoples” in the Declaration carries the same implications as “peoples” in existing international law (Anaya, 2004). The Declaration also reflects relevant clauses of other (legally-binding) international human rights instruments, such as the Convention on the Rights of the Child and Convention on the Elimination of All Forms of Racial Discrimination. Therefore, although the Declaration possesses no legal binding authority, states should acknowledge their moral as well as legal responsibilities toward implementing the Declaration at national level. Japan underwent its first cycle of Universal Periodic Review in 2008 (United Nations, Human Rights Council, March 30, 2008). With regard to the Ainu and the Declaration, Algeria recommended Japan to “review, inter alia, the land rights and other rights of the Ainu population” (para.19) to harmonize them with the Declaration. Guatemala also urged Japan “to seek ways to initiate a dialogue with its indigenous peoples” (para.19) for better implementation of the Declaration. As a signatory to human rights instruments, Japan should fulfil its obligations and respect recommendations made during the review.

## 5. CURRENT AINU POLICY ISSUES AND CHALLENGES

In December 2009, the Council for Ainu Policy Promotion (CAPP) was established under the Prime Minister’s Office as a follow-up mechanism. Since its first meeting in January 2010, it convenes once a year to further advance Ainu policy measures while taking into account the views of Ainu peoples. In contrast to the situation in the Advisory Council, the Ainu representatives held five out of fifteen seats at these meetings. Ms. Noto, the youngest representative whose mother is an Ainu, commented that “many people helped me to get to where I am now. I hope that I represent as many voices of the Japanese and the Ainu as possible” (Tomakomaiminpo, December 26, 2009). Two ad hoc groups, the Working Group for Symbolic Space for Ethnic Harmony and

Working Group for Research on the Living Conditions of Ainu People outside Hokkaido, were set up in March 2010, and submitted their reports to the Council in June 2011.

The former group discussed the basic concept of “the Symbolic Space for Ethnic Harmony” and finally constructed a national centre for Ainu culture around Poroto Kotan (the Ainu Museum) in Shiraoi, Hokkaido (CAPP, 2011a). The Symbolic Space will not only offer multifaceted educational, cultural and recreational facilities but will also serve as a space to respect the spirituality of the Ainu where traditional rituals can be performed. A memorial facility will also be constructed to console the souls of Ainu ancestors whose skeletal remains were dug up from their graves by scholars without the consent of Ainu families. According to an article by a local newspaper (Tomakomaimimpo, December 18, 2010), building the entire Symbolic Space is estimated to cost a total of over ten billion yen. On the other hand, the latter Working Group conducted the first-ever survey on the living conditions of Ainu people outside Hokkaido in order to formulate policies which target Ainu people all over Japan (CAPP, 2011b). The survey, for instance, found that the ratio of young Ainu people (outside Hokkaido) who go on to study at college is 31.1%. This figure is relatively higher than that of Hokkaido Ainu (20.2%), but much lower than the national average (42.2%). Previously, the social survey on the Ainu was only conducted in Hokkaido, but now it broadens the scope of survey to every region of the country. Ainu-related issues are now on the government agenda.

After the dissolution of the above-mentioned Working Groups, a new ad hoc group called the Working Group for Ainu Policy Promotion (‘WGAPP’) was set up as a subsidiary body of the Council in August 2011. Since its establishment, WGAPP members hold regular meetings (often bimonthly) to follow up recommendations made by the ACFAP and the previous two Working Groups. A lot of time has been spent on discussing topics regarding the implementation process of the Symbolic Space for Ethnic Harmony and the special measures for Ainu people living outside Hokkaido, including scholarships for higher education and financial and cultural supports. In addition, various issues were discussed in connection with these topics, such as the issue of human remains kept at universities, government budgets for Ainu measures, and the implementation of strategic public relations campaigns with Ainu people. With regard to scholarships for Ainu students outside Hokkaido, a new measure will be introduced in 2014 by utilising the existing interest-free scholarship loan scheme administrated by the Japan Student Services Organization (JASSO).<sup>8</sup> Accordingly, those Ainu people living outside Hokkaido and enrolling in higher educational institutions will be able to apply for JASSO scholarship loan programmes (CAPP, February 22, 2013). JASSO will take into account the special circumstances of Ainu students and ease the standards for scholarship eligibility, such as high school GPAs.

In order to apply for the JASSO scholarship programmes, an applicant must meet the following criteria as a principle: (1) an applicant must be an individual of Ainu descent who identifies himself or herself as an Ainu; or (2) an applicant must be an individual who lives with an Ainu who falls into category (1) through marriage, adoption etc.; and (3) an applicant must be an individual who lives outside Hokkaido (CAPP, February 22, 2013). The criteria (1) and (2) are almost same as the ones used for Ainu living condition survey by the Hokkaido prefectural government (see, for example, Hokkaido Government 2006). More detailed administrative and operating procedures will be discussed in the months ahead, but an applicant needs to certify his or her identity by official documents, such as a koseki (a Japanese family registry), and the Ainu Association of Hokkaido will be in charge of certifying those eligible for this new scholarship measure (CAPP, April 19, 2013). Normally, JASSO allocates a limited number of scholarships to each university, but this time, it will set up special quotas for eligible Ainu students. In addition, based on the discussions at CAPP, it was also decided that an interest-free loan programme - implemented by the Hokkaido prefectural government - for Ainu students enrolling in higher education in Hokkaido would continue to exist for the time being (CAPP, June 14, 2013). Speaking of scholarship programmes, there have also been some positive changes in supporting Ainu students at the local level.

In 2010, Sapporo University launched a unique project called Urespa (ウレシパ, “growing together” in the Ainu language) project. This section is written based on the book “Urespa Oruspe ” published by Sapporo University Urespa Club in July 2013. The Urespa project is comprised of the following three pillars: the Urespa scholarship programme; Urespa companies; and Urespa movements. If Ainu students are admitted to Sapporo University as Urespa fellows, they are awarded scholarships equivalent to the full tuition and admission fees. In return, they belong to the Urespa club and are expected to learn, practice and promote Ainu culture to the general public together with other club members. As of June 2013, the Club has 21 members (14 Ainu students and 7 Wajin students) and it functions as the main organ of Urespa movements. About 20 leading companies based in Hokkaido join the list of Urespa companies and support the club’s activities. Building face-to-face relationships with those companies through activities, the project aims to create future job opportunities for Ainu students as well as to overcome social stigma. Professor Yuko Honda of Sapporo University, the founder of the Urespa Project, states in the book that there was much criticism for the first time when she proposed the project to the university. The main reason for opposition was that it could be considered as a reverse discrimination against non-Ainu students. In response, she argued that the Urespa project would not only be beneficial for Ainu students but it would also benefit Wajin students’ interests because it promotes diversity and opportunity at university. This argument is in line with “the diversity rationale” for affirmative action by Michael Sandel (see, Sandel, 2009, chap. 7). As Sandel explains that “the diversity rationale is an argument in the name of common good - the common good of the school itself and also of the wider society” (2009, p. 171), the Urespa project enables both Wajin and Ainu students to learn from each other.

However, challenges still remain for taking ethnicity into account in higher education and employment. For instance, a Wajin student who was as committed to Urespa activities as other Ainu students once faced financial difficulties to continue his studies. At that time, even though Professor Honda acknowledged the importance of diversity at university and the mission of the Urespa project, she had an ethical dilemma. The Wajin student might feel a flash of envy and think “Isn’t it unfair that only Ainu students receive financial support even though Wajin students do the same work?” For reasons of space, affirmative action and the relevant issue of “social justice” and “equity” cannot be discussed here. But it is a controversial issue and new Ainu measures may cause tensions between the Wajin and the Ainu in the future. Therefore, as the Council’s final report reiterates, it is important to raise public understanding about the Ainu culture, the historical relationships between the Wajin and the Ainu, and the recent development of indigenous rights. In doing so, people will make a well-reasoned argument about the future direction of indigenous policy in Japan.

In relation to the future Ainu policy, there is one important item the Council missed: the definition of the Ainu. At its 10th session, one of the CAPP members addressed the issue of the official definition of the Ainu and the need for demographic data in order to implement more comprehensive Ainu policy in the future (CAPP, February 22, 2013). Although the Ainu are now acknowledged as an indigenous people, an absence of the official definition of the concept of “indigenous people” by the Japanese government makes the status of the Ainu ambiguous. As mentioned earlier, since 1972 the Hokkaido prefectural government has actually conducted surveys on Ainu living conditions based on its own criteria (Hokkaido Government, 2006, p.1). However, the precise population of the Ainu is still unknown since the ethnic background of Japanese citizens is not identified in Japan’s Population Census. Generally speaking, most CAPP members seemed to agree upon the necessity of Ainu population data, but they also acknowledged that it would be controversial to add a question regarding a citizen’s ethnicity to a census, which is probably an uncommon concept to most Japanese people. Furthermore, it is noteworthy that many Ainu people hide their identity in order to minimise the negative impact of racism and social inequality (Gayman, 2011). The 2008 survey on the Ainu (Hokkaido University, 2011) found that 57.4% of informants suffered inequality based on race and ethnicity and 46.3% of them experienced racial discrimination. It can be said that many Ainu

people still experience discrimination from (non-Ainu) Japanese based on their appearance and other traits in their daily life. When it comes to the definition of the Ainu, self-identification is a fundamental factor as an indigenous individual. However, from another perspective, Ainu descendants can hide their identity or keep dual ethnic identities at any point in their life; their identity is not always fixed, rather it is fluid in nature. In some cases, Ainu people cross ethnic boundaries with great flexibility and go beyond the dichotomy between “Ainu” and “Japanese”.<sup>9</sup> In any event, as far as the definition of the Ainu is concerned, extensive discussions need to be carried out from various points of view.

While the CAPP members and government officials were discussing the promotion of Ainu policy, the Ainu Party made its sensational inauguration speech in Biratori town, Hokkaido in January 2012. The Party was founded by several Ainu activists and Mr. Shiro Kayano, the representative of the Party (a son of the late Mr. Kayano), called for more comprehensive Ainu policies in line with the Declaration. The Ainu Party’s main policies are as follows: (1) the restoration of the Ainu’s rights and enhancement of their education and welfare; (2) the realization of a multi-cultural and multi-ethnic society based on coexistence; and (3) the realization of a sustainable society based on coexistence with nature (Ainu Party, 2012). As a political organisation solely for the Ainu, the Party aims to promote indigenous rights to language, land and natural resources, autonomy, education, and participation in political negotiation for the Northern Territories with Russia. In particular, it highlights the importance of school education for raising awareness on the Ainu history and culture and proposes an indigenous education system run from early childhood to university. The CAPP also appreciates the importance of school education in teaching Japanese children about the Ainu history. However, the CAPP and the Ainu Party show clear differences on the future Ainu education model. The model proposed by the Ainu Party is in line with the right to education stipulated in Article 14 of the Declaration.<sup>10</sup> It is intriguing that the Party also expressed concerns over other minority groups’ issues. Not only does it advocate a multicultural language programme in public schools, the Party also express its support for local suffrage for permanent foreign residents and ethnic schools, such as the Korean schools run by Zainichi Koreans.<sup>11</sup> Mr. Kayano stated that “the role of the Ainu Party is to eliminate the discrimination that continues to exist today and restore the rights of indigenous peoples” (Ainu Party, January 21, 2012) and their policy reflects generations of grievances suffered by the Ainu people, which many Zainichi Koreans have also experienced in Japan. As for environmental issues, the Party promotes the use of renewable energy and the elimination of nuclear energy, which is particularly relevant in Japan after the Great East Japan Earthquake, which occurred on the 11th of March 2011. However, considering the rigidity of the current Japanese political and social system, the aspirations of the Ainu Party are considered to be rather radical. As of August 2013, the Ainu Party has not held a seat in the National Diet of Japan.

Amid these growing political movements of the Ainu people, some nationalistic Japanese politicians have intensified their resistance to pro-Ainu measures. In March 2012, a member of the Hokkaido prefectural assembly as well as a member of the Diet started to criticise the contents of the supplementary textbooks *The Ainu People: The Past and the Present*, arguing that the textbooks contain “misleading expressions” (see, for details, Onodera, March 19, 2012). These textbooks have been published by the FRPAC since 2001 to offer primary and junior-high school students a basic knowledge of Ainu history and culture. The editorial board consists of a university professor, a board member of the Ainu Association of Hokkaido, teachers (including retired teachers), and a NPO board member. The textbooks are distributed to the fourth and the eighth graders at all compulsory schools (except special schools) in Hokkaido. Politicians challenged specifically the interpretation of “Ainu history” in the textbooks, such as the descriptions of the annexation of Hokkaido in 1869. After the broad criticism of these textbooks, the FRPAC decided to revise texts (6 revisions in a primary textbook and 5 revisions in a junior-high school textbook) without consulting the editors (FRPAC, May 14, 2012). For instance, the italicized section of the following quotation was deleted: “in 1869, the Government of Japan decided to rename the island 'Hokkaido' and annexed it to Japan unilaterally without any consent of Ainu people” (Abe, 2012). However, the FRPAC’s decision

provoked a fierce backlash from the textbook editors. As a result of discussions within the editorial committee in July 2012, most of the texts, including the one mentioned here, were changed back to the original versions (Hokkaido Shimbun, July 19, 2012).

According to Ito (2007), 84.4% of sample schools in Hokkaido (496 primary schools) allocate one to three hours per year to teach about the Ainu culture and history (p.68). However, their attempts are very much restricted by teachers' knowledge, textbooks, and government guidelines on education. As seen in the current controversy over the supplementary textbook, teaching the history of Hokkaido from the Ainu perspective in Japanese public schools would have far-reaching consequences. The Ainu issues are politically contested, particularly in Hokkaido, partly because the reparation of indigenous rights will involve transferring power from the Wajin to the Ainu. Consequently, it has caused a power struggle between the two groups and may even escalate into a power struggle among the Ainu themselves. It may appear rather naive but some Japanese politicians seem to fear that admitting past injustices against the indigenous Ainu inevitably leads to denying efforts of early Wajin settlers in Hokkaido and hamper national unity. In this context, it will take time to reach a national consensus on the Ainu policy, specifically in terms of the reparation of indigenous rights.

Nevertheless, the recent environmental case in Mombetsu, Hokkaido, shows the development of the recognition of indigenous cultural rights. In February 2010, the municipal government of Mombetsu authorised a plan to build an industrial waste dumping site near the Mobetsu River. Following this announcement, a group of Monbetsu Ainu and the Monbetsu branch office of the Ainu Association of Hokkaido (AAH) sought to recover their traditional fishing rights and legal access for ceremonies in the Mobetsu River. A Japanese NGO, the Shimin Gaikou Centre, delivered an intervention about this issue at the Permanent Forum in 2010, claiming the violation of the principle of the FPIC (Shimin Gaikou Centre, 2010). As a result of these efforts, the Monbetsu branch office of the AAH finally came to an agreement on environmental pollution control with a contractor of the dumping site on 10 March 2012. It took nearly two years to reach this result, but it is significant that the Ainu concluded an environmental agreement with a Japanese company based on indigenous cultural rights for the first time.

## 6. CONCLUSION

As summarily described in this paper, Japan's official recognition of the Ainu as an indigenous people corresponded to the historical development of global indigenous movements as well as the international legal discourse on indigenous peoples. It is particularly worth noting that the active participation and partnership of global indigenous organisations with member states inside and outside of the United Nations played an important role in developing the new international standards on indigenous rights. In recent years, the Government of Japan has promoted Ainu policy measures more positively than ever before. The works of the ACFAP were fundamental in steering future Ainu policy. The current discussions at the CAPP are equally important when implementing concrete Ainu policy measures recommended by the ACFAP. However, judging from the final report submitted by the ACFAP, policy priorities are mainly towards Ainu culture and language, traditional life, and improvement of living standards. When it comes to the implementation of the Declaration, the Japanese government expressed its negative view on the collective rights of indigenous peoples at the adoption of the Declaration in 2007. Therefore, in practice, neither the Council nor the government has discussed Ainu peoples' collective rights vis-a-vis indigenous peoples' collective rights as stipulated in the Declaration. As the Council's final report states, the Declaration is seen to offer general international guidelines for indigenous people.

Japan has found a way to coexist harmoniously with different cultures in local communities due to a consequence of globalization in the last few decades. Accordingly, in recent years a number of researchers have challenged the myth of Japan "as a homogeneous nation" (see, for example, Oguma 1998). However, the myth of Japan's racial

homogeneity still seems to prevail amongst some people, as is evident in the textbook controversy. Indigenous rights discourse could provoke both positive and negative “emotional” responses in Japanese society. Hence, although the Working Group for Ainu Policy Promotion finalised its strategic public relations campaigns on Ainu people, it will take a considerable amount of time to discuss controversial indigenous issues, including the constitutional recognition and an official definition of indigenous Ainu people. The Declaration has no binding force, hence its success hinges on the political will and actions of individual States. Acknowledging the fact that the Declaration is the culmination of decades of efforts by indigenous peoples and their advocates, the Japanese government is expected to carefully examine and implement future Ainu policy in line with the Declaration.

#### ENDNOTES

- 1 The term “Ezochi (蝦夷地)” means “the lands of Ezo people”, and was also used to refer to the whole of Hokkaido, Sakhalin and the Kuril islands during the Edo period.
- 2 The creation of a family name did not fit well for the Ainu who identified themselves only by their first names (see, the case of Nemuro, cited in Emori, 2008).
- 3 As for the term “Former Natives”, there are several explanations on its origin. According to the minutes of the Cabinet Committee in 1968, one of the participants from the Ministry of Health and Welfare explained that Hokkaido used to be called 旧土 (ancient land) and 人 means people in Japanese, so 旧土人 signifies “people on an ancient land”. However, the single Chinese character “旧” means “former” in Japanese, hence probably it is more natural to literally interpret the meaning of 旧土人 as “Former Natives”.
- 4 These Regulations specifically targeted Japanese settlers from the mainland and the Ainu were excluded (Emori, 2008).
- 5 If it was considered appropriate and met the community’s needs, handicraft was introduced as a subject. Each school had sole discretion on this matter.
- 6 Utari means “companion” or “compatriot” in the Ainu language (ACFAP, 2009, p.15)
- 7 In the current Constitution of Japan, it is stipulated that “the Emperor shall be the symbol of the State and of the unity of the people.”
- 8 JASSO is an independent administrative organisation established under the Ministry of Education, Culture, Sports, Science and Technology.
- 9 For example, Sekiguchi’s oral history interviews with a practitioner of Ainu cultural activities in Tokyo depicted the “flexible dual-identity” of the Ainu: When I went to [lower secondary] school, I hardly ever thought about it [Ainu cultural activity]. In those days, I was “sometime being an Ainu”. So, I felt that I was both Japanese and Ainu at the same time...very strongly. It was like I was Japanese in my ordinary life but became Ainu on very special occasions. (Sekiguchi, 2007, p.142)
- 10 Article 14 of the Declaration states indigenous peoples’ right to education as follows:  
Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.
- 11 Zainichi means “(foreigner) residing in Japan,” and is often used to refer to Zainichi Koreans. More specifically, the term “Zainichi Chōsenjin” is used for people from North Korea and the term “Zainichi Kankokujin” is for people from South Korea.

