

INDIGENOUS PEOPLES' RIGHTS AND UNREPORTED STRUGGLES: CONFLICT AND PEACE

*A contribution of the Indigenous Peoples' Rights Program of the
Institute for the Study of Human Rights at Columbia University to the
Tenth Anniversary of the United Nations Declaration on the Rights of
Indigenous Peoples*

Institute for the Study of Human Rights

Columbia University

2017

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Copies of this book are available from:

Institute for the Study of Human Rights,
Columbia University
91 Claremont Ave. 7th Floor
New York, NY 10027

212-854-2479
Fax: 347-620-9350
ishr@columbia.edu

www.humanrightscolumbia.org

ISBN 978-0-692-88605-2

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Acknowledgements

First and foremost, the Indigenous Peoples' Rights Program of the Institute for the Study of Human Rights at Columbia University would like to thank the contributors, who attended to this book with such care and dedication.

We are grateful to all the participants at the 2016 International Seminar on *Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*, whose discussions and insights informed the outcomes of the Seminar and this book.

Shayna Halliwell was our superb copyeditor, committed as much to the substance as to the elegance of the texts. She is herself one of the co-authors of this book.

Timothy Wyman-McCarthy of Columbia's Institute for the Study of Human Rights helped us navigate the institutional shoals which helped to make this publication possible.

We appreciate the financial support of the Columbia University Seminar on Indigenous Studies and the Tebtebba Foundation.

We greatly appreciate the friendship of all those from around the world who participated in this project with dedication to peace and to the vision of the UN Declaration on the Rights of Indigenous Peoples.

Elsa Stamatopoulou
New York, 30 April 2017

FOREWORD

The Institute for the Study of Human Rights at Columbia University believes that combining research and advocacy in the field of human rights can contribute to the respect, protection and fulfillment of human rights.

We consider especially significant that the United Nations Permanent Forum on Indigenous Issues (UNPFII) designated conflict, peace and resolution as the special theme for its fifteenth session in May 2016, a welcome initiative, given the fact that issues of peace were excluded from the formal original mandate of the Permanent Forum. Moreover, the new United Nations Special Rapporteur in the field of Cultural Rights, Professor Karima Bennouna, focused her 2016 reports on the deliberate destruction of cultural heritage, a topic that affects Indigenous Peoples as well.

The Institute, wishing to make a contribution to the fifteenth session of the UNPFII and to the work of the UN Special Rapporteur in the field of Cultural Rights, organized an International Seminar on *“Indigenous Peoples and Unreported Struggles: Conflict and Peace”* on 14 and 15 May 2016. We were pleased to be joined in this effort by various departments within Columbia as well as various institutions from around the world. The conference was co-sponsored by Gáldu Resource Centre for the Rights of Indigenous Peoples (Norway), The International Work Group on Indigenous Affairs (Denmark), Tebtebba Foundation (The Philippines) and the Universidad Indígena Intercultural de America Latina, a seminal program of the Fondo Indígena (headquartered in Bolivia). From within Columbia University, the co-sponsors were the Center for the Study of Ethnicity and Race, The Human Rights Institute of Columbia Law School, The Heyman Center for the Humanities, The Columbia University Seminar on Indigenous Studies, and The Department of Anthropology.

We are especially thankful to the University Seminar on Indigenous Studies and our affiliate Tebtebba Foundation for making this publication possible.

The International Seminar was aimed at three main outcomes. The first was to reach a better understanding as to where the human rights and other challenges and opportunities lie when it comes to Indigenous Peoples and conflict, through interdisciplinary and interregional analysis of the topic. Twenty-eight presenters put forward their various perspectives on the topic, through case studies and thematic discussions. The second aim of the conference was to provide inputs to the UN Permanent Forum on Indigenous Peoples' conclusions on the topic, as well as to the study of the Special Rapporteur in the field of Cultural Rights in 2016. Third, we wanted to issue a publication that would strengthen the literature available in the field of Indigenous Peoples, conflict and peace. And, in the long term, we would like to create a continuing space for reflection and advocacy on this topic, a space for which an academic institution such as this one could be a vehicle.

While the realities around us are often disheartening in a world that is ravaged by conflict, we have to be able to see the hope and not be overtaken by cynicism. As the late Louis Henkin, Professor of Constitutional Law in this University and mentor to many of us, wrote in 1990 in *The Age of Rights*:

“Despite this universal consensus, as all know, the condition of human rights differs widely among countries, and leaves more-or-less to be desired everywhere. This may suggest that the consensus described is at best formal, nominal, perhaps even hypocritical, and cynical. If it be so, it is nonetheless significant that it is this idea that has commanded universal nominal acceptance.... Even if it be hypocrisy, it is significant—since hypocrisy, we know, is the homage that vice pays to virtue—that human rights is today the single, paramount virtue to which vice pays homage that governments today do not feel free to preach what they may persist in practicing.”

This book is a contribution of the Indigenous Peoples' Rights Program of our Institute to the Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples.

A handwritten signature in cursive script, reading "Elazar Barkan".

Elazar Barkan

Director, Institute for the Study of Human Rights

Columbia University

Introduction

“Pashpashqwa” (Aymara concept)
“Despite everything, I continue being”

From the beginning of their interface with the United Nations in the 1970s, Indigenous peoples have recounted numerous stories about contemporary conflicts that ravage their lands and communities, resulting in massacres, rapes and other gross violations of human rights, including forced conscription into the army and militia, heavy militarization of their areas, destruction of their cultural heritage, outright settlement of their lands, displacement and deprivation of their means of livelihood. Many of those situations often go unreported, ignored by mainstream media and pushed into political invisibility or trivialized by states and non-state actors, such as corporations.

Indigenous peoples in different parts of the world experience conflict differently: it could be armed conflict or non-armed conflict; systemic discrimination and entrenched settler colonialism; systematic denial of cultural rights, including destruction of tangible or intangible cultural heritage. The uniqueness of the historical experience of Indigenous peoples creates many blind spots in the mainstream media and areas of urgent investigation for scholars and advocates. In other situations, efforts towards peace agreements or similar arrangements have been made, but the gaps in implementation remain.

Most conflicts today, at least in the classical sense of armed conflict, have been of an internal nature and it has taken some time for the peace processes of the United Nations and other multilateral organizations to absorb this fact. Only a quarter to a third of modern civil wars (including anti-colonial wars) have found their way to negotiation. About two-thirds of internal conflicts have ended in the surrender or elimination of one of the parties involved.¹ The UN peace mechanisms, especially the Security Council, took time to absorb this new type of conflict in international affairs and to actually recognize it as an international matter—not just as an internal matter. A gradual

1. *Reclaiming Balance*, V. Tauli-Corpuz and Joji Carino eds., (Baguio City, Philippines: Tebtebba and Third World Network, 2004), 558.

and slow shift in approaches and methodologies occurred over the years, especially through the interface between peace and human rights. Some expressions of a conceptual shift are the establishment of the International Criminal Court; the emergence of the doctrine of the responsibility to protect civilians in armed conflict, including internal conflict; the protection of internally displaced persons; the protection of women in armed conflict (Security Council Resolution 1325); the protection of children in armed conflict (UN General Assembly Resolution A/RES/51/77); as well as the prevention of genocide and other mass atrocities.

This shift started happening after the end of the Cold War, the dissolution of the Soviet Union and that of Yugoslavia. How was ethnicity viewed by the UN in the area of conflict? It is well known that ethnicity was viewed with tremendous fear and skepticism by states after WWII, and this view of ethnicity intensified when it came to the peace/conflict mechanisms of the UN. However, the thawing of the ice in terms of how ethnicity was viewed in the peace arena started happening around the mid-1990s. In those days, the UN started recognizing that attention should be paid to the issue of minorities (ethnic, religious) and their treatment (i.e., the respect of their human rights) so that conflict can be prevented. At that time, the authors of various UN reports that I witnessed during my work in the Organization had in mind the ethnic rifts in the Balkans, but also the former Soviet Union. That was also the time that the Rwandan genocide took place and that stirred the world's awareness to the need not to close our eyes and ears to the signs of upcoming genocides. However, in the midst of the creation of this new doctrine and awareness at the UN, the plight of Indigenous Peoples was quite absent. By this I mean that Indigenous Peoples were not recognized as a category, but were subsumed under "ethnic groups" in general, without any special attention to the specificities of their situations. The first time that special attention was paid to Indigenous Peoples by the peace area of the UN was in connection with the peace process in Guatemala. Such attention had been absent in similar efforts in El Salvador.

Despite the overall invisibility of Indigenous Peoples' issues in UN peacekeeping and peace-building, there has been one small but

focused program that has annually addressed Indigenous Peoples: *UNITAR Training Programme to Enhance the Conflict Prevention and Peacemaking Capacities of Indigenous Peoples' Representatives*. It was developed in 2000 based on the requests of Indigenous representatives for strengthened capacities in the resolution of conflict, and on the recommendation of UN Special Rapporteurs to enhance Indigenous abilities to engage in negotiation and the realization of rights. The programme provides training for Indigenous representatives in conflict analysis, negotiation, conflict transformation and reconciliation, coupled with information on UN and regional human rights mechanisms to further the promotion and protection of rights, and to contribute to the realization of the implementation of the UN Declaration on the Rights of Indigenous Peoples. By 2017, 483 Indigenous Peoples' representatives from around the world, 40% of whom are women, have deepened their knowledge and strengthened their skills through participation in the training programme.

Indigenous Peoples themselves have been discussing issues of conflict and peace and have been developing actions and proposing solutions at the global level. In the year 2000, in Manila, an international Indigenous leaders' conference was held on Conflict Resolution, Peace Building, Sustainable Development and Indigenous Peoples. The outcome document, referred to as the Manila Declaration, calls for the establishment of an international mechanism and affirms the right of Indigenous Peoples: "...to create new systems and institutions of peace-making that are sourced in Indigenous values and that co-exist with existing bodies such as the International Court of Justice and similar regional bodies. Such institutions could include independent Indigenous Peoples' tribunals; [and] commissions of inquiry that are recognized as legitimate organs in any process of conflict resolution."² The Manila Declaration contains detailed recommendations for peace-building, technical assistance, training in mediation and other approaches to conflict resolution. It also recognizes the critical role that women play in peace-building in their communities.

2. Manila Declaration Preamble (2000), <http://www.twn.my/title/manila.htm>

Although the mandate of the United Nations Permanent Forum on Indigenous Issues (UNPFII) does not explicitly include issues of peace and conflict, in 2004, when the UNPFII focused its session on Indigenous women, it addressed the issue of the impact of conflict on Indigenous women,³ but did not examine the topic more broadly. Given the prevalence of conflicts affecting Indigenous Peoples, it is not hard to understand why, on several occasions, such issues have gained visibility at the UN despite the lack of formal procedures to deal with them. It was, for example, in 2003 that the Bureau of the Permanent Forum met the President of the Security Council regarding atrocities faced by the Batwa people in the Democratic Republic of Congo. Permanent Forum members repeatedly held meetings with the UN Department of Peace-keeping Operations to bring to their attention violence and crimes against Indigenous Peoples, including Indigenous women, committed by soldiers of troop-contributing countries on Indigenous lands in their own countries. In the case of Colombia, where criminal elements and corporations were threatening many Indigenous Peoples with extinction, the Permanent Forum was able to visit the country in 2010 and present a report,⁴ and there were also reports of the Special Rapporteur on the rights of Indigenous Peoples in 2009 and 2010⁵ that described the challenges in Colombia. In addition, a report of Lars-Anders Baer, Member of the UNPFII, on the state of implementation of the Peace Accord regarding the Chittagong Hill Tracts in Bangladesh⁶ laid out some alarming developments and made concrete recommendations for solutions. It was especially significant that the UNPFII decided to have as a special theme of its 2016 session conflict and peace. The conclusions and recommendations of the Forum are reproduced in Appendix Two.

To accompany the work of the Permanent Forum and of the UN Special Rapporteur in the field of Cultural Rights in 2016, the Institute for the Study of Human Rights (Indigenous Peoples' Rights Program) at Columbia University organized an International Seminar on *Indigenous*

3. E/2004/43.

4. E/C.19/2011/13.

5. A/HRC/15/34 and follow up in A/HRC/15/37/Add. 3.

6. E/C.19/2011/6.

Peoples' Rights and Unreported Struggles: Conflict and Peace, from 14–15 May 2016. The questions addressed at the Seminar included the following: What are the forms of violence specific to Indigenous peoples? Are there forms that do not express themselves in physical violence? Are there specific causes for conflicts affecting Indigenous peoples? What can we learn from case studies? Can existing norms and policies for dealing with conflict apply to Indigenous peoples? What is the international normative framework applicable to conflict affecting Indigenous peoples and its resolution? Has the adoption of the UN Declaration on the Rights of Indigenous Peoples had an impact on conflict resolution and peace solutions? Should Indigenous peoples-related conflicts be handled differently from other so-called “ethnic conflicts”? What gaps must be addressed in terms of national and international mechanisms for the prevention of atrocities and the promotion of peace in cases where Indigenous Peoples are involved? What impact does the deliberate destruction of cultural heritage have on Indigenous Peoples’ human rights? What is the human rights approach and response to the deliberate destruction of cultural heritage of Indigenous peoples? How could existing mechanisms of conflict resolution, national and international, be improved in regards to Indigenous Peoples? What can be learned from efforts toward conflict resolution involving Indigenous Peoples, including peace agreements and a gender perspective, in different parts of the world? What are the opportunities we can seize to make progress in this area and what recommendations can we make to various parties?

The International Seminar was co-sponsored by Columbia’s Center for the Study of Ethnicity and Race, the Human Rights Institute of Columbia Law School, the Heyman Center for the Humanities, The Columbia University Seminar on Indigenous Studies and the Columbia University Department of Anthropology. It was also co-sponsored by Gáldu Resource Centre for the Rights of Indigenous Peoples (Norway), the International Work Group on Indigenous Affairs (Denmark), the Tebtebba Foundation (The Philippines) and the Universidad Indígena Intercultural de America Latina y el Caribe. The Seminar held nine panels and heard twenty-eight speakers, including two keynotes (the UN Special Rapporteur on the Rights of Indigenous Peoples

and the UN Special Rapporteur in the Field of Cultural Rights). Some 120 participants attended the Seminar from around the world representing Indigenous Peoples, governments, intergovernmental organizations, non-governmental organizations and academia. A summary of observations, lessons learned and recommendations from the International Seminar appear in Appendix One.

Most of the authors in this volume participated at the International Seminar at Columbia. Others were also invited to contribute. The book has been conceptualized to address broad issues of conflict and peace pertaining to Indigenous Peoples and their human rights. While some of the chapters are geographically specific, they each address major questions that are relevant to many situations and are examples of broader interest. Inspired by Indigenous Peoples' unwavering efforts and initiatives towards the resolution of conflicts, the book asks questions that underlie the global peace agenda, yet provide the Indigenous angle, in addition to highlighting topics that are particular to the situation of Indigenous Peoples: the human rights standards applicable in situations of conflict, including the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration); the issue of the responsibility to protect; violence against women; women's contributions to peace; environmental violence; grassroots peace movements and their strategies; the negotiation and implementation of peace accords; structural violence; seeking conflict resolution through the courts; the potential and limits of shaming and sanctions; and a peace-mapping model for sustainable peace that includes Indigenous theories of peace.

The book contains a number of case studies with a geographical focus at the national level—Chile, Nicaragua, Colombia, Russia, India, Bangladesh, the Philippines—or at the regional level, namely Africa, in the Great Lakes region and East Africa.

The title of the book contains the phrase “unreported struggles” to underline the invisibility that often coats Indigenous Peoples' struggles in the context of conflicts, as part of deeply engrained structural violence and its long-term historic roots of dispossession, trivialization and marginalization imposed on Indigenous Peoples by the colonial paradigm.

The book starts with a global overview of the topic of conflict, peace and the human rights of Indigenous Peoples by Victoria Tauli-Corpuz, the United Nations Special Rapporteur on the rights of Indigenous Peoples. While underlining the international legal standards applicable in situations of armed conflict, she highlights examples of two countries, Colombia and the Philippines, where Indigenous Peoples are caught in between on-going hostilities and continue to face serious violations of their rights, while also facing challenges in the context of peace negotiations and transitional justice. Tauli-Corpuz points out that, while the specific triggers and context of each armed conflict are different, the grave consequences of these conflicts share common characteristics of serious violations such as forced displacement, extrajudicial executions, sexual violence and forced recruitment of children. The violations against Indigenous Peoples in the context of armed conflict cause trauma and irreparable harm, destroy cultures and rip apart the social fabric of the affected Indigenous communities. Conflict generally affects Indigenous Peoples who are already marginalized and entrenches them in poverty, perpetuating high illiteracy rates and poor health indicators. Many Indigenous Peoples reside in ancestral territories that are rich in natural resources. Land disputes are frequently the root cause of conflict as Indigenous Peoples are faced with dominant and powerful political and economic interests who use the state institutions and state laws to seek control over their lands and exploit their resources. In many instances, there are private interests behind these actions, utilizing the presence of armed actors to facilitate land grabbing and exploitation of natural resources such as minerals and metals, oil, gas and coal, timber and water. In other situations, armed groups claim ideological grounds for occupying Indigenous lands and seek to involve Indigenous Peoples in their armed struggle. The often-scarce presence of state institutions and services in Indigenous territories leaves Indigenous Peoples particularly vulnerable to the force of non-state armed actors. The author states that collective reparations for Indigenous Peoples is an issue that should be considered within the potential remedy measures in the peace accords and these should be subject to prior consultation with Indigenous Peoples.

In Chapter 2, on intercultural conflict and peace-building, Jose Aylwin analyzes the struggles of Indigenous Peoples in Chile, which is one of the few, if not the only state in the region, which does not recognize Indigenous Peoples, nor does it recognize their collective rights, such as the right to political participation or autonomy or the right to lands and resources, in its political constitution that dates back to 1980. With the proliferation of land grabbing and land disputes and the securitization of public life that has negatively impacted the human rights of the Mapuche people, social movements have called for a constituent process aimed at replacing the 1980 Constitution by a new democratic, plural and inclusive constitution. Aylwin explores the potential of such a process for the resolution of conflicts that would entail the recognition of Indigenous Peoples' collective rights, including political and territorial rights denied today.

In Chapter 3, Mirna Cunningham also brings out the transformative potential of constitutional reform, by analyzing the example of the peace processes in Nicaragua. Since 1990, after the establishment of Autonomous Regional Governments, a process of transformation began in the Nicaraguan State, in which the definition of public policies regarding Indigenous Peoples' rights and the strengthening of autonomy has continued since. Describing, among others, the negotiation between the Government of Nicaragua with different armed Indigenous groups between 1984 and 1989 that led to the signing of approximately 400 peace accords, the author points out that conflict resolution requires diverse and complementary strategies. She also highlights the role of women in peace autonomy commissions.

Chapters 4 and 5 focus on Africa. In Chapter 4, Albert Barume examines the impact and causes of conflicts on the most vulnerable or marginal social groups of African societies, notably Indigenous communities such as the San or "Bushmen," Touareg, Maasai and Batwa or "pygmies," which remain undocumented and are often denied or hidden. The author argues that conflicts affecting Africa have particularly impacted Indigenous Peoples in three major ways: firstly, there are African Indigenous communities caught up in conflicts between major groups; secondly, there are African Indigenous Peoples whose lands and territories are militarized for various reasons and that

are, to a certain extent, forced to join armed conflicts; thirdly, there are African Indigenous Peoples involved in land-related disputes resulting in open or latent conflicts, including with states and with private businesses. Paths identified by the author to uncover the imposed invisibility of such conflicts and to seek solutions include: firstly, African governments and policymakers coming to terms with their misunderstandings regarding Indigenous Peoples and aligning themselves with the work of the African Commission on Human and Peoples' Rights, which has conceptualized and clarified what the term "Indigenous Peoples" means and does not mean in Africa; in its human rights-based understanding, the term refers to a limited number of traditional African communities whose land-based livelihoods suffer from prejudiced views and are forced to abandon their cultures or traditional economies and integrate into mainstream lifestyles. Secondly, in the context of globalized security problems and concerns, Africa's bilateral and multilateral partners on peace and security should take a wider approach to addressing the root causes of conflicts and insecurity, including redress of historical injustices that have pushed many communities, including Indigenous Peoples, into a life in the margins of society, thereby making these communities fertile ground for extremism. Thirdly, conservation agencies, safari companies, businesses, International Financial Institutions and similar actors should develop clear and updated guidelines or codes of conduct guided by international human rights standards on Indigenous Peoples, including their ownership rights over lands and natural resources. And fourthly, UN agencies, governments, mainstream media and other actors working on data and information should generate disaggregated data on Indigenous Peoples as victims of conflicts, including through specific indicators and introducing variables in research and censuses.

In Chapter 5, Naomi Kipuri focuses on East Africa, where Indigenous Peoples are mainly but not exhaustively hunter-gatherers and pastoralists, including in Kenya, Tanzania and Uganda. Systematic human rights violations faced by Indigenous communities include discrimination; encroachment and expropriation of their lands, territories and resources leading to tenure insecurity; political and social exclusion; violence, including forced relocations, killings,

intimidation and maltreatment; deprivation of all means of livelihood; rape of women and young girls; destruction of communities and their cultural heritage; psychological torture; and other gross violations of human rights. Such experiences, in almost every case, result in conflict. Starting from the invisibility of these conflicts, the essay examines the mechanisms used to address and resolve these conflicts at the local and regional levels. It further assesses the efficacy of these methods of conflict resolution in the face of other peace-building possibilities involving Indigenous Peoples. Litigation that has resulted in a number of positive decisions for Indigenous Peoples (such as the *Endorois* and *Ogiek* cases) has proven lengthy, expensive, cumbersome and may not necessarily achieve the desired result due to non-implementation. Alternative possibilities may now need to be explored for the realization of human rights of Indigenous Peoples in the region, including peace-building and negotiated settlements that Indigenous Peoples have pursued, often with positive results. The author makes a number of recommendations to states in Africa, to regional bodies and to bilateral agencies and development partners.