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APPENDIX A The Declaration on the Rights of Indigenous Peoples and Japan (1995-2009)

| Gov Panel '95 | UN Declaration 2007                            |                                                      | J-GOV*          | Advisory Council for Future Ainu Policy |                                 |       |                                    |                  | Policy Priorities (Final report '09) |
|---------------|------------------------------------------------|------------------------------------------------------|-----------------|-----------------------------------------|---------------------------------|-------|------------------------------------|------------------|--------------------------------------|
|               |                                                |                                                      |                 | Main Subjects of Discussion             | Gov Panel '09 Interview Results |       | NGO's recommendations (priorities) |                  |                                      |
|               |                                                |                                                      |                 |                                         | Hokkaido                        | Tokyo | Int'l Network AINU                 | Chi Kara Nisatta |                                      |
|               | <i>Part I Fundamental Rights</i>               |                                                      |                 |                                         |                                 |       |                                    |                  |                                      |
|               | Article 1                                      | Human rights (Individual and Collective rights)      | Individual only | ✓                                       |                                 |       |                                    |                  | ◎                                    |
|               | Article 2                                      | Equity                                               | Individual only | ✓                                       | ✓                               | ✓     | ✓                                  | ✓                | ◎                                    |
|               | Article 3&4                                    | Self-determination and autonomy                      | Reservation     |                                         |                                 |       | ✓                                  | ✓                |                                      |
|               | Article 5                                      | Effective participation                              | Individual only |                                         |                                 |       |                                    |                  |                                      |
|               | Article 6                                      | Citizenship                                          |                 |                                         |                                 |       |                                    |                  |                                      |
|               | <i>Part II Life and Security</i>               |                                                      |                 |                                         |                                 |       |                                    |                  |                                      |
|               | Article 7                                      | Existence                                            | Individual only |                                         |                                 |       |                                    |                  |                                      |
|               | Article 8                                      | Cultural integrity                                   | Individual only |                                         |                                 |       |                                    |                  |                                      |
|               | Article 9                                      | Right to belong to an indigenous community or nation | Individual only | ✓                                       | ✓                               | ✓     | ✓                                  | ✓                |                                      |
|               | Article 10                                     | Removal and Relocations                              | Individual only |                                         |                                 |       |                                    |                  |                                      |
|               | <i>Part III Culture, Religion and Language</i> |                                                      |                 |                                         |                                 |       |                                    |                  |                                      |
| ✓             | Article 11                                     | Culture                                              | Individual only | ✓                                       | ✓                               | ✓     |                                    |                  | ◎                                    |
|               | Article 12                                     | Spiritual and Religious Traditions                   | Individual only | ✓                                       | ✓                               |       |                                    | ✓                | ◎                                    |

|                                                 |            |                                                     |                 |   |   |   |                                                 |                                                 |   |
|-------------------------------------------------|------------|-----------------------------------------------------|-----------------|---|---|---|-------------------------------------------------|-------------------------------------------------|---|
| ✓                                               | Article 13 | Language                                            | Individual only | ✓ | ✓ | ✓ | ✓<br>(Designation of Ainu as official language) | ✓<br>(Designation of Ainu as official language) | ⊙ |
| <i>Part IV Education, Media and Environment</i> |            |                                                     |                 |   |   |   |                                                 |                                                 |   |
|                                                 | Article 14 | Education                                           | Individual only | ✓ | ✓ | ✓ | ✓                                               | ✓<br>(Opportunity to receive ethnic education)  | ⊙ |
| ✓                                               | Article 15 | Information                                         | Individual only | ✓ | ✓ | ✓ |                                                 | ✓                                               | ⊙ |
|                                                 | Article 16 | Media                                               | Individual only | ✓ | ✓ | ✓ |                                                 |                                                 |   |
|                                                 | Article 17 | Employment                                          | Individual only |   | ✓ | ✓ |                                                 |                                                 |   |
| <i>Part V Participation and Development</i>     |            |                                                     |                 |   |   |   |                                                 |                                                 |   |
|                                                 | Article 18 | Decision-Making                                     | Individual only | ✓ | ✓ | ✓ |                                                 | ✓                                               |   |
|                                                 | Article 19 | Law and Policy-Making                               | Individual only |   |   |   |                                                 | ✓                                               |   |
|                                                 | Article 20 | Economic Activities                                 | Individual only | ✓ | ✓ | ✓ |                                                 |                                                 |   |
|                                                 | Article 21 | Economic and Social Development                     | Individual only | ✓ | ✓ | ✓ | ✓                                               | ✓                                               | ⊙ |
|                                                 | Article 22 | Special Measures (children, senior citizen, gender) | Individual only | ✓ |   | ✓ |                                                 |                                                 |   |
|                                                 | Article 23 | Exercising right to development                     | Individual only | ✓ | ✓ | ✓ | ✓                                               | ✓                                               |   |
|                                                 | Article 24 | Health                                              | Individual only |   | ✓ | ✓ |                                                 |                                                 |   |
| <i>Part VI Land and Resources</i>               |            |                                                     |                 |   |   |   |                                                 |                                                 |   |

|  |                                          |                                                                           |                 |   |   |   |   |   |                                                       |
|--|------------------------------------------|---------------------------------------------------------------------------|-----------------|---|---|---|---|---|-------------------------------------------------------|
|  | Article 25                               | Spiritual relationship to land (spiritual relationship)                   | Individual only | ✓ | ✓ | ✓ |   |   | © (IWOR)<br>*Promotion of usage of land and resources |
|  | Article 26                               | Property rights                                                           | Reservation     |   | ✓ | ✓ | ✓ | ✓ |                                                       |
|  | Article 27                               | Procedure                                                                 | Individual only |   |   |   |   |   |                                                       |
|  | Article 28                               | Reparation                                                                | Reservation     |   | ✓ | ✓ | ✓ | ✓ |                                                       |
|  | Article 29                               | Environment                                                               | Individual only |   | ✓ |   |   |   |                                                       |
|  | Article 30                               | Army                                                                      | Individual only |   |   |   |   |   |                                                       |
|  | Article 31                               | Cultural and Intellectual Property                                        | Individual only | ✓ | ✓ | ✓ |   | ✓ |                                                       |
|  | Article 32                               | Development and FPIC                                                      | Reservation     |   |   |   |   |   |                                                       |
|  | Article 33                               | Community Memberships/Identity                                            | Individual only |   |   | ✓ |   |   |                                                       |
|  | Article 34                               | Indigenous Law and Customs                                                | Individual only |   |   |   |   |   |                                                       |
|  | Article 35                               | Responsibilities                                                          | Individual only |   |   |   |   |   |                                                       |
|  | Article 36                               | <a href="#">Cross-Border Rights</a>                                       | Individual only |   |   |   |   | ✓ |                                                       |
|  | Article 37                               | Treaties and Agreements                                                   | Individual only |   |   |   |   |   |                                                       |
|  | <i>Part VII Implementation</i>           |                                                                           |                 |   |   |   |   |   |                                                       |
|  | Article 38                               | State obligations                                                         | Individual only | ✓ | ✓ | ✓ | ✓ | ✓ | ©                                                     |
|  | Article 39                               | Financial Assistance                                                      | Individual only | ✓ | ✓ | ✓ |   |   |                                                       |
|  | Article 40                               | Disputes                                                                  | Individual only |   |   |   |   |   |                                                       |
|  | Article 41                               | Role of International Organisation for Technical and Financial Assistance | Individual only |   |   |   |   |   |                                                       |
|  | Article 42                               | Implementation/Follow-up                                                  | Individual only |   |   |   |   |   |                                                       |
|  | <i>VIII Principle of the Declaration</i> |                                                                           |                 |   |   |   |   |   |                                                       |

|                                                                        |             |                                                                                                                                                                                                                                                                                        |                 |  |   |  |                                             |                  |                  |
|------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--|---|--|---------------------------------------------|------------------|------------------|
|                                                                        | Article 42  | Minimum Standard                                                                                                                                                                                                                                                                       | Individual only |  |   |  | ✓                                           |                  |                  |
|                                                                        | Article 44  | Gender Equity (individual right)                                                                                                                                                                                                                                                       | ---             |  | ✓ |  |                                             |                  |                  |
|                                                                        | Article 45  | Other Indigenous Rights                                                                                                                                                                                                                                                                | Individual only |  |   |  |                                             |                  |                  |
|                                                                        | Article 46  | Sovereignty and territorial integrity of states                                                                                                                                                                                                                                        | Individual only |  | ✓ |  |                                             |                  |                  |
|                                                                        | <i>Note</i> | *Japanese government denies collective rights in the Declaration stating that “the concept of collective human rights is not widely recognized as a well-established concept in general international law and most states do not accept it” (Explanation of Vote, 13 September, 2007). |                 |  |   |  | Official apology                            | Official apology | ◎=Top priorities |
| Implementation of the Declaration                                      |             |                                                                                                                                                                                                                                                                                        |                 |  |   |  | Establishment of a permanent advisory panel |                  |                  |
| Participation to the negotiation process of northern territorial issue |             |                                                                                                                                                                                                                                                                                        |                 |  |   |  | Establishment of a Human right committee    |                  |                  |

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**RECOGNISING INDIGENOUS PEOPLE, THE BANGLADESHI WAY:  
THE UNITED NATIONS DECLARATION, TRANSNATIONAL ACTIVISM  
AND THE CONSTITUTIONAL AMENDMENT AFFAIR OF 2011**

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ABSTRACT

The UN Decades on the Rights of Indigenous People have led to increased support for and sympathy with indigenous people all over the world. Networks and groups have been formed and transnational connections created, with the aim of generating possible solutions to the problems of indigenous people in countries where marginalization reaches a long way back. Many activists welcomed the UN Declaration as a document of high moral value legitimizing them to exert pressure on the state in order to recognize indigenous people's rights.

Indigenous activists in Bangladesh and their allies anticipated the Declaration's global appreciation as a window of opportunity when the government initiated the amendment of the constitution in 2010. Backed by their transnational connections and partners inside and outside Bangladesh, the demands were geared towards the recognition of the notion of indigenous people in the constitution. It was hoped that the principles of the declaration would be endorsed in the constitution and lead to greater equality through affirmative action. Initial positive responses by the government however were revoked later on: The representatives argued that the concept of indigenous people as formulated in the declaration referred to "first nations" only, whereas in Bangladesh the majority are regarded as more indigenous to the land than the so-called ethnic minorities.

Despite the deep disappointment resulting from the disparaging position of the government, the declaration has had positive effects on the position of indigenous people in public discourse. Moreover, cross-ethnic alliances have been strengthened which enable indigenous activists to access more powerful segments of society and polity. Lastly, the international donor community has become more sensitive towards the plight of indigenous people, which has had an impact on cooperation with the government and civil society.

1. INTRODUCTION

The adoption of the United Nations Declaration on the Rights of Indigenous Peoples in September 2007 raised high expectations among indigenous peoples' movements all over the world. Many of them expected the newly emerged global discourse to have an enormous potential to improve their bargaining position vis-à-vis their governments, and they hoped that this would help them to articulate their demands more successfully. This situation could be observed in Bangladesh, where indigenous activism has gained new impetus since the late 1990s. Institutions and networks advocating indigenous claims and rights have been formed, and indigenous discourses have "taken root" (Bal 2010). But while some activists have enthusiastically promoted globalised notions of indigeneity and established networks to gain support for their political demands, the prevailing majoritarian politics endorsed by the state has continued to set more or less clearly defined limitations. After some initial achievements concerning the inclusion of indigenous claims in different political and societal domains, a decisive "window of opportunity" was provided by the Constitutional Amendment in 2011. The indigenous peoples' movement advocated the constitutional recognition of indigenous people, a demand that was eventually



turned down by the Government of Bangladesh. One of the main reasons for the adoption of this rather harsh standpoint was the increasing pressure on the Bangladeshi government “from the outside”. In May 2011, a few weeks before the Constitutional Amendment was approved in the Bangladeshi parliament, the prevalence of human rights violations in Bangladesh had been discussed in the United National Permanent Forum on Indigenous Peoples in New York leading to some insistent recommendations to the Government of Bangladesh.

The government’s opposition to the demands of the indigenous peoples’ movement was particularly unexpected for many as previous, positive signals from political leaders had seemed to give reason for optimism. But the strong opposition from the Government of Bangladesh was also surprising from a social scientist’s point of view, as the transnational activism paradigm, which has been intensively debated over the last couple of years, proposes the opposite. According to the so-called “boomerang pattern”, a mechanism in transnational activism that Margaret Keck and Kathryn Sikkink (1998) identified on the basis of empirical fieldwork on environmental and women’s rights movements, activists may enlarge their scope for taking action by transcending the local to the global. With the creation of transnational networks and the help of international allies, activists can articulate their grievances in the global sphere and pressure the state for change. With the formation of transnational networks (TAN) and the detection of “political opportunity structures”, they may be able to change the discursive positions, institutional procedures, policies and behaviour of states. Critics however, have argued that this approach implies a linear understanding of how liberal norms of democracy and human rights can be diffused (Chandler 2013: 19) and does not take changing global power constellations and balances into account. Moreover, it tends to emphasise international institutions and powerful western states without recognising the increasingly limited scope for influence these may have in an increasingly multi-polar world-order. Concentrating on the removal of narrow blockages, “freeing the local agency of civil society” (ibid.), they disregard the entanglements of local and national interests and social processes. In addition, it has been argued that the focus on networks not only neglects the internal hierarchies and power struggles that may result in divergent views and crises of representation, but also glosses over other influences characterising the global actor configuration (Stewart 2004; Ghosh 2006; Pfaff-Czarnecka 2007). Inasmuch as these complexities located between the global, national, and local levels are neglected, the approach does not take the negotiations of political and social change at and between socio-spatial scales into account<sup>2</sup>. An analysis of transnational activist configurations thus requires a thorough analysis of the activists’ agency and interaction among themselves and with other actors located at various levels of society, as well as their contribution to the structuration of society (Giddens 1984). Only then will we be able to assess the changes spurred by the UN Initiative as expressed in the Declaration.

The demands articulated by indigenous activists in relation to the Declaration for the Rights of Indigenous People have thus been subject to negotiations in a political space that has been simultaneously enabling as well as constraining. Strengthening transnational networks and seeking support from the global discursive and normative repertoire provided by the United Nations initiative, however, has not only encouraged Bangladeshi indigenous activists to explore their bargaining power within the realm of policy-making, but has also had far-reaching consequences at various levels of society. The aim of this article, thus, is two-fold. First, it traces the emergence of indigenous activism in Bangladesh and seeks to outline the social and political changes that have been taking place throughout the last couple of years and that largely went against the demands of the indigenous movement. Second, it analyses the political process leading to the rejection of the constitutional recognition demand by revealing not only activism at the national level but also its transnational dimensions. Moving beyond structuralist assumptions, it seeks to shed light on the complex ways in which the United Nations Declaration for the Rights of Indigenous People has been negotiated under the specific conditions of contemporary Bangladeshi politics and society. It further reveals the ambivalent outcomes of transnational activism, depending on the contexts’ particular characteristics and complexities, power constellations, and differentials. The case exemplifies that the explanatory value of structuralist assumptions can be limited, when particular - sometimes unforeseeable - changes in power

relations come to the fore. The paper thus concludes with some remarks on the changes that occur in the global landscape: Twentieth-century developmentalism had produced dependencies between those who provide and those who receive development aid, which, in turn, urged the latter to remain amenable to proposals for improving policies in line with so-called westernised values concerning governance and human rights, including minority and women's rights. However, it seems that global power changes and the recent emergence of new donors alter these established loyalties and give way to new forms of assertiveness among the formerly dependent "developing countries".

The paper is based on long-term empirical field research conducted in Bangladesh as well as within the field of transnational activism in Europe. In 1999 and 2000, I spent several months in Bangladesh, most of the time in the Chittagong Hill Tracts (CHT).<sup>3</sup> During this time, I was mainly interested in understanding the construction of ethnicity (Gerharz 2000) and in the scope of development cooperation for making a contribution to peace-building (Gerharz 2002). The methods applied were genuinely ethnographic and comprised of participant observation along with numerous semi-structured interviews and informal conversations with stakeholders in various societal fields, ranging from politics and civil society activities to religious institutions, and with local people. Since 2003, I have been an active member of a Bangladesh-related network in Germany that specialises in lobby work and the distribution of information on Bangladesh to the European public. One of the network's main topics is human rights violations, including those committed against ethnic minorities. In addition to this long-term engagement as an "activist researcher" (Hale 2006), I have engaged in local fieldwork repeatedly again since 2008. During several shorter visits, I conducted interviews and held numerous informal conversations and discussions with activists working for the rights of indigenous people, local activists both nationally and locally, local NGO representatives, and members of the indigenous population. Having a sustained connection with Bangladesh over a relatively long period of time has enabled me to take a diachronic perspective, allowing me to trace social change over a considerable period of time.

After providing a short overview of the recent history of indigenous people in Bangladesh, this article examines the changes that have occurred within and beyond Bangladesh during recent years. In particular, it will offer a discussion of new developments in indigenous activism with regard to institution-building and networking, as well as the rising significance of the language of indigeneity. The next step is a detailed analysis of the activists' move towards constitutional recognition of indigenous people in the course of the Amendment in 2011, with particular focus on the ways in which transnational activism has influenced the decision-making process in the Government of Bangladesh. The paper concludes with some thoughts on changing power relations at the global level and Bangladesh's struggle to locate itself within this new constellation.

## 2. THE DECLARATION FOR INDIGENOUS PEOPLES' RIGHTS AND THE CONFLICT IN THE CHITTAGONG HILL TRACTS

The United Nations Declaration for Indigenous Peoples' Rights was the result of a twenty-three-year long process in which indigenous activists successfully brought the issue onto the agenda of the United Nations (Oldham and Frank 2008). The first achievement was the formation of the Working Group on Indigenous Populations (WGIP) in 1982, leading to the announcement of the International Year for Indigenous People in 1992. Two consecutive International Decades on the World's Indigenous People (1995-2004, 2005-2015) were marked by a broad variety of activities, including institutionalisation at the global level with the Permanent Forum on Indigenous Issues and numerous activities in various local contexts. The Declaration, which was adopted at the beginning of the second Decade, can be regarded as part of the move to provide a universal system for protecting indigenous rights. Its intention is to provide a set of "minimum standards for the survival, dignity and well-being of the indigenous people" (Oldham and Frank 2008: 5) to be pursued in cooperation between states and indigenous people. Although

not binding, it is an “internationally sanctioned legal instrument that aims to advance the codification of indigenous rights in national constitutions and legal systems” (Shah 2007: 1806). Thereby, it may form a pre-cursor to a legally binding convention and has already been invoked in national and regional cases (Oldham and Frank 2008: 5).