In Chapter 6, Rodion Sulyandziga and Dmirty Berezhkov review Indigenous Peoples' rights in Russian legislation and how the legal environment has been weakened as a result of changes in the political regime over the past two decades. Analyzing laws and administrative practices around ecological issues and extractive industries, the authors present certain examples, with special focus on experiences in the Khanty-Mansiysk region. The region, one of the most developed in the Russian Federation, had, for many years, one of the lowest levels of conflict between Indigenous Peoples and extractive companies in the country and was presented as one of the best experiences of negotiations between Indigenous Peoples and extractive industry. However, experts believe that the region has no fewer challenges than other regions in the country; rather, these were better covered because of significant financial resources concentrated in the region and massive public relations campaigns in the media. The oil companies have enough financial resources to pay compensation immediately, so Indigenous families agreeing to sign contracts with companies giving up their ancestral lands usually do not typically raise the issue of free,

prior and informed consent or environmental pollution. But as soon as Indigenous Peoples' representatives refuse to agree with oil extraction, they are met with the joint efforts of both powers—administrative and the oil industry—through public relations campaigns, cheating through legislative measures, police and intelligence agencies pressure, judicial pressure and other tools to gain access to land and overcome the resistance of the local community. Because of the general political situation of the country, the typical human rights tools of public opinion or international law are not working properly to protect Indigenous Peoples' land and cultural rights and advocates are increasingly termed “foreign agents,” “spies,” or “Western servants.” The current shift away from the international legal framework compounds the already existing insecurity of Indigenous Peoples in the country. The author concludes that there is a need for the international Indigenous movement to act jointly on emerging challenges and to find appropriate solutions in cooperation with partners and allies.

Chapters 7 and 8 address perspectives on Indigenous women and conflict. In Chapter 7, Andrea Carmen lays out the concept of environmental violence developed by Indigenous women, and now accepted by UN bodies, that highlights the fact that environmental contaminants causing disease, birth defects and death are deliberately released into the environment because they are toxic to living things (i.e., pesticides), or as a result of industrial or military processes that are judged by States and corporations to pose an “acceptable risk” and “allowable harm.” States and corporations deny “provable” impacts despite the clear evidence that they cause a range of serious health and reproductive impacts which disproportionately affect Indigenous women and children. The author discusses the impacts of environmental violence based on case studies in Latin America and other evidence. She analyzes human rights-related standards and action in the international arena, showing signs of progress towards holding states and corporations accountable for the causes of environmental violence. She also highlights continued activities and advocacy by impacted Indigenous Peoples that provide increased access to remedies for victims and create a basis for greater understanding and recognition of these under-recognized and under-reported human rights violations.

In Chapter 8, Binalakshmi Nepram draws from the experiences of Indigenous women in long-term conflicts in Northeast India to highlight their major role and strong and sustained grassroots movement for peace. The author places the discussion within the overall challenges of recognition of Indigenous identity in India, and recounts the struggles and strategies of the non-violent peace movement of the women in Northeast India over the past 200 years, from the anticolonial movement to the Meira Paibis, the Women Torchbearers, the Movement Against Counter-Insurgency, the Naga Mother's Association, the Indigenous Women's movement in Assam to the Manipur Women Gun Survivors Network. After analyzing specific examples of the women's peace movement, the author concludes that, to galvanize social change in a big way for peace in the region, there is a need for similar non-violent movements by women to continue in full vigor.

Chapter 9 is an original examination of the emerging international doctrine of the responsibility to protect (R2P) as it applies to Indigenous Peoples. Shayna Halliwell analyzes this topic through the study of the potential application of this doctrine to the Chittagong Hill Tracts in Bangladesh, where the Indigenous Peoples of the area have been socially, economically and politically marginalized for decades, while violence has steadily been perpetrated against them with impunity. Why has R2P not yet been mentioned within official United Nations documents on this conflict and is it an appropriate mechanism for intervention in this instance? To test whether R2P could be applicable in situations of violence against Indigenous Peoples, this chapter first outlines the history of the development of R2P and discusses the literature around its normative elements. The author uses the United Nations Declaration on the Rights of Indigenous Peoples as a normative framework through which she assesses the Indigenous right to self-determination as it pertains to mass atrocity prevention and intervention in Indigenous communities. Using the case study of the Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh, she then analyses whether R2P could be an appropriate international humanitarian intervention mechanism in conflicts victimizing Indigenous Peoples. She concludes with an assessment of how R2P could be better shaped to address situations of mass atrocities

involving Indigenous Peoples, and how this paradigm shift may affect future iterations of the Responsibility to Protect as an evolving norm.

Two chapters, 10 and 11, approach conflicts, their causes and possible solutions applying the long lens of historical and sociological analysis as a methodology. Tone Bleie uses this methodology to provide insights into the conflict of the Chittagong Hill Tracts in Bangladesh and Ulia Gosart unveils the complex conflicts affecting Indigenous Peoples in Russia.

In Chapter 10 on the “Politics of Shaming and Sanctions: Rewriting the Anatomy of the Bangladeshi State,” Bleie draws on various disciplines in order to substantiate her main hypothesis: that the assumption of alleged regime shifts should be substituted by an analytical emphasis of structural continuity in order to better explain why the CHT Accord’s principal provisions remain largely unimplemented 20 years after the deal was signed, regardless of parties in executive power. In order to examine the validity of this assertion, the author tests five main arguments. First, civil-military relations are intertwined—a conglomerate—and cemented by patrimonial vertical and horizontal bonds of patronage, non-transparent control over state resources and a power-sharing arrangement that makes the categories “civilian” and “military” fuzzy and overlapping. Second, this tacit power-sharing arrangement has three distinct phases: an early antagonistic one; a second experimental, increasingly institutionalized phase during military rule (with partly civilian elements) and reign; and third, the current phase of uneasy opportunistic co-existence, with (until recently) caretaker governments as a safety valve. Fourth, during times of military rule, the armed conflict in CHT became integral to this tacit national power-sharing structure, a civil-military complex not only in its own right, but one of the Bangladeshi state’s bearing pillars. A final argument is that the sources of reproduction of a political culture of oral rhetoric (agitational in nature), patronage and factionalism need to be fully appreciated in order to explain striking structural continuity across institutions (political parties, military and bureaucracy).

A deeper understanding of such societal and system-wide deeply culturally coded behavioral patterns renders it possible to predict and develop approaches that may engender structural change and a new

scope for national and international actors to facilitate, steer or help augment positive societal change.

In Chapter 10, Gosart discusses structural violence as it applies to Indigenous Peoples in the Russian Federation. The essay emphasizes that structural violence toward Indigenous Peoples, as enacted through the workings of contemporary institutions of governance of the Russian state, recreates the oppression characteristic of the Soviet era. It reveals a continuity between Soviet treatment and political opportunities of the “small Peoples of the North” and the legal and political institutions defining indigeneity in contemporary Russia. Further, it argues that the question of Indigenous rights stemmed from and remains a part of nationality policies, a state-wide set of measures focused on the political rights of the non-Russian groups within the multicultural federal system of Soviet and post-Soviet Russia. These policies institutionalized the notion of inferiority of (now Indigenous) communities as dependent on the guidance and financial assistance of the state. The notion of inferiority shaped the consciousness of Soviet and post-Soviet authorities that continue to administer these Indigenous communities as populations dependent upon the state. And yet, the opportunities to participate in the state system of administration since Soviet times has shaped Indigenous politics in post-Soviet Russia; and the fact that Indigenous activists are able to envision their communities as “Indigenous Peoples,” or communities with a right to self-determined existence, signifies a step forward, despite increased oppression against non-Russian minorities today in response to the current use of nationality policies as a means toward centralization of the state. The author develops these claims in three interrelated essays, based on findings from Russian and other scholarship. The first essay is on the legal and institutional framework concerning Indigenous rights; the second essay is on means of Indigenous resistance to structural violence; and the final essay is on consequences of structural violence, drawing from the studies of Indigenous demographics and socio-economic conditions of Indigenous populations, as well as the 2010 Russian census data. The essay advocates widening of the political opportunities for Indigenous Peoples at the regional and local levels of the contemporary Russian state.

In Chapter 12, Neal Keating's essay is informed by the emerging science of sustainable peace. He presents the A4 peace map model, developed by the Advanced Consortium on Conflict, Complexity and Cooperation at the Earth Institute, Columbia University. Discussing Indigenous experiences from North America and Asia, the author points out that the nodal variable core of the AC4 peace-mapping model approximates the regulator relationship between peace and war in terms of a dynamical ratio between positive and negative intergroup reciprocity, and so finds support from the spectral theory of peace. Furthermore, the design corresponds with Indigenous theories of peace, such as the *Gayanashago:wa*, that view peace as an active process of ongoing renewal and 'requickening' of intergroup relations. The model proposes sustainable peace as a dynamic effect generated not only by the presence or absence of given elements and aspects that may enable peace or trigger conflict, but also produced by the shifting nonlinear relations between these different elements and aspects over time.

Many Indigenous Peoples' representatives continued to address issues of conflict and peace at the Sixteenth Session of the UN Permanent Forum on Indigenous Issues in 2017 that also marked the Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous leaders urged states and the international community to work constructively with Indigenous Peoples towards peace. Resounding these messages, a Touareg representative ended her speech to the Forum in 2017 with this appeal to the world:

I urge you to preserve Indigenous Peoples, a part of you".

The Indigenous Peoples' Program of the Institute for the Study of Human Rights at Columbia University hopes that this book will enrich the literature on Indigenous Peoples' rights, conflict and peace and will inspire further research in this area.

Elsa Stamatopoulou

Conflict, peace and the human rights of Indigenous Peoples

Victoria Tauli-Corpuz¹

It is a pleasure for me to be present here today and speak on this important topic. Through many decades of my life as an indigenous activist and an indigenous rights advocate and in my two years as the Special Rapporteur on the rights of indigenous peoples appointed by the United Nations Human Rights Council, I regrettably have born witness to the tragic consequences armed conflict has on indigenous peoples across the world.

As part of my mandate as Special Rapporteur, I monitor and report publicly on the situation of indigenous peoples through country visits and by sending communications to Governments on specific cases of alleged violations. Through this work, my predecessors and I have engaged numerous situations of armed conflict where we have called for a halt to violations and the adoption of protection measures, argued for the need to hold perpetrators accountable and to ensure that victims are provided with reparations.

The specific triggers and context of each armed conflict are different; however the grave consequences share common characteristics of serious violations such as forced displacement, extrajudicial executions, sexual violence and forced recruitment of children. The violations against indigenous peoples in the context of armed conflict cause trauma and irreparable harm, destroy their culture and rip apart the social fabric of the affected indigenous communities. Conflict generally affects indigenous peoples who are already marginalised and entrenches them in poverty, perpetuating high illiteracy rates and poor health indicators.