Preceding the adoption of the Declaration were highly controversial discussions about how to define “indigenous people”. Some activists argued that the term should be reserved for people inhabiting territories since immemorial times who have been subject to organised colonisation by European powers (Karlsson 2003: 411).<sup>4</sup> But this view excludes people in Africa and Asia who claim to be indigenous, and is therefore strongly opposed by activists from these parts of the world. In addition, academics have contributed to the controversy by highlighting that the movement for the rights of indigenous people entails not only the danger of essentialising “the primitive” or “the native”, but relies upon racist criteria and thereby follows the European tradition of defining citizenship as a matter of ties of blood and soil (Kuper 2003: 395, see also Vandekerckhove 2009). By refraining from using the particular criteria for defining membership, however, the indigenous representatives involved in drafting the Declaration sought to avoid such an essentialising tone. Rather, they highlighted the universality of human rights and their validity for indigenous peoples as people under international law, with the corresponding right to self-determination (Oldham and Frank 2008: 6; see also Muehlebach 2001; 2003). Seen from this perspective, the notion of indigeneity has become accepted as part of a universal global discourse and can therefore be regarded as a powerful instrument that has been applied by an increasing number of activists to raise not only the rightfulness of their claims to a particular territory, as it is the case in the debates about autochthony or the “sons of the soil” discourse (Vandekerckhove 2009), but also as a means to attract attention to their marginalization within the nation-state.

Bangladesh is one of the nation-states where the indigenous population has experienced exclusion from political and economic processes since colonialism. With the country’s independence from Pakistan in 1971, the emphasis on the linguistic, economic, and political autonomy of the Bengali-speaking population further aggravated the marginalisation of minorities. This process led to manifest and unequal majority-minority relations, as two different kinds of nationalism (based on language and religion) continued to dominate the political discourse and further alienated ethnic minorities. This resulted in a protracted conflict in the Chittagong Hill Tracts, where a large portion of indigenous people are concentrated (see Mohsin 1997). The Declaration and the preceding Decade for the Rights of Indigenous People coincided with a sequence of decisive moments in the country’s history. With the signing of a peace accord in the Chittagong Hill Tracts (CHT) in 1997, the armed conflict between the Bangladeshi military and indigenous insurgents was brought to a halt. The CHT, the hilly region in the southeastern part of Bangladesh, is the home of several groups that distinguish themselves from the Bengali-speaking Muslim majority population. Shortly after independence, they had demanded recognition of their distinct ethnic identity and regional autonomy. When the Government of Bangladesh rejected the demands, the Parbatya Chattagram Jana Sanghati Samiti (PCJSS - United People's Party of the Chittagong Hill Tracts) was formed. Promoting so-called Jumma nationalism,<sup>5</sup> this political party sought to represent the interests of the indigenous population in the hills (see van Schendel 1992; Mohsin 2003). Parallel to the articulation of the hill people’s demands by political means, local youths made an attempt to protect their rights with the help of weapons left over from the liberation war (Mohsin 1996). In the context of increasing polarisation, these local militant forces, who called themselves Shanti Bahini, were incorporated into the PCJSS as its military wing. The Bangladeshi state tended to regard the CHT mainly as a security problem and challenged the insurgency movement with massive militarisation and re-settlements of landless Bengalis from the plain-land. This led to large-scale eviction of indigenous people from the communally-owned land. More than twenty-five years of armed conflict resulted in severe human rights violations, including “massacres, torture, rape, illegal detention, looting, arson, forced labour, forced marriages and forced conversion to Islam” (Arens 1997: 1817). In addition, more than 70,000 hill people

fled to India; many more were internally displaced.

To some extent, the Peace Accord was the result of the increasing desire to negotiate a settlement, spurred by the war-weariness of the local population. The final breakthrough, however, was initiated by the government formed by the Awami League,<sup>6</sup> elected in 1996. The Awami League had included its aim to resolve the CHT problem in its election manifesto. In addition, it gained strong support from India for negotiations as the high numbers of people from the CHT entering into India as refugees complicated cross-border entanglements with its own insurgent movements. Carrying out infrastructure projects, which depended on stability in the region, was also high on the agenda (Mohsin 2003: 41). The increasing global attention to intra-state conflicts between states and minorities and the situation of indigenous populations has had an enormous impact on developments in Bangladesh. The Peace Accord was warmly welcomed by the so-called international donor community and several country representations, as well as development agencies that showed their commitment to the peace process (Gerharz 2002). On the one hand, this encouragement was based on the growing concern about the development-hindering effects of armed conflict, which has led to new approaches to conflict management in development since the late 1990s. On the other hand, the debates resulting from the UN initiative for the rights of indigenous people had sensitised Bangladesh's partners in the "western world" to the significance of minority issues in the context of democratisation and governance.

### 3. FROM MILITANT ACTIVISM TO CIVILIAN ACTIVISM

Both of these timely events, the Peace Accord and the International Decade, encouraged indigenous people from the CHT to enter into civilian activism. Their organisations demanded the implementation of the CHT Peace Accord together with the recognition of the rights of indigenous peoples endorsed by the UN Declaration in Bangladesh. A crucial point is access to land and other resources. Gaining special protection as indigenous people would enable a small but particularly marginalised section of society to claim land titles on the basis of collective land rights. Therefore, a central demand is to provide appropriate legal instruments to protect them against land-grabbing by members of the majority Bengali society. Several legal scholars have repeatedly argued that the traditional customary land rights systems could serve as an appropriate tool to protect indigenous people's land rights and ensure their access to land (Roy 2009).<sup>7</sup> But with the high population density and scarcity of cultivable land, which poses a massive challenge to the majority of the population, this demand remains particularly delicate. Throughout the country's recent history, the appropriation of indigenous people's land has been a prevalent practice, quite often protected by the state and its institutions. Ultimately, the land question is also one of the major reasons why the CHT Peace Accord has never been fully implemented<sup>8</sup>. Instead, the CHT have seen repeated eruptions of violence, mainly in the form of so-called inter-communal clashes accompanied by intensifying militarisation. A positive sign was the re-election of the Awami League in 2008, as the party had promised to implement the CHT Peace Accord in its election manifesto once again. As we will see later, this has given rise to fundamental criticisms within and beyond Bangladesh.

Initially, the Bangladeshi indigenous movement was encouraged by the UN Declaration as it provided an instrument to take the national claims to an international level and to make use of the reverse effect. They hoped that once the UN Declaration was adopted, they would have a morally binding document along with a significant number of international sympathisers, which should have provided them bargaining power. Indeed, the Declaration has had a variety of effects on the position of indigenous people in Bangladeshi society. These range from increased visibility in national public discourses, accompanied by rising sympathy among the general public, to cross-ethnic alliances inside and outside Bangladesh that have enabled indigenous activists to access more powerful segments of society and polity. Moreover, the incentives provided by the UN bodies, along with intensified transnational activism, have encouraged the international donor community to be more sensitive

regarding the plight of indigenous people. The allocation of developmental resources for specific initiatives, along with increased sensitivity within a large portion of developmental activities, has had an impact on cooperation with the Government of Bangladesh, the so-called civil society and the wider public.

The insurgency in the Chittagong Hill Tracts has attracted a lot of international attention, and since the 1980s, human rights organisations such as Human Rights Watch and Amnesty International, the Society for Threatened Peoples and the International Working Group on Indigenous Peoples Affairs (IWGIA) have not only expressed their solidarity but lobbied against human rights violations in the CHT. This international attention, however, reduced the perspective on indigenous people to the CHT, leaving the equally numerous so-called “adivasi” living in the plain-land largely ignored. In contrast to the indigenous population of the CHT, these groups live more or less scattered, sometimes amidst Bengali majority settlements, with concentrations in the northern borderlands.

With the Peace Accord and the support provided by the UN initiatives, networks between the indigenous people living in the CHT and the plain land were created. Among others, one very visible example is a network called Bangladesh Indigenous Peoples Forum (BIPF), which seeks to provide a platform for the indigenous population. BIPF was formed in 2000 by a group of indigenous activists from different parts of Bangladesh. One of their objectives was to reinforce cooperation between the CHT and the plain-land. Therefore, the leadership comprises of prominent figures from the CHT as well as the plains, with the JSS leader and Regional Council Chairman from the CHT and a Garo from the North of Bangladesh, as the General Secretaries. BIPF has taken a very active stand in representing the claims of indigenous people within, as well as outside, the country. It has been repeatedly argued by activists that while the CHT had gained considerable attention due to the militarised struggle and international support, the problems of the vast majority of indigenous people living rather scattered in different parts of the plain-land have remained largely unrecognised (Bal 2007). By bringing together the two fractions, BIPF attempted to increase the visibility of the plain-land adivasi. This, however, had positive effects for the CHT people as well, as their demands, which had been regarded as confined to the territory of the CHT itself, were now related to issues of democracy and governance within the nation-state in general. Moreover, the Forum helped to rid at least a portion of CHT activists of their image as militants and paved the way into the realm of civilian activism. BIPF however, has also been subject to critique from within Bangladesh. Several of my interviewees belonging to the activist scene<sup>9</sup> argued that they hardly feel represented by its leadership; others said that the Forum had scarcely any impact on the situation of indigenous people, except for increasing their visibility amongst the national public.

BIPF is the main organiser of the annual celebrations of the World’s Indigenous People’s Day in August. During my fieldwork in 2008 and 2010, I witnessed that the festivities drew more and more public attention each year. Smaller groups gather in the district headquarters and rural centers in different parts of the country. The Forum attracts not only indigenous people from the rural parts of Bangladesh, but also representatives of society and politics to take part in the rallies and cultural events in Dhaka. BIPF also convinces government representatives as well as individual members of the donor community to participate and deliver speeches expressing their commitment and solidarity during the celebrations.<sup>10</sup> The events have been closely observed by the national media, as I witnessed when attending the celebrations in 2008 and 2010, and in the daily newspapers and TV programmes. The movement also receives substantial support from Bengali human rights activists (see Gerharz 2013). In addition, indigenous issues have gained prominence as a research topic in national research institutions and universities. There are a considerable number of scholars in social sciences, law, and related disciplines investigating various related themes; the students too have shown considerable interest.<sup>11</sup> During the last fifteen years or so, the indigenous movement has entered the national arena. Attempts have been made to institutionalise the country-wide cooperation in order to increase its visibility and bargaining power.

#### 4. TRANSNATIONAL CONNECTIONS AND THE LANGUAGE OF INDIGENEITY

The activists also stretched their contacts to other groups beyond Bangladesh. The meetings, which have taken place all over the world, and also the regional context, have contributed to the transnationalisation of the movement. Among the activists I interviewed during fieldwork between 2008 and 2012, Nepal was referred to as a model case.<sup>12</sup> Other successful cases in South (-East) Asia have inspired the Bangladeshi activists to provide incentives for a more intensive discussion on the recognition of indigenous rights. Personal contacts with successful activists all over the world, some of which were established by supporting development organisations,<sup>13</sup> helped the members of the Bangladeshi movement to become professionalised. An important connection, for example, was Victoria Tauli-Corpuz from Tebtebba-Foundation in the Philippines, who is now the chairperson of the United Nations Permanent Forum on Indigenous Issues. Again, as has been suggested by some “activist elites”, the transnationalisation of indigenous activism has antagonised others. There is criticism of leaders who distance themselves from the rural population by adopting a cosmopolitan lifestyle. The fact that this is a phenomenon common to many indigenous movements (Ghosh 2006; Shah 2007; Kradolfer 2011) does not justify it happening. However, the professionalisation of indigenous activism has contributed greatly to the visibility and prominence of indigenous issues, although the international and media attention toward the professional, transnationalised organisations renders the local grass-roots oriented initiatives largely invisible<sup>14</sup>. At the same time, the new media have opened new vistas for activist work. As a long-term observer of discussions on Facebook and other online forums, I have witnessed the increasing participation of young indigenous people, mainly from the CHT, who inform and exchange information about recent events, controversies and contemporary local and national debates.

Activism has benefitted from support provided by sympathisers in Europe and other western countries. One initiative is the International Chittagong Hill Tracts Commission, which seeks to ...promote respect for human rights, democracy, and restoration of civil and political rights, participatory development and land rights in the Chittagong Hill Tracts in Bangladesh, including examination of the implementation of the CHT Peace Accord of 1997. The CHT Commission will build on the work undertaken by the original CHT Commission between 1990 and 2001.<sup>15</sup>

The first CHT Commission was formed in 1990, when the armed conflict in the CHT was in full swing. Throughout the 1980s, the CHT had remained closed off to foreigners, a situation that gave reason to assume that amidst intensifying militarisation, human rights violations would become more frequent. Initiated by the Amsterdam-based Organising Committee CHT Campaign (OCCHTC) and the International Working Group for Indigenous Peoples (IWGIA) in Copenhagen, the CHT Commission consisted of five members and included renowned activists for indigenous people’s rights from different parts of the world, but mainly Europe. The Commission carried out a number of field investigations on the basis of which it produced reports<sup>16</sup> documenting the human rights violations of the indigenous people in the CHT. Following a largely inactive period of about eight years, the Commission was reformed, albeit in light of the changing conditions after the Peace Agreement, as well as an increased awareness of the situation in the CHT in Bangladesh and internationally, with the mandate mentioned above. As of 2012, the CHT Commission includes four Bangladeshi members - who are all are respected activists and two of whom are very well-known and respected lawyers - and four non-Bangladeshi members. Apart from the CHT Commission, other groups have been formed by migrants from the CHT residing in India, Korea, Japan, Australia, Europe, or North America. Moreover, transnational civil society actors have provided assistance to the indigenous movement in Bangladesh. These actors comprise both organisations concentrating on indigenous people’s issues worldwide as well as those working on human rights and developmental issues in Bangladesh.

The local use of particular arguments and idioms that are based on allegedly universal repertoires are an important

feature of political communication in a globalised world. In this process, Pfaff-Czarnecka (2012) has argued that the language of ethnicity provides not only a useful ground for individual and collective positioning, but can also be understood as a resource when the social order is negotiated. This applies for the language of indigeneity as well: thanks to the initiatives taken within the United Nations to find a universal concept of indigenous people, which culminated in the Declaration, the activist movement in Bangladesh has been enabled to draw on a specific communicative repertoire, with legitimising power (Pfaff-Czarnecka/Büschges 2007). The application of the concept, as well as the idioms related to this standardised rhetoric, can be regarded as a result of the intensified transnational exchange and participation in global meetings since the 1990s. Roy (2009: 47) argues that the English term “indigenous” or the Bengali translation “adivasi” has been increasingly used since 1992, which was the International Year of Indigenous People. During the period in which I conducted fieldwork, starting in 1999, I witnessed this change as well. Whereas in 1999 the term “tribal”,<sup>17</sup> which had belonged to the common repertoire to signify the indigenous population during colonialism and Pakistani rule (1947-1971), had been prevalent in many conversations, my experiences in the late 2000s were entirely different. Many interviewees used terminologies like “indigenous people” or “IPs”; others preferred to speak of “pahari” or “adivasi”.<sup>18</sup> There was a lively discussion about indigenous people’s rights and their recognition and a couple of activists who, as a consequence of living in metropolitan Dhaka and frequent travel to conferences and meetings in different parts of the world, had adopted a cosmopolitan lifestyle. Many activists had become used to the globalised vocabulary promoted in the United Nations Declaration and the Permanent Forum and have introduced it into the local and national context of Bangladesh. In addition, international organisations have supported the emerging local awareness of these communicative and legal instruments.

The field of indigenous activism in Bangladesh has thus undergone tremendous changes during the last few years. The new dynamism can, in the first place, be traced back to the Peace Agreement in the CHT. This enabled indigenous activists to reorganise beyond the military agenda and to occupy a civilian and political space in the CHT,<sup>19</sup> but also beyond. Important incentives have been provided by numerous initiatives to create activist networks at the national level, from which indigenous people both in the CHT and the plain-land have benefitted. The BIPF is just one example. This structural novelty at the national level is related first to international allies and the subsequent emergence of transnational activism and, second, to the increasing significance of the UN initiative in strengthening indigenous people’s rights. Whereas the UN Decades have already had a recognisable effect on the situation of indigenous people in Bangladesh (see in particular ICIMOD 2007), the UN Declaration, which was adopted in 2007, constitutes an even stronger mechanism for exerting pressure on UN member states. This could be observed in Bangladesh’s recent past, but with an outcome that is quite different from the activists’ expectations.

## 5. THE CONSTITUTIONAL AMENDMENT IN 2011

In 2010, an indigenous caucus was formed within the National Parliament. Equipped with the confidence that the established networks and legitimising power of the language of indigeneity had consolidated the movement’s bargaining power not only in the general public sphere but also in the policy-making process, the main aim was to work towards the inclusion of the term “indigenous people” in the constitution in the course of the ongoing process of amendment. The working group comprised a couple of parliamentarians belonging to both the indigenous and non-indigenous sections of society. In particular, they lobbied for the inclusion of the term “indigenous people” in Article 23, which defines the obligation to protect and develop minorities. It was hoped that this would open new vistas to develop affirmative action mechanisms for indigenous people on the basis of altering their historical discrimination.<sup>20</sup> The official adoption of the terminology had also helped the activists to lobby for the recognition of the Declaration. This recognition would mean that the special relationship to land, as it is expressed in indigenous people’s collective land rights (as opposed to the individual land rights system among the Bangladesh

population) could be officially recognised and protected.

The international support network, especially the CHT Commission and some other pressure groups, constituted so-called transnational advocacy networks, which had the potential to exert pressure on the Government of Bangladesh. The activists' optimism relied upon this structuralist logic and, indeed, several developments conveyed the rising significance of Bangladesh's indigenous people's issues: when Raja Devasish Roy, the chief of the Chakma circle in the CHT and a renowned lawyer, was elected by Economic and Social Council (ECOSOC) to the UN Permanent Forum on Indigenous Peoples Issues (UNPFII) 2011-2013 in June 2010, the issue gained more recognition globally. In 2009, the UNPFII had appointed Lars-Anders Baer, a member of the Permanent Forum as well as the CHT Commission, as Special Rapporteur to undertake a study of the implementation status of the CHT Peace Accord,<sup>21</sup> which highlights the attention paid to Bangladesh in the United National system. At the same time, the Government of Bangladesh had sent out positive signals: The prime minister and other government officials had repeatedly made use of the terms "adivasi" or "indigenous people". The terminology not only appeared in a couple of official documents and policies, such as the education policy, but politicians also raised indigenous concerns in public several times.<sup>22</sup> The activist scene, the media and the concerned public discussed the potential success of the constitutional amendment intensively. During the gatherings on the World's Indigenous People's Day in August 2010, the constitutional amendment was the main demand. In their speeches, the government officials who had been invited raised the issue and assured their solidarity. The political discourse was supplemented with a performative component when a group of musicians sang a "traditional song" into which they had included the sentence "We want constitutional recognition" (in English) as a refrain. Overall, most activists and participants were quite optimistic about the potential success, and everyone was in a good mood.

In March 2011, when the committee which had been formed to coordinate the Constitutional Amendment announced that the term "small ethnic minorities" (khudra nrigoshti) would be included in the Constitution instead, there was considerable indignation and frustration. Despite protests by national activists as well as their international partners, particularly the CHT Commission, the National Parliament endorsed the Amendment with Article 23A reading as follows:

The culture of tribes, small ethnic groups, ethnic sects and communities – The State shall take steps to protect and develop the unique local culture and tradition of the tribes [upajati], minor races [khudro jatishaotta], ethnic sects and communities [nrigoshti o shomprodai].

The denial of constitutional recognition went together with some other governmental initiatives that have been interpreted as directed against indigenous activism. This became particularly clear in 2011, when the Ministry of Home Affairs released a circular that imposed restrictions on the Indigenous People's Day celebrations. The circular states that

a) necessary instructions may be sent to the concerned persons so that (on Indigenous day) government high officials do not give speech/comments that are conflicting/contradictory to the policies of the government undertaken at different times. b) It might be monitored so that no government patronization/support is provided during the World Indigenous Day. c) Steps might be taken to publicize/broadcast (by providing related information) in the print and electronic media that there are no Indigenous people in Bangladesh. d) The month of August is recognized nationally as the month of Mourning. Hence, such unnecessary amusement programmes in the name of Indigenous Day in this month should be avoided.<sup>23</sup>

On the one hand, this strong opposition against the indigenous peoples' movement can be explained as being congruent with Bengali nationalism, which has been promoted by the ruling party Awami League since independence. On the other hand, the involvement of transnational allies and the institutional backing of the UN system did not lead to the desired result but provoked governmental resistance. The juxtaposition of these two



dynamics can be seen as underlying the government's decision to refrain from strengthening the position of indigenous people in the constitution. The argument provided by Bengali nationalism has been exploited by a couple of political protagonists in opposition to the indigenous people's claim, including the military, which seeks to maintain its powerful basis in the CHT. As it has been promoted during and immediately after independence, culture has provided the ground for maintaining national unity on the basis of cultural homogeneity. The fact that the current Prime Minister, Sheikh Hasina, is the daughter of the Sheikh Mujibur Rahman, the great Awami League leader and the "Father of the Nation", has made it easy to convince her that national unity can prevail only if cultural homogeneity is maintained. In that sense, the following sentence was added to Article 6(2) of the Constitution:

The people of Bangladesh shall be known as Bengalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis.

At the same time, the Government suspended the idea of secularism, which had been one of the pillars of Bengali nationalism, and put more emphasis on Islam, relating to a national discourse that accuses western foreigners of belonging to Christian missionaries. Instead, the Phrase "Bismillah-ar-Rahman-ar-Rahim" - which had been added in 1979 by General Ziaur Rahman, who had promoted an alternative nationalism based on Islam - remained in the Preamble of the Constitution. Moreover, Article 2A, which General Mohammad Ershad had added in the 1980s to declare Islam as the state religion, was likewise maintained. According to the logic of Bengali nationalism and the significance of Islam as a constitutive aspect of Bengali culture, religious and linguistic minorities put the congruence of the nation and culture at risk<sup>24</sup>.

The national debate on authenticity and originality was deeply entrenched in the events that took place at the level of transnational activism. The Special Rapporteur of the UNPFII, Lars-Andres Baer, who is also a member of the international CHT Commission, submitted his "Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997" in May 2011, which was quite timely. In this report he takes a rather critical stance as he highlights the ongoing militarisation in the CHT and points at severe shortcomings with respect to governance. The UNPFII accepted several of the recommendations to the Government of Bangladesh, such as the full and timely implementation of the Peace Accord of 1997, the prevention of Bangladeshi military personnel involved in human rights violations of indigenous people in the CHT from participating in the UN peacekeeping missions,<sup>25</sup> and the establishment of independent and impartial commissions of enquiry to address human rights violations against indigenous people in the CHT.

The Government of Bangladesh reacted with strong opposition. The First Secretary of the Bangladeshi Mission to the UN submitted a statement to the Permanent Forum saying that there were no indigenous people in Bangladesh and that the Peace Accord had nothing to do with indigenous issues. Therefore, the government claimed that the UNPFII, with its mandate to deal with indigenous issues, would not have "any locus standi" in discussing issues relating to the CHT Peace Accord.<sup>26</sup>

After the quest to include the notion of indigenous people in the constitution was turned down, government representatives repeatedly highlighted that the concept itself could not be applied to the Bangladeshi context. The Foreign Minister, Dipu Moni, stated at the Economic and Social Council that the people living in the CHT were not indigenous in the sense of the definition provided by the United Nations, but came as asylum seekers and economic migrants.<sup>27</sup> Moreover, the Ambassador and Permanent Representative of Bangladesh to the United Nations questioned the way in which the study was conducted and discredited the Special Rapporteur as being the member of "a partisan CHT-based NGO".<sup>28</sup> In addition, the Government apparently requested ECOSOC, as the parent body of the UNPFII, to refrain from adopting Lars-Anders Baer's report in the report of the UNPFII session.<sup>29</sup>

While on the international stage government representatives rushed to deny the existence of indigenous people in Bangladesh, there was once again strong opposition at the national level. In public discourses there was a tendency to interpret the notion of indigenous people as an international concept that foreigners, including potential Christian missions, sought to transplant into Bangladesh. The attempt to support the national movement at the level of transnational activism by increasing pressure on the Bangladeshi government thus failed. Whereas the Special Rapporteur, highly committed to the indigenous peoples' struggle within Bangladesh, tried to seize the window of opportunity provided by the open atmosphere during the discussion about the constitutional amendment, his attempt resulted in a backlash. This episode thus shows the limited scope for transnational activism and reveals that the potential for success is highly dependent on context. In Bangladesh, granting indigenous rights would imply far-ranging concessions that are crucial to the national interest with regards to the ideal of a culturally homogeneous nation.

Another dimension, which can be referred to only briefly here, is economic interests. These interests are directly linked to the demilitarisation of the CHT as demanded in Baers' report. Conversations with experts in Bangladesh reveal that the military depends on the CHT as a "training ground" for the soldiers to be deployed in the UN peacekeeping missions. As these missions constitute an important source of income for the Bangladeshi army, the withdrawal from the CHT would diminish the soldiers' exposure to practical training, which is a requirement for taking part in the UN missions. The second issue is access to land, which has been one of the core arguments throughout the armed conflict and remains highly topical in densely populated Bangladesh. A recent study by Adnan and Dastidar (2011) reveals that the security forces as well as state institutions continue to be involved in the redistribution of land in the CHT through acquisition and land-grabbing.

## 6. AMBIVALENT ACHIEVEMENTS: CHANGING POWER RELATIONS AND LIMITATIONS TO CONDITIONALITY

The aim of this chapter was not to provide a comprehensive explanation of why the pressure exerted by transnational activists on the Bangladeshi state had adverse effects. Rather, it sought to highlight the dynamic and sometimes unforeseeable ways in which social actions at different socio-spatial levels are related to each other. The complexity of the interrelation between nationalism and resistance against outside interferences is shown by the restrictions that have been introduced in 2011. Following the Special Rapporteur's report to ECOSOC, the Government decided to place more restrictions on access for foreigners to the CHT. While earlier it was sufficient to inform the District Commissioner's office of the intended stay and to register at the checkpoint on arrival, foreigners now need the District Commissioner's permission in advance. In addition, news has spread that foreigners are not allowed to hold meetings with civil society representatives without the presence of a government official.<sup>30</sup> Even though the potential of transnational activism has convinced many of Bangladesh's partners in development cooperation to raise the issue of indigenous people's rights again and again,<sup>31</sup> these initiatives have not proved to be successful because of the hard stance of the government on these issues. According to the assumptions of transnational activism, this is rather astonishing, as one would expect the Government of Bangladesh to comply with the demands, since, being a classic case of a developing country, Bangladesh remains dependent on international aid. But the indignation with which government officials rejected the Special Rapporteur's report on the CHT Peace Accord implementation reveals that global power hierarchies are not as simply structured as one might assume.

This kind of resistance against UN institutions and their moral arguments is not unique to Bangladesh. Another recent example was Sri Lanka, where the reprimands of the UN and other international actors to respect human rights during the final war against the Liberation Tigers of Tamil Eelam (LTTE) in 2009 were ignored even though

this became an explicit conditionality in aid allocation (Gerharz, forthcoming). More prominent than the Sri Lankan case has been the rising significance of the so-called “new donors” in several African countries. Much public debate has been centered on fears that the efforts made by the traditional donors to introduce codes and standards to safeguard environmental and human rights standards may be weakened by the rising significance of emerging donors. Although Woods comes to the conclusion that the “hysteria surrounding the emerging donors is overplayed” (Woods 2008: 1212), she admits that a “silent revolution” is going on. By offering alternatives to aid-receiving countries, emerging donors weaken “the bargaining position of western donors in respect of [the] aid-receiving country” (Woods 2008: 1221). This may be symptomatic of what Jan Nederveen Pieterse has described as a major change in twenty-first-century globalisation, namely that it “brings much of the developing world outside the grasp of western institutions” (Nederveen Pieterse 2010: 203). There is a growing awareness of plural development strategies and approaches and that each societal context may need to generate its own ways of governing.

Therefore, approaches that are based on a liberal, linear way of thinking entail increasingly limited potential for explaining transnational relations between so-called developed and developing states. With the so-called “emerging donors” there is a pluralisation of developmental resources taking place in the contemporary world which reduces the scope for conditionality. As much as south-south trade relations gain increasing significance, alternative development partners enter the scene and this convinces many southern governments to no longer comply with “western-dominated” development ideals. In the context of Bangladesh this certainly relates to land and national resources (see Adnan and Dastidar 2011). There is a growing interest in Bangladesh, and particularly the CHT, with regard to resource extraction, a business in which India and China play an increasingly important role. At the same time, labour migration from Bangladesh has led to strong relationships with countries in South-East Asia and the Middle East. Accompanying agreements have opened new channels for the transnational banking sector, for example, and the transmission of alternative models of governance and democracy. In general, western-dominated models and ideas are increasingly questioned in public debates, and there is a growing awareness of the limitations of (post-) colonial power relations. These observations lead to an array of concerns addressing very basic questions of how governance and democracy will be dealt with in future. Apart from questioning the potential universality of UN-based decisions and Declarations, in the case of the Rights of Indigenous People, we need to ask what the failing mechanisms of transnational activism and the decisively anti-UN position of Bangladesh’s government tells us with regard to its perspectives on the future society. Does democracy as a framework for accommodating minority rights and participation still play a role in future aspirations? If not, what are the alternatives? What role will western models of governance play in future? There is still a lot of scope for future research.

#### ENDNOTES

- 1 I thank Gudrun Lachenmann, Sandrine Gukelberger, the editors of this issue and two anonymous reviewers for their comments which helped me to enrich the arguments developed in this paper.
- 2 I have applied the notion of translocality to my work on transnational activism to highlight social interaction transcending socio-spatial scales and different levels of institutionalization (Gerharz 2012). Elaborating this concept here would be beyond the scope of this paper as it does not provide additional value.
- 3 The Chittagong Hill Tracts are located in the south-eastern part of Bangladesh. They are home to the majority of indigenous people in Bangladesh.
- 4 Karlsson refers to the report by the UN Special Rapporteur Miquel Alfonso Matínez that was discussed in the late 1990s in the WGIP.
- 5 The notion of Jumma derives from jhum, the local agricultural practice of slash and burn cultivation.

6 The Awami League is one of the two major parties in Bangladesh and has repeatedly been in power since independence.

7 Raja Devasish Roy, the traditional chief of the Chakma circle in the Chittagong Hill Tracts, advocate and member of the UNPFII, has published extensively on the land rights system in the CHT and the plain-land.

8 As part of the Accord, five land commissions were formed to solve the land problems in the CHT. None of them has produced any viable results. In May 2013, the government announced that a sixth land commission is to be formed soon. See: [www.theindependentbd.com](http://www.theindependentbd.com) (accessed 27 May 2013).

9 Like other social movements, the Bangladeshi indigenous activist scene is not at all unified but divided into various fractions, which makes it difficult to design an institution that is supported by all movement members.

10 In 2008, for example, the Foreign Minister who was the central figure opposing the Constitutional Amendment in 2011 participated and publicly announced her solidarity and support.

11 This observation stems from my personal experiences and exchange with academics at the national universities in Dhaka and Chittagong, as well as the Jahangir Nagar University.

12 In the process of designing a democratic state after the fall of the monarch in Nepal, the question of how to accommodate the interests of indigenous people has been discussed rather extensively. The National Federation of Indigenous Nationalities (NEFIN) has gained broad acceptance in politics and the wider public.

13 This was raised in a personal conversation with a representative of a German development organisation that has been actively involved in supporting the indigenous movement in Bangladesh.

14 Exceptions occur when human rights violations target local activists. Ranglai Mru, for example, a local headman and environmental activist from Bandarban, the southern district of the Chittagong Hill Tracts, became subject to public debate when he was arrested in 2007 by the police on the basis of false cases. Like the murder of Cholesh Ritchil from Modhupur in 2007, this case attracted much international attention both in activist circles as well as among the foreign missions in Bangladesh (Wessendorf 2008).

15 <http://www.chtcommission.org/description-of-the-cht-commission/mandate/> (accessed 15 May 2013).

16 The first report “Life is not Ours” was published in 1991 with updates in 1992, 1994, 1997 and 2000. They are available online: [http://www.iwgia.org/publications/search-pubs?publication\\_id=129](http://www.iwgia.org/publications/search-pubs?publication_id=129) (accessed: 18 March 2013).

17 In Bengali, the notion of “upajati” (subnation) resembles the English term “tribal” (Roy 2009: 48). Uddin argues that this notion was invented by the Bangladeshi state to undermine and degrade the hill people as lower-ranked people (Uddin 2010: 290).

18 The Bengali term “pahari”, which literally means hill people, is regarded as the most neutral and politically correct term for denominating the indigenous population of the CHT, as many use it to refer to themselves. For others, however, it has a negative connotation because it is a Bengali term. “Adivasi” has become a common phrase for denominating the indigenous people living in the plains, but is sometimes used as an encompassing category equivalent with “indigenous people”.

19 The indigenous people living in the CHT had been represented in UN working groups well before the peace process. This, however, was only possible because the militants had maintained contact with CHT inhabitants who had migrated to India and who had acquired citizenship there. The Indian passport enabled them to travel to the UN meetings.

20 This was the term used by one activist supporting the initiative during my fieldwork in 2010.

21 [http://www.iwgia.org/news/search-news?news\\_id=307](http://www.iwgia.org/news/search-news?news_id=307) (accessed 20 March 2013).

22 There is an opinion in Bangladesh that the politicians representing the major political parties were basically motivated to step up to the indigenous population because they would help them to secure their votebanks. This, however, has not yet been verified and remains subject to controversial debate, given the small number of indigenous people compared to the majority population.

- 23 <http://de.scribd.com/doc/102343718/English-Version-Not-to-Celebrate-1p-Day> (accessed 18 March 2013). The Government has declared August as a month of mourning because in August 1975, Sheikh Mujibur Rahman and his family were killed in a massacre, except his daughter Hasina who is prime minister at present.
- 24 A good explanation for this mechanism that is well known from other countries is provided by Appadurai's argument in his "Fear of Small Numbers" (2006).
- 25 The Bangladeshi Army has become one of the main providers of staff for the UN peacekeeping missions worldwide.
- 26 See press statement of the Chittagong Hill Tracts Commission, 5 June 2011.
- 27 Statement by Chakma Raja Devasish Roy, 27 July 2011 on [www.bdnews24.com](http://www.bdnews24.com) (accessed 24 May 2013).
- 28 He referred to the international CHT Commission of which Lars-Anders Baer is a member as well.
- 29 See Wasfia Nazreen article "I ain't indigenous – reflection of a Bengali" on [bdnews24: http://opinion.bdnews24.com/2011/07/28/%E2%80%9Ci-ain%E2%80%99t-indigenous%E2%80%9D-%E2%80%93-reflection-of-a-bengali/](http://opinion.bdnews24.com/2011/07/28/%E2%80%9Ci-ain%E2%80%99t-indigenous%E2%80%9D-%E2%80%93-reflection-of-a-bengali/) (accessed 23 May 2013).
- 30 See Report of CHT Commission 30 November 2011.
- 31 See also Letter to Ban Ki Moon, CHT Commission 11 November 2011.

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# **THE BATWA INDIGENOUS PEOPLE OF UGANDA AND THEIR TRADITIONAL FOREST LAND: EVICTION, NON-COLLABORATION AND UNFULFILLED NEEDS**

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## **ABSTRACT**

The growing literature about the Batwa indigenous people in Uganda has uncovered the interplay between global power, local realities, and current interventions. However, this literature has not adequately focused on the relationship between the eviction of numerically small indigenous groups from their land and their consequent plight. Therefore, this study reviews available literature on the events, processes, and consequences of the Batwa eviction from their traditional forest land in the early 1990s. The literature reviewed suggests that the application of international standards was not respected; it also shows that the Batwa were evicted without their free, prior, and informed consent. Additionally, the total resettlement of the Batwa has failed dramatically; they face appalling economic, health, and social conditions. In conclusion, the paper asserts that a greater international control of compliance (by international and national actors) with applicable standards must be observed, and sincere measures to redress the Batwa land eviction ought to follow guiding instruments on the rights of indigenous people.

Keywords: Batwa, land eviction, indigenous peoples, social plight

## **1. INTRODUCTION**

The events, processes, and consequences surrounding the eviction of the Batwa from their traditional land demonstrates how well-meant development projects can ruin the lives of small groups of indigenous people (Tumushabe and Musiime, 2006; Zaninka, 2001; Zaninka and Kidd, 2008; Blomley, 2003; Namara, 2006). Notably, the Batwa, also called Pygmy<sup>1</sup>, are a group of former hunter-gatherers of southwest Uganda, whose livelihood dramatically changed after their eviction from the forest land in the early 1990s (Lewis, 2000; Kabanankye and Wily, 1996). The nature of their expulsion suggests that there was a violation of their traditional land ownership right.<sup>2</sup> Indeed by a stroke of a pen, the policy instrument to protect the Bwindi Impenetrable and Mgahinga national parks together with the highly endangered - and highly valued - flora and fauna (mountain gorillas) left more than ninety percent of the Batwa landless (Ahebwa, Van Der Duim and Sandbrook, 2012).