Conflicts affecting indigenous peoples can often be traced back to long-standing historical injustices and discrimination originating in the context of colonization and dispossession of indigenous peoples' lands, territories and resources. Many indigenous peoples reside in ancestral territories that are rich in natural resources. Land disputes are

1. Victoria Tauli-Corpuz is the United Nations Special Rapporteur on the Rights of Indigenous Peoples; she addressed the International Expert Seminar on "*Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*" at Columbia University on 14 May 2016.

frequently the root cause of conflict as indigenous peoples are faced with dominant and powerful political and economic interests who use the state institutions (e.g., police, military, courts) and state laws to seek control over their lands and exploit their resources. In many instances, there are private interests behind this, and they utilise the presence of armed actors to facilitate land grabbing and exploitation of natural resources such as minerals and metals, oil, gas and coal, timber and water. In other situations, armed groups claim ideological grounds for occupying indigenous lands and seek to involve indigenous peoples in their armed struggle. The often-scarce presence of state institutions and services in indigenous territories leaves indigenous peoples particularly vulnerable to the force of non-state armed actors.

In this presentation, I wish to underline the international legal standards applicable in situations of armed conflict and I would like to highlight examples of two countries where indigenous peoples are caught in between on-going hostilities and continue to face serious violations of their rights. The two countries, Colombia and the Philippines, also highlight the challenges indigenous peoples face in the context of peace negotiations and transitional justice.

I. International legal standards applicable to armed conflict

a) International human rights law

The International Covenant on Civil and Political Rights (ICCPR) affirms basic human rights such as the right to life, the right to liberty and security and the prohibition against torture or cruel, inhuman or degrading punishment, and the right to have an effective remedy for persons whose rights have been violated. The ICCPR also stipulates the right to self-determination, non-discrimination, and that ethnic, religious or linguistic minorities not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.²

2. International Covenant on Civil and Political Rights (ICCPR), Arts. 1, 2, 6, 7, 9 and 27.

In situations of armed conflict and unrest, States commonly seek to declare states of emergency and derogations from human rights. The Human Rights Committee has noted that any measures derogating from a State party's obligations under the Covenant must be limited to the extent strictly required by the exigencies of the situation. In addition, Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: Article 6 (right to life), Article 7 (prohibition of torture or cruel, inhuman or degrading punishment), Article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), Article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), Article 15 (the principle of legality), Article 16 (the recognition of everyone as a person before the law), and Article 18 (freedom of thought, conscience and religion).³

Article 2(2) of the Convention against Torture is explicit and states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

b) Right to a remedy

In order to advance the right to a remedy in situations of armed conflict, the General Assembly adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2006.⁴ The Basic Principles entrench the obligation to respect and implement international human rights law and international humanitarian law by preventing violations; ensure prompt and impartial investigations and action against those alleged responsible; provide victims of violations with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and provide effective remedies to victims, including reparation. Reparations are defined

3. CCPR/C/21/Rev.1/Add.11, "General Comment No. 29 on States of Emergency (Article 4)," (2001 Human Rights Committee, 2001).

4. A/RES/60/147.

as consisting of the following elements: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Committee against Torture has furthermore noted in its General Comment No. 3 that “culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others. The Committee notes that collective measures do not exclude the individual right to redress.”⁵

The jurisprudence of the Inter-American human rights system has entrenched the responsibility of States to guarantee indigenous peoples protection in the context of armed conflict and to establish accountability of perpetrators. It has provided concrete orders on the obligation to remedy and repair damages to indigenous peoples caused by State actors, their collusion with paramilitaries or by omission of the State to protect.⁶ The case of *Plan de Sanchez Massacre v. Guatemala* set an important precedent by recognising the community as a beneficiary of collective reparations. The IACtHR ordered in its judgment in 2004 that the State, in addition to compensation, should undertake a series of measures aimed at achieving restitution, rehabilitation and satisfaction through acknowledgement. The measures included a public act of recognition in the village, translation of the Convention and judgment into indigenous languages, the provision of free medical and psychological services, and to undertake efforts to promote indigenous culture by the establishment of an educational institution.

c) International humanitarian law

In situations of armed conflict, both human rights law and international humanitarian law apply concurrently.⁷ International

5. CAT/C/GC/3, para. 32.

6. *Plan de Sanchez Massacre v. Guatemala*, IACtHR, Judgment, Ser. C, No. 105, 2004; *Moiwana Community v. Suriname*, IACtHR (Reparations), Ser. C, No. 145, 2006.

7. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Judgment, 2004, para. 106; *Democratic Republic of the Congo v. Uganda*, ICJ Judgment, 2005, paras. 217–219; see also OHCHR, *International Legal Protection of Human rights in Armed Conflict*, 2011.

humanitarian law is binding on all parties to hostilities; both State and non-State armed groups.

International humanitarian law is based upon the fundamental principles of distinction and proportionality. All sides in a conflict must distinguish between legitimate military targets on the one hand and civilians and civilian objects on the other. Attacks must not be directed against civilians and civilian objects. All persons who are not members of the armed forces are considered to be civilians and protected against attack, unless and for such time as they take a direct part in hostilities.⁸ The obligation to respect and ensure respect for international humanitarian law applies in all circumstances, even if the adversary breaches the law; it does thus not depend on reciprocity.⁹

The applicable international law provisions, binding on all parties in non-international conflict, are Common Article 3 of the Geneva Conventions and the obligations and prohibitions found in customary international humanitarian law.

Common Article 3 binds all parties to the conflict to respect and apply humane treatment of persons taking no active part in hostilities without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. It prohibits the following acts at any time and in any place: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused. Serious violations of international humanitarian law furthermore constitute war crimes and entail individual criminal responsibility. States must investigate war crimes allegedly committed by their nationals

8. *Customary International Humanitarian Law*, ICRC, Rules 1, 5, 6, 7.

9. *Customary International Humanitarian Law*, ICRC, Rule 140.

or armed forces or on their territory, and, if appropriate, prosecute the suspects. Statutes of limitation do not apply to war crimes.¹⁰

d) Crimes against humanity

Serious human rights and international humanitarian law violations that have been carried out in a widespread or systematic manner against a civilian population may constitute crimes against humanity. The commission of crimes against humanity may occur irrespective of the existence of an armed conflict and the application of international humanitarian law.

e) The ILO Indigenous and Tribal Peoples Convention No. 169, 1989

Article 16 of the ILO Convention No. 169 stipulates that “the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent...whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.” Article 6 speaks of the duty of States to consult indigenous peoples “through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.” The Convention furthermore establishes the right to be able to take legal proceedings for the protection of their human rights (Art. 12) and to retain their own customs and institutions (Art. 8). The Convention further requires that, when applying national laws to indigenous peoples, customs and customary laws be regarded (Art. 8); and that adequate procedures be established to resolve land claims (Art. 14).

10. *Customary International Humanitarian Law*, ICRC, Rules 150, 151, 156, 158, 160

f) The United Nations Declaration on the Rights of Indigenous Peoples, 2007

Under the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms recognized under international human rights law (Art. 1). This includes rights of indigenous individuals to “life, physical and mental integrity, liberty and security of person” and also includes collective rights of indigenous peoples to “live in freedom, peace and security as distinct peoples and... not be subjected to any act of genocide or any other act of violence” (Art. 7).

Of particular relevance in the context of armed conflict, Article 30 establishes that military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. Article 30 also establishes that States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 10 affirms that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 28 states that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

Article 40 states the right of indigenous peoples to “access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective

remedies for all infringements of their individual and collective rights” and said decisions should consider the customs, traditions and legal systems of indigenous peoples and international human rights.

II. Experiences of indigenous peoples in armed conflict

Indigenous peoples are currently affected by armed conflicts between the military and armed groups in a number of countries including Colombia, India, Myanmar and the Philippines. Other countries where similar occurrences in the past still have lingering effects on indigenous peoples include Bangladesh, Guatemala and Peru. These armed conflicts affect indigenous peoples in various ways and indigenous peoples have adopted different strategies in such situations. Certain indigenous peoples join or are sympathetic to revolutionary or guerrilla armed movements because these groups are able to sympathise and to a certain extent address the problems indigenous peoples face, such as extreme poverty, absence of the State and the utter lack of basic social services and infrastructure which the State should provide, as well as protection against land grabbing and other injustices from the wealthy and politically influential sectors of society. From the perspectives of indigenous peoples, guerrilla movements may be perceived to provide them protection against despotic landlords or abusive government officials including police, military or local politicians.

Certain indigenous individuals choose to become members of armed guerrilla movements. Their families are often stigmatised and subjected to military harassments and become paramilitary targets on the mere basis of their relationship with a member of a non-state armed group. Indigenous members of armed groups who seek to leave armed movements for various reasons and attempt go back to their communities as civilians face particular challenges. Their community may not accept them back and because they fear for their safety, they may seek protection from the military or police. Thus they become identified by the armed group as enemies of the revolution and designated targets for extermination. In such cases, indigenous former members of armed groups are at risk of being recruited to join paramilitary armed groups who are used to fight the guerrillas.

Some indigenous peoples have declared their neutrality and seek to keep away from armed groups in their territories and from State armed forces through their traditional governance systems. There are examples of this in the Philippines and Colombia. In many cases, because the indigenous peoples are divided amongst themselves, with some sympathetic to guerrillas and others to the State military and police forces, their communities become centers of armed operations that often lead to their being forcibly displaced from their communities.

In some cases, indigenous peoples themselves are armed and they have their own indigenous warriors who attempt to keep the military and armed guerrillas away.

In other situations, private security guards of corporations (e.g., mining corporations present in indigenous peoples' territories) recruit indigenous men and use them to protect their mining operations. State sponsored paramilitary forces are at times used by private corporations for their security.

Armed non-state groups address the issues of indigenous peoples in a range of ways. For Marxist or Maoist groups, indigenous peoples' issues and rights are regarded to be within the objectives of the class struggle. The legitimate concerns of indigenous peoples are thus utilised by such armed groups to highlight the failure of the State and therefore supports their justification to overthrow the State in favour of the dictatorship of the proletariat. Indigenous peoples are classified by such armed groups as national and ethnic minorities and not as indigenous peoples with the right to self-determination. This is the case of the New Peoples' Army in the Philippines and the Naxalites of India.

a) Some common aspects of the conflicts in Colombia and the Philippines

I wish to make specific reference to two country situations, Colombia and the Philippines, where indigenous peoples have been caught in armed conflict between multiple armed groups and State forces. In both countries, left-wing guerrilla groups have operated since the 1960s and have used indigenous territories to launch attacks. The ensuing armed confrontations between the armed groups and State forces within their

territories has converted their ancestral lands into conflict zones and resulted in frequent large-scale forced displacements of indigenous peoples, killings of their leaders and community members, the forced recruitment of indigenous children, sexual violence and other serious violations.¹¹ The considerable natural resources within indigenous territory add additional dimensions to the conflict as private entities seek to exploit such resources, notably mining and logging, and use private armed actors to advance their economic interests.