The situation of the Batwa discredits, in a way, Uganda's commitment to indigenous people's rights. On the one hand the country is a signatory to International Conventions, including the Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples' Rights, and, locally, article 20 of the Uganda Constitution<sup>3</sup> is against all sorts of discriminatory practices. On the other, the discrimination and marginalization suffered by the Batwa seem to suggest the violation of international instruments<sup>4</sup>. Locally, the difficulty is that the constitution considers all ethnic groups as indigenous (Constitution of Uganda, 1995). However, the African Commission clearly recognizes the Batwa as identifying with the worldwide indigenous peoples' movement in their struggle for recognition of their fundamental rights (ACHPR, 2005). In addition, the legal framework over land and natural resources in Uganda (the Land Act of 1998 and the National Environment Statute of 1995), protects customary interests on land and the traditional use of land but restricts the customary forest land rights of



indigenous peoples (Mwanga, Mukhwana, Zaninka, & Kidd, 2009, p. 483).

Beyond the case of Uganda, the problem of defining an indigenous people and indigenous peoples' rights is a complex debate in many other parts of Africa. The report of the African Commission on Human and Peoples' Rights' Working Group on Indigenous Populations/Communities, adopted by the Commission in 2005, discusses the problem of definition at length. The report repeats the old argument that all Africans are indigenous to Africa given that the European colonialists left all of black Africa in a subordinate position which is very similar to indigenous people elsewhere.

"...if the concept of indigenous is exclusively linked with a colonial situation, it leaves us without a suitable concept for analyzing the internal structural relationships of inequality that have persisted from colonial dominance." It continues that:

"Africa's Indigenous Peoples have their own specific features that reflect from the specific feature of the African state and its role. They have specific attachment to their land and territory; they have specific cultures and mode of production that are distinct from the groups that dominate political, economic and social power."<sup>5</sup>

Within this unfolding debate, the current study inclines towards the definition of indigenous people by the African Commission because of its relevancy to the African context. The commission defines indigenous people as those "whose culture and ways of life is subject to discrimination and contempt and whose very existence is under threat" (ACHPR, 2005). In addition, domestic policies and international conventions considered in the discussion include: the Wildlife Statute of 1996 and the Environment Statute of 1994<sup>6</sup>; the African Charter on Human and Peoples' Rights of 1986; the Indigenous and Tribal Populations Convention of 1957 (No. 107) and the Indigenous and Tribal Peoples Convention of 1989 (ILO Convention No. 169)<sup>7</sup>; and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007<sup>8</sup>.

This review is based on the most relevant human rights standards pertaining to indigenous peoples' right to land. The African Charter on Human and Peoples' Rights of 1986 guarantees property rights and, in case of dispossession, it recognizes the right to recover their property and be compensated.<sup>9</sup> However, a provision in this charter states that this right could be encroached upon in the interest of the public need or in the general interest of the community<sup>10</sup> In many cases, governments have exploited this provision to displace and evict indigenous people. Certainly, use of that provision to displace Indigenous Peoples (henceforth, IPs) is unjust because the same African Charter guideline can be interpreted with reference to other international human rights instruments and decisions.<sup>11</sup> In that respect, the UNDRIP, as an international instrument, acknowledges the "right to lands, territories and resources which they [indigenous people] have traditionally owned, occupied or otherwise used or acquired."<sup>12</sup> This Article of UNDRIP also deliberates on the right to own, use, develop, and control the lands, territories and resources that IPs "possess by reason of traditional ownership or other traditional occupation or use."<sup>13</sup> Another basic international standard is the International Labor Organization (ILO) convention. The ILO has adopted two conventions pertaining to IPs: the ILO 107 of 1957 and ILO 169 of 1989 which came in force in 1991. However, their content is only partially applicable in Africa, since African states have not yet ratified these instruments.<sup>14</sup> This puts advocacy for Indigenous Peoples' rights in a precarious position.

The main challenge to this paper's analysis is that some of these guidelines and conventions came into effect after 1991, the year the Batwa were evicted from their traditional land. In spite of that challenge, the paper explores whether the appalling conditions of the Batwa are a result of continuous marginalization due to land eviction. It also analyzes whether their plight would have been averted had better international and national control of compliance, with applicable standards, been met before and after eviction plans. To achieve the intended objective, several events, documents and positions of various actors in the eviction of the Batwa are reviewed. The review illustrates that difficulties facing the Batwa indigenous community, especially with regard to land and natural

resources have not been fully redressed, and that they arise from an initial disregard of applicable standards for free, prior and informed consent that must precede eviction.

## 2. METHODOLOGY

This paper is exclusively prepared on the basis of existing literature. It includes both academic sources and documents by indigenous and non-indigenous organizations engaged in advocacy for Indigenous Peoples' rights. Notably, only a part of the literature reviewed places land eviction and the social plight of indigenous groups as its primary concern. In most cases, land eviction is not the primary focus and information on indigenous people's livelihoods and conditions is often fragmented and unsystematic. Most of the texts lack conceptual and analytical frameworks. However, this material is still worth taking into account given that it offers new empirical information or new perspectives.

The review partially reflects or represents the growing body of literature because it concentrates on the right of IPs to land, among other rights, and their livelihoods and living conditions. The challenge is that it is not always easy to distinguish sharply between indigenous and non-indigenous ethnic groups in Africa. Neither is it easy to distinguish between Indigenous Peoples' rights and human rights, as these rights often overlap in both application and context. It was nevertheless necessary to make some conceptual distinctions, in order to identify and understand the case of the Batwa in Uganda.

This paper targets a wide audience, including researchers, grassroots organizations, non-governmental organizations (NGO), policy-makers, and the local community associations interested in the issues of Indigenous Peoples' rights in Africa and Uganda.

## 3. WHO ARE THE BATWA IN UGANDA?

The Batwa of the great lakes region are a marginalized ethnic group found in Uganda, Rwanda, Burundi, and the Democratic Republic of Congo (Lewis, 2000; Kidd and Zaninka, 2008). In Rwanda and Burundi, they are called Twa. In the Democratic Republic of Congo, they are the Twa, Mbuti, or Bayanda. In Uganda, the Batwa people are also called Bayanda. They range between 3,000 - 3,700 people in Uganda; almost 0.02 percent of the total population (UBOS, 2002). They were formerly forest hunter-gatherers, who today live in the Kisoro, Rukungiri, and Kabale districts surrounding the Bwindi Impenetrable and Mgahinga Gorilla National Parks in southwestern Uganda as illustrated in the map below.

The available history of the Batwa identifies them with the mountain forests. In a historical account, Zaninka (2001) laments that until the 16th century the Batwa people were the only inhabitants of the regions of the Bwindi Impenetrable National Park, the Mgahinga Gorilla National Parks and the Echuya Forest Reserve. They were later joined and marginalized by incoming groups of farmers and shepherds. In addition, cross-generational stories of these people show that the forefather of the Batwa (called Gihanga) had three sons (Gatwa, Gahutu and Gatutsi). They suggest that his son Gatwa, the forefather of the Batwa people, received bows, spears, and arrows for hunting. As a result of these stories, hunting is cherished by the Batwa and the Garama underground lava cave (hidden in the Gahinga Mountains) is a sacred place for the Batwa (Mukasa, 2012; Lewis, 2000). The ILO 169<sup>15</sup> recognizes and respects this relationship between the lands and territories of indigenous peoples and their distinct spiritual, cultural, and economic structures.

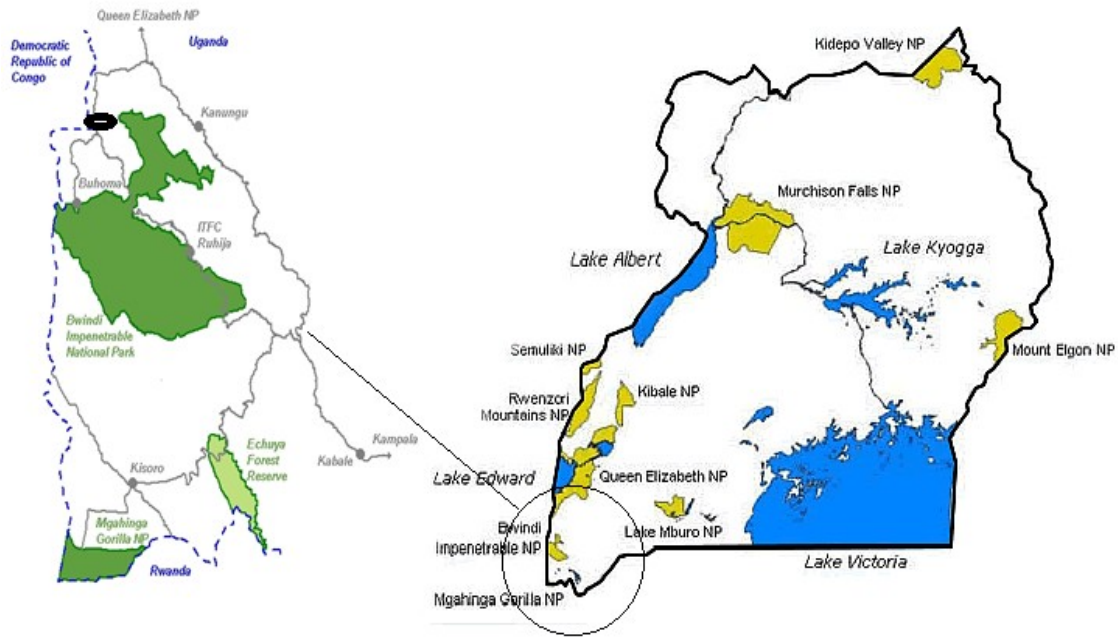


Figure 1: The location of the Batwa in Uganda (extraction on the left shows the protected area—the Bwindi Impenetrable National Park, the Mgahinga Gorilla National Parks, the Echuya Forest Reserve and its neighborhood)  
(Source: Mukasa, 2012—adapted)

As suggested by other authors, the marginalization of the Batwa can be seen in the social, political, and economic walks of life (Kidd, 2008; Kidd & Zaninka, 2008). They are discriminated based on their physical appearance and their heritage as forest dwellers, and are labeled pygmies<sup>16, 17</sup> in a pejorative way. Their marginalization is now visible in the education sector, local and national government offices, and the activities of mainstream society. Additionally, due to this marginalization, little has been done to keep and maintain their original language amidst pressure from dominant non-Batwa groups. Some linguists claim that the original language of the Batwa has disappeared due to marginalization and pressure from the "other" (Kabanankye & Kwagala, 2007). In an emblematic case, the first Mutwa to graduate with a university degree lamented in a BBC interview that, after evicting her forefathers from the forest, the concern is not only their loss of land but also their loss of culture (Vishva Samani-BBC, 2010).<sup>18</sup>

#### 4. EVICTION OF THE BATWA: POLICY HISTORY

“The Bwindi Impenetrable National Park (BINP), which covers 331 km<sup>2</sup>, is the largest tract of natural forest remaining in Uganda, and is the only area in East Africa containing an unbroken ecological continuum of lowland and transitional and montane forest. BINP is extremely rich in mammalian diversity. The park is home to some 120 species, including the mountain gorilla, and is equally rich in the variety of bird species (330). Though much smaller at 48 km<sup>2</sup> ... MGNP is one of the few areas in Uganda that contains Afro-montane and Afroalpine vegetation, as well as a number of rare species, such as the golden gueron monkey and eleven endemic species of birds”

(Source: World Bank, 2007 Project Performance Assessment Report No.: 39859)

Natural resource legislation in Uganda has changed over time and so has the access of local people to these resources. Initially, the customary rules and practices of the local communities regulated hunting, the collection of medicinal plants, and other forms of resource extraction until colonial legislation on access to wild flora and fauna came into effect in the 1900s (for instance the 1926 game ordinance and the 1952 National park Ordinance)

(Republic of Uganda, 2008, p. 1). However, the last blow to the Batwa was the 1991 resolution that awarded the Bwindi Impenetrable Forest and the Mgahinga Gorilla Reserve the status of national parks (Republic of Uganda, 1999). This action led to the eviction of people, mostly the Batwa, residing and carrying out activities around the protected area. For the Batwa, exclusion from the forest area without free, prior and informed consent (Kidd & Zaninka, 2008; Tumushabe & Musiime, 2006), meant abandoning the livelihood which they depended on (Nakayi, 2009). This eviction and the insufficient process of compensation meant that most of the Batwa had to survive as landless laborers, dependant on small payments from powerful farmers, or even as beggars (Kenrich, 2000:11). The process also defied the relocation guidelines of the ILO 169<sup>19</sup>. The eviction policy history can be summarized in three phases (Namara, 2006, p. 44):

1. First, pre-gazette era (absence of forest boundary and peoples accessed forest resources);
2. Second, forest reserve or reserved era (beginning of state sanctioning of access to forest resources);
3. Finally, post-gazette/national park era (with strict policing and removing the people from the forest resource).

Below is a chronological outline of the evolution of legislation on conservation between 1932 and 1996:

Table 2: Evolution of BINP and MGNP conservation policy

| Policy and parties involved                                                                                                                             | Remarks                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Bwindi and other forests first gazetted as Kasatoro and Kayonza crown forest reserves by the British colonial power.                                    | The forest continued to be economically and culturally important and accessible for the Batwa.                          |
| The BINP & MGNP were combined and gazetted as impenetrable central crown forests                                                                        | The colonial office strategy was conservationist but respected the IPs rights and access to the forest.                 |
| The forest reserves were additionally gazetted as a gorilla sanctuary                                                                                   | The report by FPP and UOBDU finds no clear effects of the policy on the Batwa at that time                              |
| The Forest and Farm Act were introduced in Uganda                                                                                                       | Use of hunting dogs, possession of hunting weapons, residing, hunting, and farming in the forest was made illegal       |
| UNPs and Games department presented a report to the executive government to make Bwindi Impenetrable forest and Mgahinga Gorilla reserve National Parks | Bwindi forest would become BINP and Mgahinga gorilla reserve would become MGNP                                          |
| The 13th August 1991 resolution turned the two forest and game reserves into BINP following the earlier May 1991 resolution that had gazette MGNP       | The Batwa were definitively evicted and restricted from access to the forest, without any resettlement and compensation |
| In 1996, the conservation body (UNPs) which implemented Tourism Resource Sharing, merged with the Game Department to form the UWA                       | UWA realized the 1994 revenue sharing arrangement lacked an institutional and a legal framework                         |

Source: Based on FPP reports; UWA policy, 1996; Ahebwa, Van der Duim and Sandbrook, 2012

There was resistance during the eviction which saw local, aggressive retaliation to the paramilitary conservation agenda. There were conflicts between the park staff and local communities (both Batwa and non-Batwa). Evidence suggests that the local people set sixteen fires in and around the parks in protest over denied access to forest resources and wild food (Nowak, 1995 cited from Ahebwa, Van der Duim, & Sandbrook, 2012, p. 381). Following

this scuffle, the government confronted its failure to single-handedly implement and monitor the protected areas by enacting a wildlife statute that introduced collaborative management of the forest resource with local communities (Namara, 2006, p. 41). This government initiative was also preemptive, responding to ever-diminishing human, material, and financial resources to manage the protected areas in the face of resistance.

In 1996, Kabanankye and Wily's comprehensive assessment of the Batwa's situation five years after their eviction from the forest made rigorous recommendations to address the failures. This assessment was in line with the World Bank's OD 4.<sup>20</sup> requirements, and a baseline study on consultation with, and compensation for, IPs. The recommendations, though not adequately acted upon (Zaninka, 2001, p.178) until 2001, are the most evident demonstration of the unfulfilled needs following the exclusion of the Batwa in 1991. The assessment made the following recommendations:

- There was an urgent need to redress the injustice suffered by the Batwa, as a result of their exclusion from the forests, so that the Batwa could gain access to the 60% of Trust funding allocated to projects proposed by local community associations, via capacity-building;
- The Batwa are strongly connected to their ancestral vicinity due to its embodiment in their networks of social relations, thus any redistribution of land should have taken place in the areas where the Batwa lived;
- The recognition of and an urgent solution for the cultural and economic needs of the Batwa connected to use of the forests ancestral land;
- It also noted that the Batwa feel marginalized in the social service sector—health, education, community networks, and representation—because they do not feel welcome in health clinics. Indeed, the study quotes health workers who laugh about visiting Batwa households and express the sentiment that “the Batwa need everything for free”.

In 2001, a case study assessment of the impact of the conservation agenda on the Batwa by Zaninka (2001) carried out a compelling analysis which demonstrated that the Batwa, as those most affected by the dispossession and lack of accessibility to the forest resource, should have adequate participation in the conservation project (both representation in the decision-making process and allocation of benefits). The Batwa were not generally involved if the community project aimed to redress their exclusion from the forest. Specifically, the assessment noted that the Batwa lack the necessary "expertise" and would be in a better place to hold a dialogue with the Trust within the context of their "own representation committee"<sup>20</sup> (Zaninka, 2001 p184). Another finding by this study was that the continuous funding of schools, clinics, and other projects from which the Batwa do not benefit due to discrimination would simply continue to exacerbate the situation for the Batwa if their share in land distribution and restoration of their forest access is excluded from the debate. The author also vehemently noted that: "Eight years after eviction and four years after the [1996 assessment] study's urgent recommendation, the Batwa had still not been given land on which to settle."

In 2008, an exhaustive and eloquently presented Ph.D. dissertation by Kidd (2008) concluded that ".....the current predicament of the Batwa has been constructed by external forces and that Development discourse continues to construct this marginalized position..... a fundamental shift in the paradigm of the 'Modern World' is needed to allow the Batwa, and other Indigenous Peoples, to be seen not as 'Exotic Others' but as equal participants in an interconnected world where multiple ways of knowing and being are mutually supported and validated" (Kidd 2008 p2). The summary of this same work is one of the most elaborate empirical investigations on the Batwa's livelihood and condition after their eviction. Using the dominant discourses analysis, the author challenges the development agency in what he calls a failure to respond to Batwa consent. According to Kidd, it is possible those agencies may not have believed that the Batwa were able to fully participate in the processes. In his thesis, the author finds that the modernist paradigm—development intervention—has failed the Batwa in that whilst the

development interventions explicitly tried to support and empower the Batwa, they implicitly dis-empowered them "by reserving them to positions of submission and inadequacy." The author summarizes the Batwa condition after their eviction as follows: "...the Batwa today live in bonded labor arrangements with their local neighbors and exist as a despised and marginalized group, positioned on the margins of Ugandan society" (Kidd, Christopher, 2008).