In both Colombia and the Philippines, indigenous peoples' rights have been recognised in the Constitution and domestic legislation has been adopted to protect the rights of indigenous peoples and to award them land titles for their ancestral lands. Yet, in both countries, indigenous peoples fail to receive guarantees for these rights and continue to suffer from poverty and marginalisation, compounded by the persistent violence of armed actors. I wish to refer to some similarities in the challenges indigenous peoples face, both in Colombia and in the Philippines, in the context of the armed conflict and on-going or recent peace negotiations.

i) Colombia

I visited Colombia in February 2016 by invitation of the Government and while I was not there to undertake an official country mission, I nevertheless met with indigenous representatives and was apprised of the situation in the country. Colombia has approximately one million indigenous people, which represents around 3% of the overall population, and there are 102 different indigenous peoples. Land titles, known as *resguardos*, under collective ownership of indigenous peoples, comprise around 30% of the national territory. The Colombian Constitution of 1991 recognizes cultural diversity and the rights of indigenous peoples to autonomy, collective property, participation and the exercise of indigenous jurisdiction. The ILO Indigenous and Tribal Peoples Convention No. 169 was ratified by Colombia in 1991

11. As noted in my report to the Human Rights Council in 2015, military officials have often perpetrated sexual violence as a weapon to weaken the resolve of indigenous peoples where rights to lands and resources are disputed, A/HRC/30/41, para. 47(c).

and while abstaining from the vote on the United Nations Declaration on the Rights of Indigenous Peoples of 2007, the Government later explicitly expressed its support for the Declaration.

Despite the formal recognition of their rights, indigenous peoples face significant obstacles to exercising these as they have been caught in the continuous violence on their territories by the two guerrilla groups—the FARC-EP and the ELN—and by various criminal gangs often composed of ‘demobilized’ paramilitaries. They also suffer violations directly attributed to State armed forces. There are over 6 million internally displaced persons in Colombia. Indigenous displacement is extensive yet reliable data is unavailable as many indigenous people remain unregistered due to the remoteness of indigenous territories, lack of access to State services and cultural barriers.

In 2015, the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Colombia observed that eight indigenous leaders were killed and that 78 indigenous leaders, 11 of them women, were victims of attacks. During the same period, 58 indigenous leaders (11 women) were threatened, the majority by paramilitary criminal gangs; the threats expressly referred to their participation in indigenous mobilisation and pointed out the indigenous leaders of being terrorists at the service of the insurgency.¹² Simultaneously, indigenous children continue to be forcibly recruited by guerrilla groups. Violations were also carried out against indigenous peoples by State forces, such as the excessive use of force by the Mobile Riot Squad of the National Police during various large-scale indigenous mobilisations in 2015.

Despite the disproportionate impact of the armed conflict on indigenous peoples and Afro-Colombians, their situation has not been specifically addressed in the on-going peace talks between the Government and the FARC-EP in Havana. This has raised concerns by indigenous peoples, especially related to their territories and their legal right to be consulted. Indigenous representatives have expressed concerns over the negotiations between the two parties regarding the designation of areas for the demobilisation. There is fear that demobilisation areas will overlap with indigenous lands and

12. A/HRC/31/3/Add.2, para. 82.

territories, thus affecting their autonomy both in economic, cultural and political terms as well as their ability to exercise indigenous jurisdiction. Furthermore, some of the guerrillas who have entered their territories have been involved in abuses against the indigenous peoples or forcibly recruiting indigenous persons, including children. Indigenous peoples also expressed concern over the facilitation of the entry of so-called development projects (e.g., for mineral, oil and gas extraction, the building of huge infrastructures and the expansion of agricultural plantations) in the post-conflict scenario without them being consulted and their free, prior informed consent being obtained.

With regard to victim participation in the peace process, to date only four indigenous persons have been invited to attend as members of a victim delegation to the peace talks with the FARC-EP in Havana. However, the victims participated in their individual capacity and not as representatives of their population groups or social sectors. On 7 March 2016, representatives of indigenous peoples' and Afro Colombian organisations announced the formation of the Ethnic Commission for Peace and Defense of Territorial Rights, made up of authorities from both population sectors, in order to safeguard their territorial and collective rights in the process of negotiation and implementation of the peace agreements. The Ethnic Commission seeks to send a delegation to meet with both of the negotiating parties in Havana and also to dialogue with other actors nationally and internationally about peace building efforts in Colombia.

Related to the peace process is also the right to reparation for victims of the armed conflict. Colombia has initiated a commendable reparation and restitution process for victims of the conflict, and specific collective remedies have been devised for indigenous peoples under the Decreto Ley 4633 of 2011. Nevertheless, I am concerned over the delays in implementing collective reparations and restitution for indigenous peoples and over information indicating that indigenous beneficiaries have not been adequately consulted in the process.¹³ In my conversations with the representatives of indigenous peoples, they strongly expressed that it is imperative for them to be effectively

13. A/HRC/31/3/Add.2, para. 67.

involved in defining, designing and implementing collective reparations and territorial peace as these relate to their territories. In light of the above, I consider that collective reparations for indigenous peoples is an issue that should be considered within the potential remedy measures in the final peace accord and these should be subject to prior consultation with indigenous peoples.

Finally, I encourage the parties to negotiations, the Government of Colombia and the FARC-EP, to adopt the measures required to respect, protect and fulfill the rights of indigenous peoples. I strongly recommend that the final peace accord include explicit reference to the commitment of the negotiating parties to ensure respect for internationally and constitutionally recognised indigenous rights in all aspects and phases of their implementation. The participation of indigenous representatives in the peace process would be an important safeguard to ensure their rights are effectively protected and that they become true beneficiaries of the much longed for peace in Colombia.

ii) The Philippines

The indigenous population in the Philippines is estimated at between 10% and 20% of the national population. Mindanao is home to the largest population of indigenous peoples, the Lumads, where the overall socio-economic indicators are some of the lowest in the country.

The Constitution of the Philippines specifically recognizes the rights of indigenous peoples in numerous articles. It was the first country in Asia to pass a law governing indigenous peoples' rights, the Indigenous Peoples Rights Act in 1997. The law recognises the right of indigenous peoples to land titles and to use their own justice systems, conflict resolution institutions and peace building processes. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples of 2007, however it has yet to ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

In the whole country, there have been decades of two long-standing internal armed conflicts: one between the Government and the communist insurgency, the New People's Army, and in Mindanao, between both the Government forces and the communist insurgency

and Government forces and the Moro (the collective name for minority Muslim groups) non-State armed groups, which have resulted in tens of thousands of people being forcibly displaced and killed. In February 2015, the Internal Displacement Monitoring Centre (IDMC) estimated that nearly half a million people were living in displacement, of which estimated 95,000 had fled conflict and violence in Mindanao.¹⁴ Most of the violence and displacement takes place in remote areas and remains under-reported.

The Lumads have, for decades, been disproportionately affected by the conflict and have long been exploited for political use by all parties to the conflict. The majority of the indigenous peoples are located in geographic areas in north east Mindanao where the communist insurgency led by the armed wing of the Communist Party of the Philippines, the New People's Army (NPA), and the counter insurgency operations by the Armed Forces of the Philippines (AFP), have been and continue to take place. Because these areas have been long-standing strongholds for the NPA, the indigenous peoples are often stigmatised and targeted as members of the NPA or considered supportive of the communist agenda and, as a result, are regularly subject to harassment, threats, recruitment into pro-government paramilitary groups, sexual violence, arbitrary arrest and detention and violent attacks which have resulted in the maiming or killing of indigenous peoples, including children and older persons.

Between January 2015 and October 2015, 17 indigenous people who were Lumad leaders, activists, or villagers, including a child, were confirmed killed. In the same period, ten different displacement incidents involving indigenous people were reported.

It is reported that the paramilitary groups that are responsible for many of the extra-judicial killings, threats, destruction of property and other activities are primarily composed of indigenous peoples who have been recruited and armed over the years by the AFP. I wish to

14. "Philippines: Long term recovery challenges remain in the wake of massive displacement," Internal Displacement Monitoring Centre (February 10, 2015), <http://www.internal-displacement.org/south-and-south-east-asia/philippines/2015/philippines-long-term-recovery-challenges-remain-in-the-wake-of-massive-displacement>

underline that paramilitaries have been pointed out as responsible for serious violations against indigenous communities for well over a decade and my predecessor Prof. Stavenhagen raised serious concerns over this during his country visit back in 2002.¹⁵ The Government and the AFP, however, continue to deny any links with such groups.

Last year, I publically called for a full and independent investigation into several killings of indigenous community members and human rights defenders working in favor of indigenous peoples' rights in Mindanao. In one instance, the director of the Alternative Learning Centre for Agriculture and Development (ALCADEV), a school providing education to indigenous youth, was found murdered on 1 September in one of the classrooms in the town of Sitio Han-ayan. They were killed immediately after members of the Philippine Army and alleged members of paramilitary forces had occupied the school, which resulted in the displacement of 2,000 people. On the same day, two leaders of the Lumad, one youth leader and an elder who is a traditional authority, were also killed. These incidents followed several brutal killings that took place on 18 August 2015 in Bukidnon, Northern Mindanao, where five members of an indigenous Manobo family, including a 72-year-old blind person and two children, were murdered, allegedly by members of the Philippine Army.¹⁶

My colleague, the Special Rapporteur on the human rights of internally displaced peoples (IDPs), visited Mindanao on a country mission in July 2015 and met with displaced indigenous communities who stated that they wished to return to their lands but would only feel safe to do so if the long-term militarization of their region comes to an end and they can return with guarantees of safety, dignity and protection. They expressed concerns over alleged forced recruitment into paramilitary groups, known as Magahat Bagani and the Alamara, and over harassment in the context of the on-going conflict between the AFP and the NPA. Schools have reportedly been closed and/or

15. E/CN.4/2003/90/Add.3, paras. 46–53. See also Philippines Indigenous Peoples ICERD Shadow Report (August 2009), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PHL/INT_CERD_NGO_PHL_75_9922_E.pdf

16. Special Rapporteurs on the rights of indigenous peoples and on the situation of human rights defenders, Press Release (September 22, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481&LangID=E>

occupied by the AFP or Alamara, hampering the access to education of indigenous children. The Special Rapporteur on IDPs urged the Government to give greater attention to militarisation as a cause of displacement and to include specific provisions on the rights of indigenous peoples in the IDP Law currently under consideration.¹⁷

In view of the Government's on-going counter-insurgency efforts and its serious impact on the safety of indigenous communities, I urge the APF to respect core IHL principles, notably that of distinction and the protection of civilians and civilian objects. I join my voice to that of the UN Resident Coordinator in the Philippines¹⁸ and call for the Government to urgently disarm and disband all armed groups and arrest and prosecute those responsible for violence against indigenous peoples. I specifically urge prompt and impartial investigations to be conducted into the allegations of extra-judicial executions, forced displacements and school occupations by the APF and paramilitaries. I call for the resumption of a peace process between the Government and the NPA to end hostilities and to ensure that indigenous peoples are consulted in such a process.