Additionally, Kidd and Zaninka, 2008 and Kenrick, 2000 pp. 11-13 claim that there has been little or no Batwa involvement in the management of their former traditional lands and only some of the Batwa had access to the forest under a multiple-use program in order to collect valuable forest resources. Kenrick, 2000 p.13 asserts that the multiple-use programs (including establishing forest access for bee-keeping, gathering medicinal herbs, and basket-making materials), are limited to some organized groups in some parishes. Yet, these organized groups rarely include Batwa and do not tend to consider ways of using the forest mentioned by the Batwa, such as collecting firewood and house building materials, hunting small animals, or worshipping ancestors.

In 2008, the UNHCR profile report categorically stated that after eviction the Batwa become vulnerable. They were forced to seek membership of religious charity groups as a survival strategy; members of these religious groups would get clothing, food, spiritual renewal, and other benefits to sustain their family's needs in after the eviction. This shows how much the cultural heritage, identity, and livelihoods of the Batwa are at stake. Despite the situation mentioned above and emerging work on the Batwa, the relationship between the Batwa land eviction and social plight has not received much attention. Yet, those who have analyzed this relationship barely focus on the interplay between global power, local realities, and current interventions.

Therefore, although conservationists classified the forest territory as highly protected areas (national parks), following claims of illegal logging and the extinction of gorillas (Hamilton, Cunningham, Byarugaba, & Kayanja, 2000), it is clear that the Batwa have suffered the negative consequences, given that it was after 2000 that they founded a Batwa advocacy organization which has to-date struggled to advocate, follow-up, and bridge the gap between the Batwa community and the authorities.

This review of policy history and related research brings the paper to explore the Bwindi Impenetrable and Mgahinga Gorilla National Park conservation project.

## 5. BWINDI IMPENETRABLE AND MGAHINGA GORILLA NATIONAL PARK: CONSERVATION PROJECT

"Gorilla tourism is Uganda's top tourism attraction. A Gorilla permit will go for \$600 (about Shs1.6m) in January next year [2014], up from \$500 (Shs1.3m). "It is the mainstay of our tourism industry. 80 per cent of the tourism income comes from business related to gorillas,"  
(The Executive director of Uganda Wildlife Authority, Mr. Andrew Seguya—in the Sunday Monitor September 15, 2013)

The Bwindi Impenetrable National Park (BINP) and the Mgahinga Gorilla National Park (MGNP) are located in south-western Uganda and are home to valuable flora and fauna. This led the World Bank to commit itself to a financial grant of US \$4.3 million in May 1991. The grant was an endowment under the Global Environment Facility (GEF) and administered through an established trust called the Mgahinga Bwindi Impenetrable Forest Conservation Trust (MBIFCT) (GEF, 1995). In addition to the GEF endowment by the World Bank, USAID contributed US\$ 900,000 for 1995 to 1997, while the Dutch government also provided further funding of US\$ 2.7 million for 1997 to 2000. This financing came to a total value of US \$8.3 million in 2000. <sup>21</sup>

Apparently, there is conflicting evidence on the conservation project's success, which to a large extent depends on the perspective of the analysis. Studies that focus on commercialization or conservation find the project a success (GEF, 1995; Wild and Mutebi, 1996; GEF, 2007; Namara, 2006). On the other hand, critics focus their analysis on the merits of the project in line with the fulfillment of applicable standards for indigenous peoples' rights. This paper inclines towards the latter perspective. Certainly, capitalizing on a narrow aim of establishing the MBIFCT to provide long-term financing for park management activities, specialized research, and small development projects for local communities surrounding the two parks may posit success (The World Bank assessment report, 2007; GEF, 2007). However, the broader analysis pertains to whether socioeconomic activities, support for park management activities, and local community projects corresponded to the interests of the people (the Batwa inclusive), in a fair way that was in keeping with local and international instruments.

The "neo conservation model" is built on the pivotal idea of the participation and involvement of IPs in decision-making before, during, and after well-intended global or local projects to infringe their territories. In the case in question, management of the conservation project comprised the local, NGOs, and government representatives. The fourteen members on this board (nine voting members and five non-voting members) are in charge of the day-to-day running of the trust fund and evaluating of the projects from the Local Community Steering Committee (LCSC). The LCSC (comprising twelve voting members of the local community) was supposed to have at least one Batwa on it (other documents refer to three Batwa). The issue of implementing mechanism for representation of the Batwa as a discriminated group was one of the conditions tabled by the Dutch government (funded the MBIFCT between 1997-2000), but reports indicate that the required number of Batwa representatives and a committee from which representatives could be drawn was not met by 2000. On this matter Kenrick (2000:8) pointedly demonstrates the failure of the Trust fund management to work towards Batwa participation on committees, even though "a Batwa committee has long been budgeted for in the Trust's budget, and was one of the steps agreed by the Trust and the Dutch Embassy as a precondition for Embassy funding of the Batwa component of the Trust's work."

### 5.1 Meeting the Bank's directives

".....the bank will not fund projects that indigenous people do not support. Its rules demonstrate how the Government and the World Bank must plan and carry out projects that could affect IPs and how they must try to prevent, or at least reduce, any harm that the project might cause to them."  
(The World Bank's IPs Policy (OP/BP 4.10)<sup>22</sup>)

The attempt to violate the key ideas of free, prior and informed consent occurs when free participation and equal involvement in the conservation process is not up to the established standards. In this review, respecting the rights of the Batwa does exclude World Bank/ GEF funding. The bitter reality is that without the GEF's support for conservation, enforcement of eviction probably would not have been possible in practice. So, the displacement and absence of meaningful consultation has little to do with the absence of funds to resettle the Batwa, but more to do with neglecting a responsibility and duty to uphold the IPs' right to customary land (OP/BP) 4.10.

According to most reports, whenever the marginalization of IPs is propagated through government organs, middle managers of the national park, and the local non-Batwa, it becomes easy to override the directives or standards. Although the bank's policy for financing projects in territories where indigenous people live states that "the Bank requires the borrower to engage in a process of free, prior, and informed consultation [...and] results in broad community support to the project by the affected Indigenous Peoples," the issue is that the IPs are rarely part of the authority (legal structure)<sup>23</sup> to decide what amounts to free, prior,<sup>24</sup> informed consultation.<sup>25</sup> So, the indigenous people must be well informed and represented because evidence shows that the process of free, prior consultation

was entirely symbolic for the Batwa (See UOBDU, FPP, and IWGIA reports) and often the Batwa, like IPs elsewhere, were excluded from the consultation process (Kenrick, 2000; Kidd, 2008). Three points resonate from the studies reviewed:

Widespread resistance to meaningful Consultation and Participation (OP/BP 4.10) of Batwa by non-Batwa, and some officials suggests that in reality, effective implementation of “meaningful consultation” and “informed participation” on the ground was slow and obstructed.

The comprehensive baseline survey prior to project commencement (a requirement in OP/BP 4.10) was only adhered to in 1995, four years after the expulsion of the Batwa.

What the trust board perceived as local community support in the form of schools, clinics, and the like were for the benefit of other local people but not the Batwa. Thus, instead of closing the gap between the Batwa and other local people, it actually increased it.

Lastly, under the special consideration section of the World Bank OP/BP 4.10, land and related natural resources<sup>26</sup> are addressed comprehensively. The loophole is that the borrower is mandated to pay particular attention to customary rights, land and natural resources, and cultural and spiritual value when carrying out a social assessment. The World Bank guidelines give the national legal systems discretion in appropriation of these rights thus the marginalized IPs often lose out. Therefore, faced with the government paramilitary eviction from the two national parks, the Batwa did not have proper legal representation as a group and due to discrimination, the arbitration process brought about enormous suffering for the Batwa. It took more than five years from the eviction date for the first household to be compensated and for government bureaucrats to formulate working policies. Therefore, the Batwa were caught-up in two opposing worlds: the conservationists who ended their forest-dwelling livelihood; and the local non-Batwa who, with impunity, exploited their labor.

## 6. SUCCESSFUL CONSERVATION OR THE PLIGHT OF THE BATWA

This section of the paper attempts to identify common trends in the materials reviewed on the topic of conservation and the plight of the Batwa.

The aspect of customary land rights seems to have been outweighed during the eviction process and efforts to redress the damage have neither been coordinated nor timely. Moreover, the issue of a customary right<sup>27</sup> to land and resource usage is well stipulated in the World Bank special consideration and other international instruments. The Bank supports the observation of customary laws, values, customs, and traditions, but not formal legal titles to land and resources issued by the State, when dealing with IPs (OP 4.10). The delay, which was uncoordinated and untimely in nature, was visible in the Batwa land eviction; the first purchase of land for evicted Batwa people was in 1999, with 69.7 acres distributed to only 10% of those Batwa who needed land. More land purchases for the Batwa ensued with the collaboration of other stakeholders (like Adventist Development and Relief Agency (ADRA), the Kinkizi Diocese resettlement at Kitariro, Missionaries Dr. Scott and Carol Kellermen). This process was uncoordinated and part of a charity initiative.

The government and the international community violated the Operative Directive 4.20 (now changed to OP and BP 4.10) when both omitted (directly or indirectly) the critical standards of the eviction of IPs in the case of the Batwa. The response to this crisis has been to mitigate the social, economic, and human rights devastated after the eviction of the people (Kabanankye & Wily, 1996). Notably, donations of land and housing support have been boosted by lobbying from civil society and the Batwa organization’s proposals; for instance, the approval of a US\$ 5 levy on every gorilla permit sold and the Batwa trail, together with other new projects. The levy became effective in August 2005 and is disbursed after every two years for communities around the conservation area (Ahebwa, Van der Duim, & Sandbrook, 2012).



The documents reviewed give rise to one crosscutting problem in relation to natural resources found in indigenous peoples' territories; the authorities undermine the common voice of the marginalized. In this case of the Batwa, by 1991, the legal structure for the participatory management of the forest resource was missing and it was five years later that the Uganda Wildlife Statute of 1996 was enacted and a further three years later before the Uganda Wildlife Policy of 1999 was agreed on. The statute and policy provided for collaborative management between the local communities and the UWA Uganda (Republic of Uganda, 1996; Republic of Uganda, 1999). However, it is important to keep in mind that meaningful participation and compensation were always too little too late.

Although the community conservation approach (CCA) reduces animosity between local communities and authorities, it took the government a long time to involve the local communities in the management of the forest resource.<sup>28</sup> Advocates of CCA attribute the approach to winning minds and sharing responsibility for wildlife management (Namara, 2006). On paper at least, many human right groups and the international development community recommend the involvement of local people (World Bank Group, 2011; ACHPR, & IWGIA, (2005; ACHPR, 2006). Many authors criticize the (local and international) authorities for the delay and the discriminatory nature of compensation which targeted cultivators with farmland but not the Batwa hunter-gathers (Lewis, 2000, p.20; Kabanankye & Wily, 1996; Kenrick, 2000; Kabanankye & Kwagala, 2007; Nakayi, 2009, p.5).

In essence, it was unfair to the Batwa to allocate 60% of the Conservation Trust funds to local communities through financing small projects (that demonstrate a positive impact on conserving the park diversity and a non-consumptive use of forests), instead of considering their full resettlement. In some reports it was found that the local non-Batwa resisted the special representation of the Batwa and allegedly ignored the Batwa on the basis of illiteracy (failure to speak, write, and read English).<sup>29</sup> On this point, the condition of the Batwa today, as reported by recent studies, is still appalling (cf. Kidd, 2008). The 2011 CARE-Uganda survey (the Combating Child Mortality (CCMB) illuminates these conditions. The survey concluded that being landless was connected to the Batwa living in squatter systems of overcrowded and temporary shelter; these conditions are associated with the high prevalence of malaria, alcoholism, and poor sanitation related diseases like diarrhea (CCMB, 2011). For the young generation of Batwa, these poor living conditions are related to high drop-out rates from school, early marriage and long-term inter-generational discrimination.

## 7. CONCLUSION

Most discussions of the eviction of the Batwa from their land have paid scant attention to global power, interventions, and the local context. This study has aimed to show that well-intended projects—in this case, conservation of the Bwindi impenetrable and Mgahinga Gorilla National Parks—can indeed be an ally (or not) to numerically small groups of indigenous people. There are positive attributes to well-managed eviction where free, prior, and informed consultant is meaningful to small indigenous groups. In addition, offering special provisions for indigenous people may open up avenues to dealing with more topical issues such as the social, economic, and political marginalization of the Batwa, culture, and other emergent issues. In the Batwa communities, these issues are forgotten, suppressed, or ignored, requiring more work and engagement. It is worth reconfiguring, deconstructing, and reconstructing the negative aspects of eviction of the Batwa to enhance indigenous rights in the face of global and national power. In this case, international control of compliance with applicable standards must be solid. Specifically, communication channels between the Batwa and others could be reactivated fruitfully to enhance customary land rights, the identity of the Batwa and their meaningful participation in the socio-economic and political dynamics of the entire community.

Special representation of the Batwa should not be perceived by others (including local non-Batwa and forest

middle managers) as a privilege, but as a right and redress for long-held discrimination of the group. The system of sharing forest revenue benefits, delayed resettlement, and competition without recognizing minority rights or the position of the Batwa could be questioned and subverted. Furthermore, changes in national constitutions, laws and policies to ensure that indigenous people have a fair share could require promotion, enforcement, enactment, and implementation to be put into place. Equally, the adoption of temporary special measures that could accelerate equal opportunities between the Batwa and others is necessary, including affirmative action programs.

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## ENDNOTES

- 1 This is a derogatory word which is used mainly by other ethnic groups to mock or marginalize the Batwa or even discriminate against them (Lewis, 2000, p. 5)
- 2 The resolution adopted by the General Assembly 61/295 expressed concern that "...indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests."(United Nation, 2008 United Nations Declaration on the rights of indigenous Peoples, pp.1-15)
- 3 Article 20 of the Ugandan constitution states that "...no person shall be treated in a discriminatory manner by any person acting... in the performance of any public office or any public authority,"
- 4 The right to equality and non-discrimination is guaranteed in the general recommendation No.23 (18/8/1997) of the Convention on the Elimination of all Forms of Racial Discrimination of 1969 and in Article 7 of the Universal Declaration of Human Rights among others.
- 5 The African Commission on Human and Peoples' Rights (ACHPR) Report of the African Commission's Working Group on Indigenous Populations/Communities, 2005.
- 6 It provides guidelines on natural resource management for the benefit of all the people of Uganda and local communities.
- 7 The standards in ILO Convention No. 169 establish a basic framework for protection of indigenous and tribal Peoples under international law, which organizations like the World Bank and the United Nation Development Programmes (UNDP) take into account when developing their own programmes or policy affecting Indigenous people.
- 8 With 24 introductory paragraphs and 46 articles, the United Nation Declaration on the Rights of Indigenous Peoples 2007 covers a range of human rights and fundamental freedoms related to IPs, namely the right to preserve and develop their cultural characteristics and distinct identities, ownership and use of traditional lands and natural resources, and protection against genocide
- 9 African Charter, Articles 20, 21, 22 and 24; these articles are considered vital in the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities
- 10 Ibid, Article 14
- 11 Ibid, Article 60
- 12 UNDRIP, Article 26 (1)
- 13 Ibid, Article 26 (2)
- 14 ILO 107 is ratified by only a few African countries and ILO 169 by none.
- 15 Article 13 (1)

- 16 Scott & Carol Kellermann, Pygmies.net (2002-2004).
- 17 Their marriage costumes, unfulfilled needs and sociocultural attachment to the forest are covered in the report of the Parliament's Equal Opportunities Committee's Working Visit to Bundibugyo and Kisoro in 2007.
- 18 A story about the first Batwa University graduate covered by Vishva Samani of BBC News, Uganda on 29th October 2010 <http://www.bbc.co.uk/news/world-africa-11601101>
- 19 ILO 169, Article 16 (2) stipulates the measures to be undertaken in event of relocation
- 20 In 2000, the Batwa formed their organization called the United Organization for Batwa Development in Uganda (UOBDU). Under the leadership of this organization, Batwa Representatives have signed some declarations with the government. In 2011, they participated in constructing a 3-D model of the forest area using their traditional knowledge.
- 21 All figures are based on the article by Ray Victurine and Christine Oryema Lalobo 2000 "Building Conflict into Cooperation: Case study of the Mgahinga and Bwindi Impenetrable Forest Conservation Trust" [https://www.cbd.int/doc/nbsap/finance/CaseStudyTrustFunds\\_UgandaBwindi\\_Nov2001.pdf](https://www.cbd.int/doc/nbsap/finance/CaseStudyTrustFunds_UgandaBwindi_Nov2001.pdf)
- 22 The World Bank policy consists of two documents: the Operational Policy 4.10 on IPS and the Bank Procedure 4.10 on Indigenous Peoples the two replaced O.D 4.20, Indigenous Peoples, dated September 1991
- 23 Some OP/BP 4.10 are loosely open to disempowering the IP, say were indigenous people lack legal capacity building or don't have their organization advocacy organization, then Paragraph 17. Which suggests, giving procedure to legally recognized rights to lands and territories that IPs have traditionally owned or customarily used or occupied (such as land titling projects), is void.
- 24 It violates the OP/BP 4.10 on IPs "Free, Prior, and Informed Consultation..."
- 25 Based on the BP 4.10 July, 2005 "free, prior, and informed consultation" is consultation that occurs freely and voluntarily, without any external manipulation, interference, or coercion, for which the parties consulted have prior access to information on the intent and scope of the proposed project in a culturally appropriate manner, form, and language"
- 26 Although the procedure is not well elaborated, the World Bank OP/BP 4.10 on IPs, suggests that special considerations apply when IPs are closely tied to land, forests, water, wildlife, and other natural resources.
- 27 The ILO 169, in its Article 14 affirms that states should recognize and effectively protect IPs' collective rights to ownership and possession.
- 28 Cernea & Schmidt-Soltau, (2003) detail six conservation cases in the Congo basin ecosystem of central Africa with nine national parks and illustrate the dilemma facing scholars and professionals in upholding biodiversity conservation versus people resettlement where relocated. Furthermore, they note that the denial of access to resources might have unidentifiable effects on the attitudes of local people towards the protected area itself.
- 29 See the report of the parliamentary equal opportunities committee's working visit to Bundibugyo and Kisoro in 2007.