With regard to the conflict between Government forces and the Moro (the collective name for minority Muslim groups) non-State armed groups, I wish to note that non-State armed groups in Central Mindanao and the Autonomous Region in Mindanao are comprised of different factions. The Moro National Liberation Front (MNLF) fought an armed struggle against Government forces between 1969 and 1996, when a peace deal with the MNLF created the Autonomous Region in Muslim Mindanao (ARMM). The Moro Islamic Liberation Front (MILF), a breakaway faction of MNLF, agreed to a peace process in 2012 and the Comprehensive Agreement on the Bangsamoro in 2014, which allows for greater autonomy for the region. Subsequently, the Bangsamoro Islamic Freedom Fighters (BIFF) broke with the MILF and together with the Abu Sayyaf group, remain active in the region.

17. Special Rapporteur on Internally Displaced Persons, Press Release, (July 31, 2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16280&LangID=E>

18. United Nations Resident Coordinator Statement at the Office of the President (December 8, 2015).

The Comprehensive Agreement on the Bangsamoro was intended to end the armed conflict and grant greater political autonomy to the Muslim areas of Mindanao through a Bangsamoro Basic Law (BBL), which has yet to be adopted. Indigenous peoples were sidelined and not invited to participate in the peace negotiations with the MILF¹⁹. While the Comprehensive Agreement states that “indigenous peoples’ rights shall be respected,” it did not mention nor make any references to the Indigenous Peoples’ Rights Act (IPRA, RA 8371), the national law which recognizes rights of indigenous peoples in the whole country.²⁰ It also contains nebulous language, notably stating that: “the customary rights and traditions of indigenous peoples shall be taken into consideration in the formation of the Bangsamoro’s justice system. This *may* include the recognition of indigenous processes as alternative modes of dispute resolution.”²¹ This provision fails to guarantee the existing legal rights of indigenous peoples contained in the IPRA and the UN Declaration on the Rights of Indigenous Peoples. The National Commission on Indigenous Peoples (NCIP) expressed their opinion on this: “As an official statement supporting the sentiment of the affected IPs/ICCs therein, let it be known that the NCIP will continue to work with the implementation of RA 8371 in the Bangsamoro entity believing that the right of IPs/ICCs thereat is protected by the very Constitution of the Republic of the Philippines. The NCIP is one with the IPs/ICCs in saying that the IPRA should continue to remain in the Bangsamoro and must be protected from possible amendments that might be caused by the passage of the BBL in Congress.”²²

As far as the development track is concerned, the indigenous peoples also expressed serious concern over the priorities mentioned in the

19. “The Philippines: Indigenous Rights and the MILF Peace Process,” International Crisis Group (November 22, 2011), <https://www.crisisgroup.org/asia/south-east-asia/philippines/philippines-indigenous-rights-and-milf-peace-process>
20. The indigenous representatives of the Teduray, Lambangian and Dulangan peoples, who are the ones living within the claimed Bangsamoro territory, have told me that one of their key demands is that the Indigenous Peoples’ Rights Act should be recognized as they believe this is what will ensure the protection of their rights within the territory. This is part of the list of demands they officially presented to the MILF and the Government of the Philippines.
21. The Comprehensive Agreement on the Bangsamoro, Section III.6, IV.3.
22. NCIP Resolution No. 06-102 2014—Series of 2014.

Bangsamoro Development Plan, which will have direct impacts on them. These include the use of their lands for mineral extraction, and the development of agricultural plantations for palm oil and bananas. They alleged that there have not been adequate consultations with them on such plans and they view this as business-as-usual, where the Government together with the future Bangsamoro authority will potentially violate their rights to their lands, territories and resources and their right to development.

As part of the transitional justice measures foreseen in the Comprehensive Agreement, a Transitional Justice and Reconciliation Commission (TJRC) was established to *inter alia* address human rights violations, historical injustices and marginalisation through land dispossession. The TJRC was essentially national, with the exception of the Chairperson, and composed of delegates from the Government and the MILF. As part of the TJRC's working methods, it organised "listening sessions" which included indigenous peoples, however there was no indigenous TJRC delegate. The Final Report of the TJRC, presented in February 2016, only contains limited reference to the experiences of indigenous peoples, who have suffered violations of their rights both by the Moros as well as by the Government.²³

III. Conclusion and areas for further attention

When a State undertakes measures that affect the rights of indigenous peoples, there must be compliance with provisions contained in international instruments and the State has the obligation to consult indigenous peoples. This principle applies even in the context of armed conflict and its aftermath and thus it is therefore crucial that indigenous peoples be consulted and that their rights be expressly recognised in peace negotiations and in transitional justice measures, including truth commissions and reparation programmes.

As stated by my colleague the Special Rapporteur on the promotion of truth, justice and reparation, "systematic violence and rights violations are often accompanied by and leave in their wake pernicious

23. Transitional Justice and Reconciliation Commission Report, (2016), 27, http://www.tjrc.ph/skin/vii_tjrc/pdfs/report.pdf

forms of marginalisation. Under such circumstances, victims tend to disappear from public awareness and discourse, and the violations and conflict are often discussed as if they affected primarily infrastructure and the economic interests of elites” and therefore the importance of exercising voice, especially in public debates, “is particularly relevant for *inter alia* indigenous peoples, who are often either the special targets of violence or experience it distinctly.”²⁴

I want to emphasise that military activities shall not take place in the lands or territories of indigenous peoples unless imperative for the security of peoples concerned, and that in such exceptional circumstances, States should undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. States need to strengthen their prevention and protection mechanisms, such as national human rights institutions and other Government bodies mandated to protect indigenous peoples’ rights such as the National Commission on Indigenous Peoples in the Philippines and FUNAI in Brazil, and ensure that these represent the diversity of all sectors of the population, have sufficient resources and are present in areas most prone to violations in order to prevent forced displacements.

The responsibility of holding perpetrators responsible lies with the States. In order to ensure that States fulfil their obligations to provide justice and reparation, I urge indigenous peoples to make thorough use of international law to continue to advocate for breaking the impunity for human rights and humanitarian law violations. Accountability must be established at the national level and though such processes are painstakingly challenging, positive steps are being taken, such as the recent *Sepur Zarco* verdict in Guatemala. I thank you for your attention and look forward to exchanging further experiences with you on this important topic.

24. A/67/368, para. 32.

Intercultural Conflict and Peace Building: The Experience of Chile

José Aylwin

With nine distinct Indigenous Peoples and a population of 1.8 million, which represents 11% of the total population of the country,¹ conflicts between Indigenous Peoples and the Chilean state have increased substantially in recent years. Such conflicts have been triggered by different factors including the lack of constitutional recognition of Indigenous Peoples; political exclusion; and the imposition of an economic model which has resulted in the proliferation of large developments on Indigenous lands and territories without proper consultation, even less with free, prior, and informed consent, and with no participation of the communities directly affected by the benefits these developments generate. The growing awareness among Indigenous Peoples of the rights that have been internationally recognized to them, and the lack of government response to their claims—in particular land claims—also help to explain this growing conflict.

Chile is one of the few, if not the only state in the region, which does not recognize Indigenous Peoples, nor does it recognize their collective rights, such as the right to political participation or autonomy or the right to lands and resources, in its political Constitution. The current Chilean Constitution dates back to 1980, when it was imposed by the Pinochet dictatorship.

Indigenous Peoples have also been severely impacted by the market economy prevalent in the country. In recent decades, Chile has signed free trade and investment agreements with more than 60 other countries, in particular large economies from the Global North including the United States, Canada, the European Union, China and Japan, among others. As a consequence of these trade agreements, direct foreign investment in natural resource extraction or in infrastructure

1. “Los pueblos indígenas en América Latina: Avances en el último decenio y restos pendientes para la garantía de su derechos,” Comisión Económica para América Latina y el Caribe (CEPAL) (Santiago, Chile: United Nations, 2014), http://repositorio.cepal.org/bitstream/handle/11362/37222/S1420521_es.pdf;jsessionid=F0DDC9D4D9880ECEB501261E07899608?sequence=1

projects—roads, dams, and so on—related to extractivism, has grown at a fast pace. Mining investment has increased steadily in the north of the country, in the traditional territory of the Andean peoples (Aymara, Quechua, Lickanantai, Diaguita and Coya), with severe impacts such as the appropriation and contamination of water resources. Forestry and salmon farming, as well as hydro dams, have proliferated in the south of Chile in the traditional territory of the Mapuche people.² These investments have been made not only by transnational corporations domiciled in the Global North, but also by Chilean corporations, which have benefited from new markets opened up by these trade agreements³.

Such is the case with forest plantations, which currently occupy 2.5 million hectares of Chilean land, 1.5 million of them overlapping lands claimed by the Mapuche people on the basis of traditional occupation or legal titles granted to their communities by the state. Two Chilean conglomerates, Arauco and Mininco (CMPC), own 1.8 million hectares of land. This is in stark contrast to the approximately 850,000 hectares registered by the state as lands belonging to the Mapuche. Pine and eucalyptus monocultures have resulted in the destruction of native forests as well as of related ecosystems, which are central to Mapuche survival. They have also impacted water sources existing in the area, most of which have disappeared. Regions and municipalities where forest plantations are located are among the poorest in the country, a reality that triggers Mapuche migration to large cities. As a result, today 80% of the Mapuche population is concentrated in large cities.⁴

2. Approximately 74.6% of Chile's exports in 2014 came from three sectors (mining with 62%, cellulose and wood products with 8%, and fish farming with 4.6% of the total). Sourced from CIPERCHILE (Centro de Investigación e Información Periodística), <http://ciperchile.cl/wp-content/uploads/GraficoExp1.pdf>
3. According to the Chilean Foreign Ministry's General Directorate of International Economic Relations (DIRECON), 94% of Chile's exports go to countries with which Chile has signed trade agreements, which proves that the Free Trade Agreements have opened up markets for Chilean products. "El 94% de las exportaciones chilenas van hoy a mercados con acuerdos comerciales vigentes," (Santiago, Chile: DIRECON, Gobierno de Chile, July 8, 2015), <http://www.direcon.gob.cl/2015/07/el-94-de-las-exportaciones-chilenas-van-hoy-a-mercados-con-acuerdos-comerciales-vigentes/>
4. José Aylwin, "El caso de Chile," *Las Directrices desde América Latina voluntarias y su aplicación*, ed. Sergio Gomez E. (Santiago, Chile: Organización de Naciones

The Chilean state has violently repressed and criminalized Mapuche peoples' social protests in defense of lands and natural resources threatened by resource extraction. Confrontation between the police and protesters is common in Mapuche communities as they relate to conflicts with forest corporations or infrastructure projects. Many community members, including children, women, and elderly people, have been injured as a consequence of police brutality. Four Mapuche were been murdered by the police in recent years. Such crimes are adjudicated by military tribunals, and consequently their perpetrators remain in impunity. Mapuche leaders involved in social protests have been prosecuted under an antiterrorism law initially enacted during the military regime. According to the UN Special Rapporteur on Terrorism and Human Rights, Ben Emmerson, 48 people have been charged under this antiterrorism legislation between 2010 and 2011 alone; 32 of these 48 people are Mapuche or their actions were connected to the Mapuche struggle.⁵ In the case of *Norin Catriman et al. vs. Chile*, the Inter-American Court of Human Rights (IACHR) condemned Chile for prison sentences issued by the judiciary against the Mapuche for "terrorist" crimes on the basis of antiterrorist legislation, a law which, according to the IACHR, violates the principle of legality and the right to the presumption of innocence. The IACHR also held that these sentences were based on stereotypes and prejudices, in violation of the principles of equality and non-discrimination. Additionally, the Court found that trials based on the antiterrorist legislation in Chile violated due process requirements.