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# THE LEGALITY OF THE BELO MONTE HYDROELECTRIC CONSTRUCTION FROM THE PERSPECTIVE OF INDIGENOUS LAND RIGHTS

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## ABSTRACT

The paper focuses on a recent case considered by the Inter-American Commission on Human Rights, which relates to the legality of the Belo Monte hydroelectric dam from the perspective of indigenous rights to land. The proposed project is to be carried out in the Xingu valley, a region in the Amazon that is well-known for its natural resources and the presence of several indigenous communities, which the Brazilian government intends to remove from the area, despite their land rights which are legally established and consolidated by the UN Declaration and the national Constitution. We are faced with a clear conflict between a minority's right to land and a majority that seeks national economic development. Thus, how can we achieve respect for indigenous rights when these rights represent an "obstacle" for economic success? Is the UN Declaration being taken into consideration by the government? I will argue that indigenous land rights cannot be seen as a hindrance to national development, but rather as the confirmation of a democratic multicultural State. In order for the UN Declaration on the Rights of Indigenous People to be respected and enforced – together with the indigenous rights it aims to protect - we need to change the views on minority rights as a whole, and indigenous rights specifically.

## 1. INTRODUCTION

Democracy in Brazil is still rather recent. The country had its first democratic election at the end of the 1980s, after twenty-five years of military dictatorial government, a period characterized by many development plans, some of which were focused on the Amazon Basin. Besides the construction of the "Transamazônica" (a road that connects the center of the Amazon with Brazil's northeast region), the government planned several projects for hydroelectric dams in Amazonian rivers, such as the Tucuruí dam, built in 1974 and located in the Tocantins River, also in the state of Pará.<sup>1</sup> What is now known as "Belo Monte", the project this article refers to, was first called "Kararaô" and intended to be built along the Xingu River and the Iriiri River with five other dams.<sup>2</sup>

The Xingu Basin is well-known for its biological wealth and the presence of several riverine and indigenous groups, given that thirty recognized indigenous territories are located in this area.<sup>3</sup> The process of planning these dams, however, was characterized by the absence of free, prior and informed consultation of the basin's inhabitants. As a reaction to this lack of consultation, the indigenous Kayapó people, one of the many groups residing in the affected region, organized, in 1989, the First Meeting of Xingu Indigenous Nations (I Encontro das Nações Indígenas do Xingu). Their goal was to discuss the impacts of building the dam between themselves, the government, and the companies responsible for its construction. This meeting had international repercussions and was a contributing factor to a temporary pause in the plans to build hydroelectric plants in the Xingu region.

The crisis of electrical supplies in the South and Southeastern regions of Brazil in 2001 gave rise to new plans for dams in the Amazon. This time, however, the project was given a new name, Belo Monte, although the aim remained essentially the same. According to studies carried out by Eletronorte, concessionaire of the project, Belo Monte would now be the only hydroelectric plant built in the Xingu River, with a total flooded area of 516km<sup>2</sup>.<sup>4</sup>

The plan is for the Belo Monte hydroelectric complex to be constructed in a region of the Xingu River called “Volta Grande” (Big Bend), known for its rapid change in elevation, which would make a hydro development possible (Júnior, Reid, 2010:249-253).

Despite considerable pressure on the part of the government to construct the dam, there are many controversies surrounding Belo Monte, from low energy production and high costs to severe environmental and social impact. From the perspective of engineering, Belo Monte presents a serious problem: the river’s flow is highly seasonal and the dam would only be fully exploited during three months of the year (Júnior, Reid, 2010:256). The total cost of the enterprise is not defined and constantly keeps changing. The Ministry of Mines and Energy has said that initial estimates of the cost were about 20.3 billion reais (approximately 6.76 billion euros),<sup>5</sup> an extremely high figure, considering that production would only be sufficient for a quarter of the year. According to predictions, the dam will flood part of the city of Altamira and cause a reduction in the volume of water situated in the “Paquiçamba” indigenous territory. As a result of these consequences, since 2001 federal prosecutors (Ministério Público Federal) have filed several lawsuits<sup>6</sup> against Eletronorte to stop the dam being constructed, given the plan to install it in area of indigenous influence (Filho, 2005:74).<sup>7</sup> According to reports of indigenous peoples in the region, it will wipe out animals and plants and the arable land will be flooded, which will also prevent transport and create diseases.<sup>8</sup> In 2011, the Inter-American Commission on Human Rights ordered the suspension of the dam construction until the rights of the indigenous peoples living in the region are guaranteed. However, IBAMA, the national agency responsible for environmental licensing, ignored this injunction and, in June 2011, approved the construction plans (Amnesty International, 2011:6). Although there are many controversies related to this enterprise, we will focus only on how it affects indigenous peoples and their right to the lands that they have traditionally occupied.

## 2. THE LEGAL INSTRUMENTS ON THE RIGHTS OF INDIGENOUS PEOPLE TO TRADITIONALLY OCCUPIED LAND

One of the main obstacles to guaranteeing the right to land for indigenous peoples is the concept of property itself. The western concept of property, which prevails in the agencies’ understanding, is centered on individual ownership. This concept differs from most indigenous communities’ perception, given that they see property and the rights derived from it as a collective entity, especially when it comes to land. Thus, indigenous people face obstacles when they try to adapt their communal claims to the concept of individual property (Wiersma, 2004-2005:1072-1074).

What mainly distinguishes the concept of land and territory held by indigenous peoples is their special relation to the land, whether it is physical, cultural or metaphysical (Duffy, 2008:506-507). The relationship with their lands, territories, and resources is difficult to separate from that of their cultural values; land is at the core of indigenous societies (Daes, 2001:7). For indigenous people, land also has several other dimensions: a political dimension, related to self-determination; an economic dimension, because it provides a means of subsistence; and a spiritual and cultural dimension, for land has a religious and non-monetary value (Duffy, 2008:509-511). These characteristics are not separated; rather, they must be seen as a whole. This is why the idea, largely accepted in civil law, that you can displace someone as long as you pay them the amount of money considered to be the economic value of the land, cannot be applied literally when it comes to traditional forms of land occupation.

Largely ignored by the international community in the past, indigenous peoples began to see their rights addressed more consistently after the ILO Convention no. 107 (1957), later amended by the Convention no. 169 (1989), with an approach that was less integrationist and more orientated towards the respect for their culture. In article 13, it recognizes the collective ownership of indigenous territories, addressing the right to land as the right of an

indigenous community, not just the right of an individual representing this group.

The United Nations Declaration on the Rights of Indigenous Peoples (2007), although not legally binding, represented a triumph for indigenous peoples, who had persevered for more than 20 years to obtain an instrument that could provide redress for the injustice of dispossession (Davis, 2008:440). It recognizes their right to culture directly (e.g., article 11 “right to practice their cultural traditions” and article 8 “right to not be subjected to forced assimilation”) and also indirectly, by ensuring their right to possess the land they traditionally live in (article 26 to 30). The Declaration recognizes that culture and access to land are intrinsically connected when it comes to indigenous peoples (article 25). Furthermore, the right to land directly affects the enjoyment of all rights contained in the declaration and the deprivation of this means the deprivation of the others.

International standards, however, are only effective when adapted to the needs of the people they protect and the different national situations in which they are to be applied. Likewise, if the people concerned have resources, knowledge and access to legal and administrative machinery to secure their implementation (Swepston, Plant, 1985:92). It is one thing to say that indigenous peoples’ right to land must be protected; another thing is to “set forth in a legal instrument how they will be protected, how conflicts which have deep historical roots can be settled [and] what special rights are to be recognized for indigenous peoples” (Swepston, Plant, 1985:95).

In terms of national law, the Brazilian Constitution, enacted in 1988, has a special section dedicated to the rights of indigenous peoples, guaranteeing their right to land. This was obviously not a charitable gesture on the part of the government, but rather the result of several pressures from the indigenous communities and international bodies. Article 231, §3º states that the use of water resources, including for potential energy, can only be used with the authorization of the Congress and the consultation of the communities affected.

The Environmental Impact Study of Belo Monte, carried out by the companies that intend to participate in the construction of the dam, admits that once the construction begins it will be necessary to remove the indigenous communities from the region. This is due not only to flooding, but also to the consequences already foreseen by the communities: the death of animals and plants essential for their survival and the arrival of diseases unfamiliar to their immunological system, which can often result in death. Due to the conditions agreed prior to the licensing, the concessionaire is responsible for buying the land to which the Jurunas people (one of the indigenous communities affected by the dam) must be relocated. However, recent news announced that the concessionaire denies the responsibility of acquiring the lands needed for this community.<sup>9</sup> It remains clear that the process of Belo Monte’s construction has been lacking proper future planning (where are they going to and what will they live off?) and respect for indigenous tradition, strongly linked to the land, as has been said before.

In violation of article 231, §3º, the requirement of consulting indigenous peoples has not been fulfilled by the government and the companies planning Belo Monte. This same article, in §5º, states that the removal of indigenous people from the land they traditionally live in can only occur with the Congress’s approval, in case of a catastrophe that puts communities in danger or if there are risks for national sovereignty (warfare and/or secessionism). In technical terms, Belo Monte is legally impossible: the dam will necessarily flood indigenous territories, which would imply their removal from the area. However, this can only happen in cases of catastrophe, warfare, or a risk of secessionism<sup>10</sup> and none of these hypotheses applies to the case of Belo Monte. Although the Congress has approved the project for the dam’s construction in an incredibly fast fifteen days, it was unconstitutional due to the absence of a legal hearing with the indigenous communities affected by the project, as will be discussed below.



### 3. INDIGENOUS LAND RIGHTS AS A RATIFICATION OF MULTICULTURAL DEMOCRACY

“In liberal democracies, there are two recognized politico-juridical entities – the individual and the sovereign will of the undivided collective. Consequently, there was no place for intermediate interlocutors such as national minorities [...]” (Porter, 2003:63). Usually defended by liberal “blind-to-differences” authors,<sup>11</sup> this shallow concept of democracy as the mere representative vote and the will of the majority over the minority puts indigenous people in serious danger, for they represent a literal minority in most of the states they still live in. Political decisions made by the majority who only consider the benefits a majority can receive will potentially lead to unjust policies for minorities, especially cultural minorities, such as indigenous peoples, whose culture differs substantially. If a State wishes to become a (multicultural) democracy,<sup>12</sup> it must seek to “avoid threats to national cohesion based on ethnic variety and to give every citizen an equal chance in life regardless of cultural or racial background” (Jupp, 1996-1997:514-515).

A multicultural democracy, therefore, must include in its core an effective respect for the different cultures that live within the borders of the State. This includes the idea of permanent, differentiated rights for specific groups, if they are needed to maintain cultural differences, as is the case of indigenous peoples and their traditionally occupied territories. Kymlicka (1995:108-109) alerts that governments’ decisions inevitably involve recognizing and supporting the needs and identities of a particular societal culture, thereby disadvantaging others and undermining the viability of minority cultures. His argument is that a group of differentiated rights can help rectify the disadvantages of minorities by alleviating the vulnerability of minority cultures to majority decisions. Indigenous peoples are especially prone to vulnerability due to their different culture and usually small amount of population in comparison to the majority.

The adoption of a multicultural democracy with an indigenous framework by a State implies (1) implementing policies that take into account the importance of land for indigenous peoples and the multiple dimensions it represents to them; and (2) recognizing the collective ownership of indigenous lands by incorporating new forms of property in the legal system that can guarantee the ownership of territories by indigenous communities themselves. Regarding the first requisite, constitutional law itself currently offers considerable protection for indigenous peoples. However, as the case of Belo Monte shows, the implementation of policies for indigenous peoples remains attached to liberal concepts of land and territory that jeopardize indigenous peoples’ rights. Thus, a major change in domestic policies regarding the implementation of indigenous peoples’ rights is required. In this sense, according to article 231, §3° of the Brazilian Constitution, the mere approval by Congress to construct the dam is not sufficient; there must be a free prior informed hearing with the local indigenous people, once they are traditionally established in that territory. A correct implementation of this provision must guarantee that political and economic interests will not be addressed without due respect for the will of indigenous peoples when decisions regarding their territories must be made.

According to James Anaya (2004:61), the United Nations’ Special Rapporteur on the rights of indigenous peoples, the ideal model for a multicultural state is the political ordering that simultaneously embraces unity and diversity on the basis of equality. In order to reach this ideal democracy, in the case studied here, it is essential to listen to indigenous people and take this hearings seriously, respecting the importance of their opinion by making their voice crucial to deciding whether or not to build the dam. The principle of Free Prior Informed Consent, based on the right to self-determination (United Nations Commission on Human Rights, 2005:9) is present in several international documents, such as the ILO’s Convention no. 169 and the UN Convention on Indigenous Peoples.<sup>13</sup> Its applicability, however, is still precarious, particularly in situations where the government itself intends to violate this right and the legal recognition of indigenous lands “is not backed up by safety mechanisms capable of controlling the colonial mentality with which national societies relate to indigenous territories” (Hierro, Surrallés,

2005:8). The same logic applies to the Brazilian Constitution: in spite of significant progress in domestic law regarding indigenous rights to land, indigenous peoples still have to deal with the lack of enforcement of constitutional provisions (article 231). Political and economic interests are undoubtedly the main reasons behind the problem of enforcement, as they tend to collide with international and even domestic indigenous rights. The growing interest in indigenous territories that might provide economic benefits through exploration (dams, logging, mining, etc.) sets a framework of economic priorities over human rights in general and indigenous rights specifically. When this framework is largely supported and financed by the government, the consequences for indigenous peoples can become catastrophic.

The arguments of the defenders of the Belo Monte dam are frequently based on viewing indigenous rights to land as a hindrance to national development. They often say that because the dam will benefit a large part of the population and industries with “clean” energy, bringing economic development to the nation, it is worth removing indigenous communities from that region, given that there are “few” of them. This kind of thinking disregards the whole argument of minority rights and multicultural democracy. “The problem is that conflicts between two societies are always settled in a conflict resolution body that is the product of only one of the societies – applying the legal system of that society” (Ahrén, 2004:100). Because they disregard the amount of land that indigenous people need and their particular relationship with it – which is completely different from western parameters – these arguments tend to dehumanize indigenous people, by removing them from an essential feature of their culture and themselves.

These arguments also use what we consider to be a mistaken meaning of “national development”. They consider national development to be the (hypothetical) economic growth of the majority of society and, clearly, those immersed in western culture.<sup>14</sup> But how could a nation possibly develop in any way (economically, socially or culturally) when they sacrifice the fundamental rights of a minority that had no chance of being taken seriously about the damages they would suffer? Moreover, development, according to the meaning given by the arguments that defend the dam, overlooks international agreements, domestic law, and the principles of multicultural democracy.

Finally, given that current Brazilian policies regarding indigenous peoples do not follow the principles of multiculturalism, what could a multicultural democracy achieve in a case like Belo Monte? A multicultural democracy would make sure that construction licenses would not be given unless the indigenous peoples affected by the dam were legally consulted and, by consultation, we mean what the ILO Convention no. 169 (articles 6, 15 and 16) and the UN Declaration on the Right of Indigenous Peoples (articles 10, 11, 19, 28, 29 and 32) guarantee: free, prior and informed consent given by indigenous communities living in the area through democratic hearings where the members of the communities can express themselves and, if it represents their interest, engage in further negotiation with the governments and the concessionaire in equal parameters to show what their requisites are and what benefits they demand in exchange. Plus, in case of denial by the indigenous communities, the government has the obligation to guarantee that no retaliation occurs against these people, whether it is from private sectors interested in the dam construction or from government’s agencies themselves. If indigenous policies continue to be guided strictly by political and economic interests, international and domestic law will keep being violated and indigenous peoples’ fate might be translated into cultural and even physical extinction.

#### 4. CONCLUSION

Cases of the construction of dams in the Amazon Basin are iconic due to the serious difficulties they cause for indigenous people. In the past, dams like Tucuruí, built in Brazil in the 1970’s, or Afobaka, built in Suriname in the 1960’s, were also responsible for the removal of traditional communities due to flooding as well as the social

and environmental impacts. The Belo Monte project, however, is the first one whose negative impacts have had significant international repercussions, representing considerable pressure against its implementation.

This paper started by asserting that how to build a strong democracy in Brazil it is not yet entirely clear, due to the quite recent shift from a dictatorial government to a democracy. International instruments such as the ILO Convention no. 169 and the United Nations Declaration on the Rights of Indigenous Peoples represent a significant step towards the consolidation of indigenous rights and, therefore, a multicultural democracy. Unfortunately, the law in the Americas still works as if indigenous rights did not exist (Clavero, 1994:114), and Brazil is no exception to this situation. Thus, the government should take international agreements and its own Constitution into account if it ever wishes to become a democratic State, by guaranteeing that indigenous peoples who live inside their territories are given a real opportunity to decide their future. The right of the indigenous peoples to remain on the land and free from harm by the dam surely imposes restrictions on the national majority, who, in theory, would have less electric energy available, but this “sacrifice required (...) is far less than the sacrifice members [of the minority] would face in the absence of such rights” (Kymlicka, 1995:109)

Indigenous peoples have long struggled to maintain their existence without assimilation and the latest events in the conflict between the government/companies and the indigenous communities living in the dam region offers yet another example of this situation.<sup>15</sup> The right to traditionally occupied land is a central element of that struggle, given that it is vital to their culture and physical survival (Wiersma, 2004-2005:1087). Thus, taking into account the arguments we have shown in this paper, the Belo Monte dam presents a serious threat to their existence and allowing its construction means signing a certificate of disregard for indigenous peoples’ rights and democracy.

#### ENDNOTES

- 1 The construction of dams in the Amazon Basin also occurred outside Brazil, such as the Afobaka dam, built in Suriname in the 1960’s.
- 2 Ironically, although the government ignored the existence of several indigenous people living in the area, these projects were named after indigenous peoples: Kararaô, Babaquara, Ipixuna, Kokraimoro, Jarina and Iriri. See Erwin KRÄUTLER, “Mensagem de Abertura”, in FILHO, 2005:10.
- 3 For more information about social movements in the region of Xingu, we recommend the website of the NGO “Xingu Vivo” <<http://www.xinguvivo.org.br>>.
- 4 Eletronorte (Centrais Elétricas do Norte S.A.), Relatório de Impacto Ambiental (RIMA) do Aproveitamento Hidrelétrico de Belo Monte, 2009:16.
- 5 Ministério de Minas e Energia (Brasil), Projeto da Usina Hidrelétrica de Belo Monte – Fatos e Dados. <<http://www.epe.gov.br/leiloes/Documents/Leil%C3%A3o%20Belo%20Monte/Belo%20Monte%20-%20Fatos%20e%20Dados%20-%20POR.pdf>>, accessed 30th May 12.
- 6 At the time of writing this article, fifteen suits have been filed against the concessionaire and the government, arguing the illegality and unconstitutionality of the licensing and demanding the urgent suspension of the construction.
- 7 The lawsuit was filed on behalf of the following indigenous communities, all of those directly affected by the dam: A’Ukre, Arara, Araweté, Assurini, Gorotire, Juruna (Yudjá), Kararaô, Kayapó- Kuben Kran Ken, Kayapó-Mekrangnoti, Kikretum, Kokraimoro, Moikarakô, Panará, Parakanã, Pituiaro, Pu’ro, Xikrín, Xipaia e Kuruaia. However, it is estimated that other indigenous communities will be affected by the construction of Belo Monte.
- 8 Testimony of Kuit Arara, Lawsuit nº 2001.39.00.005867-6/Justiça Federal (Brazil).
- 9 Ministério Público Federal, “Norte Energia se recusa a obedecer condicionante indígena e MPF quer punição”, <<http://www.prpa.mpf.br/news/2013/norte-energia-se-recusa-a-obedecer-condicionante->

indigena-e-mpf-quer-punica>, accessed 14th August 2013.