In recent years, confrontation on Mapuche territory has increased. Violent actions, particularly against forest plantations and trucks that transport forest products, have been orchestrated by Mapuche organizations. Other actions, including the burning of farmhouses and agricultural machinery, are generally attributed to the Mapuche by authorities and media prior to any judicial investigation. In one of these

Unidas para la Alimentación y la Agricultura Santiago, 2015),182–216, <http://www.fao.org/3/a-i5037s.pdf>

5. A/HRC/25/59/Add.2, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Mission to Chile" (United Nations, April 14, 2014), paras. 72–74.

actions, a couple of settlers of European origin died when a farmhouse was burned. A Mapuche *machi* or shaman was sentenced to 18 years in prison for that crime. Currently, eleven other members of Mapuche communities are being prosecuted under charges of terrorist crimes for that episode. State policies to confront the so-called “Mapuche conflict”—as if the Mapuche were the only ones responsible for its existence—have been contradictory. However, governments in power since the democratization of the country in 1990 have acknowledged Chile’s debt to Indigenous Peoples in general and the Mapuche in particular, as a consequence of past dispossession and assimilationist policies. They have also implemented a policy aimed at restituting lands, in particular to the Mapuche, in accordance with the Land and Water Fund created by law N° 19.253 in 1993. This Fund considers both the acquisition of lands by non-Indigenous individuals who currently own them in accordance with the law, as well as the transfer of state-owned or “fiscal” lands.

Lands purchased for Mapuche communities through this Fund from 1994 to 2014 total 170,000 hectares, according to official statistics.⁶ Such purchases, though, have mainly been limited to those lands previously recognized as Mapuche property by the state after the military occupation of the Araucanía in the second half of the XIX century. This amounted to half a million hectares, which is only 5% of the traditional Mapuche territory of which their communities have been dispossessed. Consequently, state policy has not considered the acquisition of lands of traditional occupation, in accordance with Convention 169 of the ILO on Indigenous and Tribal Peoples ratified by Chile in 2008; forest corporations own much of this land. Moreover, the lack of sufficient funding by the state, as well as speculative prices set by current land owners for such purchases,⁷ has left many

6. “Situación de los Derechos Humanos en Chile: Informe Anual 2014,” (Santiago, Chile: Instituto Nacional de Derechos Humanos, 2014). An additional 70,000 hectares of state-owned lands which were lands traditionally occupied by the Mapuche that the state considers as its property, have been transferred to Mapuche communities during this same period.
7. A conservative think tank, Libertad y Desarrollo, admitted in 2010 that prices of land purchases made by CONADI, the state agency in charge of Indigenous policies, in the Araucanía region, have increased by 826% between 1994 and 2009.

Mapuche land claims without a state response. Expropriation with fair compensation, a mechanism considered in the Constitution in cases of “national interest,” has not been used by the state as a means of restituting Mapuche lands claimed by them. In contrast, it has been used as a means of imposing roads and dams on Mapuche lands.

The implementation of ILO Convention 169 on the duty of the state to consult regarding administrative measures which could directly affect Indigenous Peoples, has been insufficient as it relates to large developments impacting the Mapuche. Regulations approved in recent years to regulate the application of this right (DS N° 40 of 2013 and DS N° 66 of 2014) have restricted the Convention’s standards on this matter, resulting on many occasions in the imposition of these measures without encouraging Indigenous free, prior, and informed consent. Although some judicial decisions initially halted investment projects on Indigenous lands on the basis of lack of consultation with the communities impacted, such jurisprudence has been reversed in recent years.

In 2014, the current Chilean President appointed a Mapuche advocate, Francisco Huenchumilla, as governor of the region of the Araucanía, the heartland of the Mapuche territory. This symbolic appointment, as well as his initial apology to the Mapuche people for past wrongs of the Chilean state which negatively affected them, generated hopes of a new peaceful relationship between the Mapuche and the state, based on dialogue and respect, at least at the regional level. However, Huenchumilla’s resignation from this role was triggered by a lack of central administrative support for his plans to enforce human rights standards in forest activities on Mapuche traditional territory; to reconstitute lands of traditional occupation back to their communities; as well as to apply the rights inherent in ILO Convention 169 and UNDRIP to consultations with Indigenous peoples with the aim of obtaining free, prior, and informed consent and participation in benefits from development projects affecting them.

The appointment of a new governor in 2015 with support from the Ministry of the Interior, the office in charge of security policy, has been interpreted as a step backward in the dialogue process necessary to build interethnic peace with the Mapuche. This security policy is

reflected in a recent report of the Ministry of the Interior to the Deputy Chamber. According to this report, the number of police agents in the Araucanía region has increased from 612 in 2014 to 1,785 in 2016. The amount of police vehicles and armored cars in this region has also increased from 96 to 146 in the same period of time. Those arrested for their participation in acts of violence in the context of conflicts with the Mapuche were numbered at 194 in 2014, 221 in 2015, and 49 in the first two months of 2016.⁸

In order to address the growing conflict between the state and Indigenous Peoples, a *Comisión de Verdad Histórica y Nuevo Trato* (Historic Truth and New Deal Commission) was established in 2001. The Commission had the mandate of reviewing the history of Indigenous Peoples' relations with the state and making recommendations for the construction of a new form of relationship based on the recognition of Indigenous Peoples as distinct peoples. In its final report issued in 2003, the Commission acknowledged the many injustices committed against Indigenous Peoples at the hands of the Chilean state, including Indigenous dispossession of ancestral lands. The Commission recommended the constitutional recognition of Indigenous Peoples as distinct peoples, as well as the protection of their lands and resource rights. As for Mapuche lands, the Commission proposed the creation of a public agency aimed at repairing dispossession of lands previously recognized by the Chilean state as their property. The lands seized from the Mapuche by non-Indigenous people should be identified, stated the Commission, and reconciliation among these parties in conflict was encouraged. When conciliatory arrangements were not possible, expropriation by law, with fair compensation, was proposed as the final means to reconstitute to the Mapuche the lands previously acknowledged as theirs by the state. Through this procedure, speculation on the land price set by private land holders—a common practice under the current framework of Corporation for Indigenous Development's Land and

8. F. Díaz, et al., "Carabineros casi triplicó su dotación en zonas de ataques en el sur desde 2014," *La Tercera* (March 3, 2016), <http://www.latercera.com/noticia/nacional/2016/03/680-672467-9-carabineros-casi-triplico-su-dotacion-en-zonas-de-ataques-en-el-sur-desde-2014.shtml>

Water Fund— was to be avoided.⁹ Unfortunately, these proposals were never implemented.

To confront the persistence of interethnic conflict—in particular the conflict between the Chilean state, investors and the Mapuche—the National Human Rights Institute proposed that the government invite Indigenous Peoples to a high-level dialogue process in 2014, at the beginning of President Bachelet’s term. Such dialogue, with an open agenda where Indigenous Peoples could determine their own representation, should be guided by the contents of ILO Convention 169 and UNDRIP, which Chile signed in 2007. Unfortunately, this dialogue has still not occurred.

Early in 2016, two law proposals, one aimed at creating a Ministry of Indigenous Affairs and another at creating a National Council of Indigenous Peoples as well as different Indigenous Peoples Councils, were sent to Congress by the current government. The Indigenous Peoples’ Council would have Indigenous representation and similar participatory and consultative powers to those granted to the Sami Parliament in Norway. Although relevant to opening spaces for the institutionalization of Indigenous-state relations in Chile, it is unlikely that these initiatives, created after consultation with the Indigenous Peoples in 2014, will reduce conflicts with the Mapuche related to land and resources impacted by large investments.

In October 2015, President Bachelet, as a consequence of long-term pressure by social movements, called for a constituent process aimed at replacing the 1980 Constitution with a new democratic, plural and inclusive Constitution. Although the mechanism through which a new Constitution will be established is still uncertain,¹⁰ different sectors of society, including some Mapuche organizations, are proposing the establishment of a constituent assembly for this purpose. Active involvement and participation of Indigenous Peoples in constituent assemblies in Latin America in recent decades has resulted in the

9. “Informe de la Comisión Verdad Histórica y Nuevo Trato de los Pueblos Indígenas,” (Santiago, Chile: Comisión de Verdad Histórica y Nuevo Trato, 2003).

10. The 1980 Constitution does not acknowledge a referendum or other forms of citizens’ participation as a mechanism for its reform, or for the elaboration of a new Constitution.

inclusion of Indigenous Peoples' rights in the new political Constitutions of several states. Of particular relevance are the cases of Ecuador and Bolivia, whose Constitutions approved by referendum in 2008 and 2009 respectively, acknowledged the plurinational nature of the state, Indigenous Peoples' rights to autonomy and self determination, their rights to lands and resources, as well as their rights to good living (*buen vivir*).

Although the implementation of these two Constitutions is still pending in many aspects, a fact that has generated frustrations among the Indigenous Peoples in these Andean states, the structural reform of Indigenous-state relations recognized in them is known by many Indigenous leaders and intellectuals in Chile. Consequently, this process is seen by some organizations, including Mapuche organizations,¹¹ as a possible avenue for the recognition of Indigenous collective rights, including political and territorial rights denied today. In the absence of any other mechanisms to deal with the increasing interethnic conflict and violence between the Mapuche and the Chilean state, the constituent process opens space and hope for its peaceful resolution.