- 10 It is important to note that indigenous peoples established in that area have never demanded secessionism from Brazil, but they have sought autonomy and the right to be legally consulted in cases such as Belo Monte. On how the principle of self-determination for indigenous peoples poses no real threat to States, see HUFF, 2005.
- 11 For authors such as Brian Barry, “a framework of egalitarian liberal laws leaves them [individuals] free to pursue their ends either individually or in association with one another”. See BARRY, 2001:317.
- 12 We understand that the world “multicultural” must be implicit in the word “democracy”, because we do not believe in the legitimacy of a democracy if it is not multicultural.
- 13 Articles 10, 12, 27 and 30 of the UN Declaration on the Rights of Indigenous Peoples impose States the obligation of effectively hearing indigenous peoples when their rights are affected.
- 14 Nevertheless, we are not convinced that ordinary citizens will be the main receivers of the energy Belo Monte intends to generate, but mostly companies exploiting the Xingu Basin’s natural assets.
- 15 The surroundings of the dam’s construction were occupied by 350 indigenous people from nine different ethnicities between 21 June 2012 and 12 July 2012. They demanded fulfillment of the conditions established by FUNAI (the agency responsible for the rights of indigenous people) to IBAMA (the agency responsible for issuing environmental licenses) and to the concessionaire. These conditions go from land demarcation and removal of non-indigenous from the land to adaptations to make the river navigable and health care. Source: Instituto Socioambiental, <<http://www.socioambiental.org/nsa/detalhe?id=3609>>, accessed 12th July 2012.

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**Ph.D. Dissertations from Universities Around the World on Topics Relating to Indians in the Americas,  
Compiled from Dissertation Abstracts**

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IPJ hosts a regularly updated data base of American Indian related Ph.D. from 2006 – the present. In addition, each regular issue of IPJ now carries the Indians of the Americas Ph.D. dissertation abstracts of the last half year. The dissertation coverage includes all languages and is international in scope as far as Dissertation Abstracts covers. This includes most European universities, South African universities, and a few in the Far East. They do not cover all the universities in the world, but do a pretty good job covering first world universities. There is no coverage of Latin American universities' dissertations.

<http://indigenouspolicy.org/index.php/ipj/thesis>

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## Useful Web Sites

**CELANEN: A Journal of Indigenous Governance** was launched, this winter, by the Indigenous Governance Program at the University of Victoria, at: <http://web.uvic.ca/igov/research/journal/index.htm>. CELANEN (pronounced CHEL-LANG-GEN) is a Saanich word for "our birthright, our ancestry, sovereignty" and sets the tone for this annual publication containing articles, poetry, and commentary. The first issue is dedicated to Art Tsaqwassupp Thompson (Ditidaht), who donated his artwork entitled "new beginnings" for use by the Indigenous Governance Program.

**Native Research Network** is now at: [www.nativeresearchnetwork.org](http://www.nativeresearchnetwork.org). Its vision statement is: "A leadership community of American Indian, Alaska Native, Kanaka Maoli, and Canadian Aboriginal persons promoting integrity and excellence in research". Its mission is "To provide a pro-active network of American Indian, Alaska Native, Kanaka Maoli, and Canadian Aboriginal persons to promote and advocate for high quality research that is collaborative, supportive and builds capacity, and to promote an environment for research that operates on the principles of integrity, respect, trust, ethics, cooperation and open communication in multidisciplinary fields". The Native Research Network (NRN) provides networking and mentoring opportunities, a forum to share research expertise, sponsorship of research events, assistance to communities and tribes, and enhanced research communication. The NRN places a special emphasis on ensuring that research with Indigenous people is conducted in a culturally sensitive and respectful manner. Its Member List serve: [NRN@lists.apa.org](mailto:NRN@lists.apa.org).

**The National Indian Housing Council** offers a number of reports at: <http://www.naihc.indian.com/>.

**The American Indian Studies Consortium** is at: <http://www.cic.uiuc.edu/programs/AmericanIndianStudiesConsortium/>.

**Some news sources that have been useful in putting the issues of Indigenous Policy together are:**

**For reports of U.S. government legislation, agency action, and court decisions:**

**Hobbs, Straus, Dean and Walker, LLP**, 2120 L Street NW, Suite 700, Washington, DC 20037, <http://www.hobbsstraus.com>.

**Indian Country Today:** <http://www.indiancountry.com/index.cfm?key=15>.

**News from Indian Country:** <http://www.indiancountrynews.com/>.

**The Navajo Times:** <http://www.navajotimes.com/>.

**IndianZ.com:** <http://www.indianz.com>.

**Pechanga Net:** <http://www.pechanga.net/NativeNews.html>

**Survival International:** <http://www.survival-international.org/>.

**Cultural Survival:** <http://209.200.101.189/publications/win/>, or <http://www.cs.org/>.

**Censored** (in Indian Country): <http://bsnorrell.blogspot.com/>.

**ArizonaNativeNet** is a virtual university outreach and distance learning telecommunications center devoted to the higher educational needs of Native Nations in Arizona, the United States and the world through the utilization of the worldwide web and the knowledge-based and technical resources and expertise of the University of Arizona,

providing resources for Native Nations nation-building, at: [www.arizonanativenet.com](http://www.arizonanativenet.com)

**The Forum for 'friends of Peoples close to Nature'** is a movement of groups and individuals, concerned with the survival of Tribal peoples and their culture, in particular hunter-gatherers: <http://ipwp.org/how.html>.

**Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education)**, with lists of projects and publications, and reports of numerous Indigenous meetings: <http://www.tebtebba.org/>.

**Andre Cramblit ([andrekar@ncidc.org](mailto:andrekar@ncidc.org))** has begun a new Native news blog continuing his former Native list serve to provide information pertinent to the American Indian community. The blog contains news of interest to Native Americans, Hawaiian Natives and Alaskan Natives. It is a briefing of items that he comes across that are of broad interest to American Indians. News and action requests are posted as are the occasional humorous entry. The newsletter is designed to inform you, make you think and keep a pipeline of information that is outside the mainstream media. "I try and post to it as often as my schedule permits I scan a wide range of sources on the net to get a different perspective on Native issues and try not to post stuff that is already posted on multiple sources such as websites or other lists". **To subscribe to go to:** <http://andrekaruk.posterous.com/>.

**Sacred Places Convention For Indigenous Peoples** provides resources for protecting sacred places world wide. Including, news, journals, books and publishing online Weekly News and providing an E-mail list serve, as well as holding conferences. For information go to: <http://www.indigenouspeoplesissues.com>.

**Mark Trahan Blog, *Trahan Reports***, is at: [http://www.marktrahant.org/marktrahant.org/Mark\\_Trahan.html](http://www.marktrahant.org/marktrahant.org/Mark_Trahan.html)

**UANativeNet, formerly Arizona NativeNet**, is a resource of topics relevant to tribal nations and Indigenous Peoples, particularly on matters of law and governance.

**The Harvard Project on American Indian Economic Development** offers a number of reports and its "Honoring Indian Nations" at: [http://www.ksg.harvard.edu/hpaied/res\\_main.htm](http://www.ksg.harvard.edu/hpaied/res_main.htm).

**The Seventh generation Fund online Media Center:** [www.7genfund.org](http://www.7genfund.org)

**Native Earthworks Preservation**, an organization committed to preserving American Indian sacred sites, is at: <http://nativeearthworkspreservation.org/>.

**Indianz.Com has posted Version 2.0 of the Federal Recognition Database**, an online version of the Acknowledgment Decision Compilation (ADC), a record of documents that the Bureau of Indian Affairs has on file for dozens of groups that have made it through the federal recognition process. The ADC contains over 750 MB of documents -- up from over 600MB in version 1.2 -- that were scanned in and cataloged by the agency's Office of Federal Acknowledgment. The new version includes has additional documents and is easier to use. It is available at: <http://www.indianz.com/adc20/adc20.html>.

**Tribal Link** has an online blog at: <http://triballinknewsonline.blogspot.com>.

**The National Indian Education Association:** <http://www.niea.org/>.

**Climate Frontlines** is a global forum for indigenous peoples, small islands and vulnerable communities, running discussions, conferences and field projects: <http://www.climatefrontlines.org/>.



**Cry of the Native Refugee** web site, <http://cryofthenativerefugee.com>, [is dedicated to](#) “The True Native American History.”

The **RaceProject** has a **Facebook Page** that is a forum for the dissemination and discussion of contemporary Race and Politics issues. It includes a continuing archive of news stories, editorial opinion, audio, video and pointed exchanges between academics, graduate students and members of the lay-public. Those interested can visit and sign up to the page at: <http://www.facebook.com/RaceProject>.

**Rainmakers Ozeania** studies possibilities for restoring the natural environment and humanity's rightful place in it, at: <http://rainmakers-ozeania.com/0annexanchorc/about-rainmakers.html>.

**Oxfam America's interactive website:** <http://adapt.oxfamamerica.org> shows how social vulnerability and climate variability impact each county in the U.S. Southwest region. The methodology exposes how social vulnerability, not science, determines the human risk to climate change.

**The International Institute for Indigenous Resource Management** is at: <http://tinyurl.com/yaykznz>.

The **Newberry Library** received a grant in August, 2007, from the National Endowment for the Humanities to fund “**Indians of the Midwest and Contemporary Issues.**” The **McNickle Center will construct this multimedia website designed to marry the Library's rich collections on Native American history with state-of-the art interactive web capabilities to reveal the cultural and historical roots of controversial issues involving Native Americans today.** These include conflicts over gaming and casinos, fishing and hunting rights, the disposition of Indian artifacts and archeological sites, and the use of Indian images in the media. In addition to historical collections, the site will also feature interviews with contemporary Native Americans, interactive maps, links to tribal and other websites, and social networking. For more information contact Céline Swicegood, [swicegoodc@newberry.org](mailto:swicegoodc@newberry.org).

The site [www.pressdisplay.com](http://www.pressdisplay.com) has scanned and searchable versions of thousands of newspapers daily from around the world. These are not truncated "online versions". You can view the actual pages of the paper published for that day. There are also 100's of US papers included daily. The service also allows you to set search terms or search particular papers daily. The service will also translate papers into English.

**Native Voice Network** (NVN: [www.NativeVoiceNetwork.org](http://www.NativeVoiceNetwork.org)), is a national alliance of Organizations interested in collaborative advocacy on issues impacting Native people locally and nationally.

**The Northern California Indian Development Council has a web-based archive of traditional images and sounds** at: <http://www.ncidc.org/>.

**Resource sites in the Indian Child Welfare Act (ICWA): National Indian Child Welfare Association:** <http://www.nicwa.org>, offers include publications, a library, information packets, policy information and research. NICWA's Publication Catalog is at: [Http://www.nicwa.org/resources/catalog/index.asp](http://www.nicwa.org/resources/catalog/index.asp) Information Packets are at: <http://www.nicwa.org/resources/infopackets/index.asp>.

Online ICWA Courses are at: <http://www.nicwa.org/services/icwa/index.asp>.

*The Indian Child Welfare Act: An Examination of State Compliance*, from the Casey Foundation is at: <http://www.casey.org/Resources/Publications/NICWAComplianceInArizona.htm>.

**Tribal Court Clearinghouse ICWA Pages**, with a brief review of ICWA and links to many valuable resources including Federal agencies and Native organizations. <http://www.tribal-institute.org/lists/icwa.htm>.

**Other resource sources are:**

The Indian Law Resource Center: [www.indianlaw.org](http://www.indianlaw.org)

The National Indian Justice Center: [www.nijc.indian.com](http://www.nijc.indian.com).

**Other sites can be found through internet search engines such as Google.**

**Some research web sites for ICWA include:**

[http://www.calindian.org/legalcenter\\_icwa.htm](http://www.calindian.org/legalcenter_icwa.htm),

<http://www.narf.org/nill/resources/indianchildwelfare.htm>,

<http://www.tribal-institute.org/lists/icwa.htm>,

<http://www.nicwa.org/library/library.htm>,

<http://www.nationalcasa.org/JudgesPage/Newsletter-4-04.htm>,

[http://www.dlncoalition.org/dln\\_issues/2003\\_icwaresolution.htm](http://www.dlncoalition.org/dln_issues/2003_icwaresolution.htm), <http://www.helpstartshere.org/Default.aspx?PageID=401>, [http://cbexpress.acf.hhs.gov/articles.cfm?section\\_id=2&issue\\_id=2001-0](http://cbexpress.acf.hhs.gov/articles.cfm?section_id=2&issue_id=2001-0),

<http://thomas.loc.gov/cgi-bin/query/z?i104:I04296:i104HUGHES.html>,

<http://nccrest.edreform.net/resource/13704>,

<http://www.naicja.org>,

<http://www.tribal-institute.org/>.

**Tribal College Journal (TCJ)** provides to news related to American Indian higher education: [tribalcollegejournal.org](http://tribalcollegejournal.org).

**American Indian Graduate Center:** <http://www.aigcs.org>.

The Minneapolis American Indian Center's Native Path To Wellness Project of the Golden Eagle Program has developed a publication, *Intergenerational Activities from a Native American Perspective* that has been accepted by Penn State for their Intergenerational Web site: <http://intergenerational.cas.psu.edu/Global.html>.

The *Indigenous Nations and Peoples Law, Legal Scholarship Journal* has recently been created on line by the Social Science Research Network, with sponsorship by the Center for Indigenous Law, Governance & Citizenship at Syracuse University College of Law. Subscription to the journal is free, by clicking on: <http://hq.ssrn.com/>.

The **National Council of Urban Indian Health** is at: <http://www.ncuih.org/>.

**A web site dedicated to tribal finance,** [www.tribalfinance.org](http://www.tribalfinance.org).

*Lessons In Tribal Sovereignty*, at: <http://sorrel.humboldt.edu/~go1/kellogg/intro.html>, features *Welcome to American Indian Issues: An Introductory and Curricular Guide for Educators*. The contents were made possible by the American Indian Civics Project (AICP), a project initially funded by the W.K. Kellogg Foundation's Native

American Higher Education Initiative, The primary goal of the AICP is to provide educators with the tools to educate secondary students - Indian and non-Native alike - about the historical and contemporary political, economic, and social characteristics of sovereign tribal nations throughout the United States.

**The Columbia River Inter-Tribal Fish Commission (CRITFC)** has a blog as part of its Celilo Legacy project, serving as a clearinghouse for public discourse, information, events, activities, and memorials. The blog is accessible by going to [www.critfc.org](http://www.critfc.org) and clicking on the "Celilo Legacy blog" image, or by simply entering: [www.critfc.org/celilo](http://www.critfc.org/celilo).

The **Coeur d'Alene Tribe** of Idaho has **Rezkast, a Web site of Native affairs and culture** at: [www.rezkast.com](http://www.rezkast.com).

A listing of the different Alaska Native groups' values and other traditional information is on the **Alaska Native Knowledge website** at: [www.ankn.uaf.edu](http://www.ankn.uaf.edu).

**Red Nation Web Television:** [www.rednation.com](http://www.rednation.com).

**A list of Indigenous Language Conferences** is kept at the **Teaching Indigenous Languages** web site at Northern Arizona University: <http://www2.nau.edu/jar/Conf.html>.

*UNESCO Interactive Atlas of the World's Languages in Danger* is at <http://www.unesco.org/culture/ich/index.php?pg=00206>. For a detailed cautionary note about the usefulness of the UNESCO Atlas, see Peter K. Austin's comments. He is the Marit Rausing chair in field linguistics and director of linguistics at SOAS in the UK: [http://blogs.usyd.edu.au/elac/2009/02/unescos\\_atlas\\_of\\_the\\_worlds\\_la\\_1.ht](http://blogs.usyd.edu.au/elac/2009/02/unescos_atlas_of_the_worlds_la_1.ht)

**The Council of Elders, the governing authority of the Government Katalla-Chilkat Tlingit** (provisional government): Kaliakh Nation (Region XVII) has initiated a **web site in order to expose crimes against humanity committed upon the original inhabitants of Alaska**, at: <http://www.katalla-chilkat-tlingit.com/>.

An interactive website, [www.cherokee.org/allotment](http://www.cherokee.org/allotment), **focuses on the Allotment Era in Cherokee History during the period from 1887 to 1934**, when Congress divided American Indian reservation lands into privately owned parcels that could be (and widely were) sold to non Indians, threatening tribal existence.

The **Blue Lake Rancheria** of California launched a web site, Fall 2007, featuring the nation's history, philosophy, economic enterprise, community involvement, and other topics, with many-links. One purpose of the site is to make tribal operations transparent. It is at: [www.bluelakerancheria-nsn.gov](http://www.bluelakerancheria-nsn.gov).

**UN Secretariat of the Permanent Forum on Indigenous Issues:** [www.un.org/indigenous](http://www.un.org/indigenous), The newsletter **Message Stick** highlighting the activities of the **United Nations Permanent Forum on Indigenous Issues (UNPFII)** and its Secretariat 05 is available at: [http://www.un.org/esa/socdev/unpfii/news/quarterlynewsle\\_home1.htm](http://www.un.org/esa/socdev/unpfii/news/quarterlynewsle_home1.htm).

**Indigenous Rights Quarterly** can be accessed at: <http://www.aitpn.org/irq.htm>.

**NGO Society for Threatened Peoples International**, in consultative status to the United Nations ECOSOC, and in participatory status with the Council of Europe, Indigenous Peoples Department, USA: <http://www.gfbv.de>.

The **Unrepresented Nations and Peoples Organization (UNPO)**: <http://www.unpo.org/>.

The **Native Studies Research Network**, UK, University of East Anglia, Norwich is at: <http://www.nsrn-uk.org/>.

The **World Indigenous Higher Education Consortium (WINHEC)** and its Journal are online at: <http://www.win-hec.org/>. (See the Ongoing Activities Section for more on WINHEC). The WINHEC site includes links to other Indigenous organizations and institutions.

**A link on Latin American Indigenous Peoples:**

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/0,,contentMDK:20505834~menuPK:258559~pagePK:146736~piPK:226340~theSitePK:258554,00.html>

**The Asian Indigenous and Tribal Peoples Network** produces occasional papers and reports at: <http://www.aitpn.org/Issues/II-08-07.htm>.

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