11. Identidad Lafkenche and Walmapuwen, a Mapuche political party, among other Mapuche organizations.

Indigenous Peoples' Conflicts and the Negotiation Process for Autonomy in Nicaragua

Mirna Cunningham¹

I. Central American conflicts and Indigenous Peoples

It was the decade of the eighties. Military conflicts were taking place in Central America. The world was engulfed in the Cold War. In Nicaragua, a mass revolution had toppled a dictatorship that had been supported by the United States for decades. This revolution would bring about profound changes for peoples who historically had been excluded. For Indigenous Peoples, Afro-descendant communities, and the inhabitants of the Caribbean coast of Nicaragua, this revolution was seen as an opportunity to transform the historical relationships between these communities and the state of Nicaragua.²

Initial steps were taken by the Nicaraguan revolutionary government between 1979 and 1981 to define this relationship, with minimum requirements set forth in the Declaration of Principles and Definitions of the Governing Board of National Reconstruction (in Spanish, JGRN) and the Sandinista Front of National Liberation on the Atlantic Coast

1. Prepared by Mirna Cunningham, first Vice President of the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (FILAC) and President of the Center for the Autonomy and Development for Indigenous Peoples (in Spanish, CADPI) with the collaboration of Sandra Davis.
2. The Indigenous Peoples are found in the Pacific-Central-North and Caribbean coast of Nicaragua: in the Departments of Matagalpa, Jinotega, Madriz and Nueva Segovia inhabited by the Matagalpas and Nahuas; in the Department of Leon, where the Chorotegas are based; and in Rivas and Masaya, inhabited by the Uto Aztecas - Nicaraos and Chorotegas. According to the Coordination Council, there are 24 organized communities in the Central and Pacific North of the country. The Autonomous Region of the North Atlantic is inhabited by the Sumu-Mayangna and the Miskitus and the Autonomous Region of the South Atlantic is inhabited by the Miskitus and the Ramas. The Indigenous population of Nicaragua is estimated to be 10%–15% of the total population. The Miskitus, Matagalpa-Chorotegas and Nahuas have the largest numbers. The ethnic community of the Afro-descendants is made up of the Creoles and Garifunas.

(in Spanish, FSLN),³ issued on August 12, 1981. However, within the global context and, in particular, in the United States, the fact that President Ronald Reagan⁴ was elected added another factor to this already complicated situation, namely the involvement of Indigenous armed groups in the “war” of the United States of America against the Sandinista Popular Revolution.

Although the conflicts in the Central American region directly affected Indigenous Peoples in Guatemala, Nicaragua and El Salvador, peace negotiations and accords followed different paths regarding the ethnic-cultural aspects of each country.⁵ In Nicaragua, the situation was different precisely because of the presence of several armed Indigenous groups operating from Honduras as well as Costa Rica, cooperating with non-Indigenous groups. As a result, entire communities, especially from the Wangki River, were living in refugee camps in Honduras, while members of the Miskitu and Mayangna communities had been resettled in different camps and communities in Nicaragua, and others had been displaced within the country and abroad. The rupture of the family and the communal social fabric continues in many cases until now.

The national negotiation peace process started in Nicaragua in 1983 with the Grupo Contadora (Mexico, Venezuela, Colombia and Panama), continued in 1985 with the Grupo de Apoyo (Argentina, Brasil, Peru and Uruguay) and concluded with the Esquipulas Process in 1986 and 1987, sponsored by Vinicio Cerezo and led by Oscar Arias with the participation of Guatemala, Costa Rica, Honduras, El Salvador and Nicaragua. This was part of the entire regional peace process. The negotiation process on the Caribbean coast of Nicaragua started before and was developed along this same timeline, however

3. “Principios y definiciones de la JGRN y el FSLN sobre la Costa Atlántica,” *Revista Envio* no. 4 (September 1981), <http://www.envio.org.ni/articulo/2600>
4. Francisco G. Basterra, “La guerra privada de Ronald Reagan,” *El Pais* (March 23, 1986), http://elpais.com/diario/1986/03/23/internacional/511916412_850215.html
5. Arely Barbeyto highlighted the Indigenous movement, which was strengthened in Guatemala and Nicaragua in *Revista Wani* No. 6 (2010). In the case of El Salvador, the lack of recognition of Indigenous Peoples from a legal standpoint lasted until 2014 when the Constitution was changed, but another factor involved in Indigenous recognition in El Salvador was the “self-imposed invisibility” of the Indigenous Peoples themselves after a massacre in 1932, which practically forced them to hide their ethnic identity in order to survive.

it has been scarcely documented due to military conflicts involving Indigenous Peoples and Afro-descendants in this region.

For the Indigenous Peoples' and Afro-descendants' communities of the Caribbean coast, the challenge consisted in finding a solution to the two types of conflicts affecting them, namely the long term historic conflict they had been facing since colonial times, and the military conflict they were facing as part of the anti-revolutionary movement. This meant trying to achieve peace while simultaneously promoting the necessary structural transformations for a multi ethnic coexistence with respect for cultural diversity and, within that context, trying to achieve autonomous self-government.

This essay summarizes the conflict resolution process on the Caribbean coast of Nicaragua. It highlights several events that took place between 1984 and 1990, the date when the first elections occurred for both autonomous regional governments. This date coincided with the first national elections after the signing of the peace accords.

II. The legacy of the historic conflicts of the Caribbean Coast of Nicaragua

The historic conflicts between Indigenous Peoples allied with Afro-descendant communities and the Nicaraguan state correspond with the history of colonization and the very establishment of the state. The Caribbean coast has a different colonial history from the rest of the country. A Miskitu Kingdom was established under the auspices of colonial English administration, and later the Moskitia Reserve carried out the duties of a state. Not until the end of the 19th century, when the Moskitia territory was "incorporated" into Nicaragua, did the current state become what it is now. However, this was done at the expense of the rights of the peoples who inhabited that territory.⁶ Some hallmarks of that process are described below.

6. There is an abundance of literature about the complaints and appeals that the Caribbean coast authorities made when faced with mistreatment by the central government of Nicaragua. In 1960, through a ruling by the International Court of Justice at The Hague, the last section of the Moskitia territory was divided and it became part of Honduras.

One of the first historic events of the settlement of this area⁷ was the establishment of a protectorate system that was controlled by the British. With this system, the British secured their political and economic power over other colonial interests without really having to establish territorial sovereignty. Many remember this period as the first expression of Indigenous autonomy.

Official documents of the Moskitia Reserve between 1883–1891 describe the degree of institutional development achieved. Examples of the ordinances of 1883 include the opening speech of the legislative period by the king of Moskitia; decrees prohibiting the sale of alcoholic products; guidelines for passenger ships; the exoneration of taxes for the Indigenous inhabitants; the regulation of the importing of weapons; the use of coins; rules around contraband; and the celebration of baptisms, among others.

The second historic period on the Caribbean coast of Nicaragua was when Great Britain and Nicaragua signed the Treaty of Managua,⁸ through which both countries agreed to dissolve the British protectorate on the Miskitu Coast. Great Britain officially recognized the sovereignty of the Nicaraguan state over the territory for the first time.

Another relevant historic hallmark was the annexation of the Moskitia Reserve under the command of Jose Santos Zelaya, the President of Nicaragua, in 1894. As a result of this, the Nicaraguan *mestizos* began to "migrate" to the region, especially military personnel, government employees, traders and businessmen, who occupied the "military reserve." In this context, the government of Managua granted concessions over land and other natural resources to the country's *mestizo* population and to North American interests.⁹

During this phase, North American companies developed an extractive economic model on the Caribbean Coast over which the Nicaraguan state had no control. This period is characterized by the

7. The period of time between 1747–1786.

8. The Treaty of Managua, also called the Zeledon-Wyke Treaty, referred to the "Miskitu Indians" and was signed in January 1860 between the United Kingdom of Britain and the government of Nicaragua.

9. Gismondi and Mouat, "Merchants, Mining and Concessions on Nicaragua's Mosquito Coast: Reassessing the American Presence, 1895–1912," *Journal of Latin American Studies*, 34 no. 4 (November 2002): 845–879.

presence of a very weak Nicaraguan state. The companies provided the basic services that the state should have offered such as health, education, electricity, and water, among others. Similarly, during the subsequent dictatorship of Somoza Garcia, the churches that were present in the region provided health and education services.

The Indigenous Peoples and Afro-descendant communities perceived the weak or almost absent Nicaraguan state with mistrust and at times demonstrated hostility toward public institutions, political bodies and development programs of the Nicaraguan government. All of this created a situation characterized by the limited development of a national conscience and an almost non-existent sense of nationality among the peoples of the Nicaraguan Caribbean coast.¹⁰

III. Conflicts tied to the Popular Sandinista Revolution of the 1980s

Nicaragua was aware of the civil and political rights movements of the decade of the 1970s in North America, as well as how the Indigenous movement had been evolving at the level of the United Nations.¹¹ As a result, Indigenous organizations were established such as the First Indigenous Regional Organization in Central America (CORPI) and the Alliance for Progress of the Miskitu Peoples and Sumus (ALPROMISU). Some of the fundamental demands of the movement included political representation and land rights.¹²

With the triumph of the Popular Sandinista Revolution in 1979, the Indigenous movement was transformed under the new leadership into MISURASATA—the Alliance among Miskitus, Sumus, Ramas and Sandinistas—which negotiated with the Sandinista government to have political participation in the State Council and other state institutions. One of the greatest victories stemming from this negotiation was

10. Polanco and López y Rivas, “Nicaragua: Autonomía y Revolución,” (J. Pablos Editor, 1986), <https://books.google.com.pa/books?id=HXQSAQAAIAAJ>
11. In 1971, the United Nations Economic and Social Council authorized a study “On the problem of discrimination against Indigenous populations.” The study was concluded in 1984 and is often referred to as “the Martínez Cobo Study.”
12. This movement negotiated with the Somoza government for alternate representatives and Indigenous city council members.

increased literacy in the Indigenous languages during the National Literacy Crusade.

When tensions began to rise between the communities of the Caribbean coast and the government in August 1981, the Nicaraguan Government adopted the Declaration of Principles of the Popular Sandinista Revolution for the Indigenous Communities of the Atlantic Coast,¹³ alluding to the need to give a just and revolutionary response to the legitimate claims of Miskitus, Sumus, Ramas and Kriols.¹⁴ The Declaration recognized that the claims were based on the impact of internal colonialism and the legacy of the previous regimes. The Declaration contained the following aspects:

- Reaffirmation of the Nicaraguan Nation as a single entity, territorially and politically;
- The commitment to support the fight against racism;
- Recognition and respect for the diversity of cultures and the commitment to support cultural revitalization including languages;
- Support for political, economic, social, and cultural participation;
- Commitment to the communal and cooperative titling of the lands “where they have lived traditionally”;
- Recognition of the significant benefits of forest resources found on communal lands;
- Support for diverse forms of self-organization; and
- Continuation of economic development projects to improve conditions of life.

However, the political changes in the United States at the beginning of the 1980s, when President Reagan started the war against the Sandinista government as his own personal commitment,¹⁵ facilitated the involvement of some Indigenous persons in the

13. “Principios y definiciones de la JGRN y el FSLN sobre la Costa Atlántica,” *supra* note 2.

14. The use of the term Creole or Criollo or Kriol refers to the Afro-descendant population.

15. With the triumph of Ronald Reagan, the government of the United States initiated a period known as a war of low intensity. See: Basterra, *supra* note 3.

counterrevolutionary war. The military response by the Revolutionary Government exacerbated the contradictions arising from a military conflict that completely impacted the lives of the communities, especially in Rio Coco, due to the destruction of communities and the displacement of their populations.

The vastness of the war in the Caribbean, where the counterrevolutionary non-Indigenous groups also carried out attacks, virtually paralyzed the economic and social activity of the region. The landmines that were placed along the few roads that existed often destroyed the vehicles that were to be used for construction work or supplying food. The sawmills were burned; the fishing boats were attacked when they went out to sea; the teachers and health workers were threatened or murdered and the same thing happened to the construction workers of roads or houses or those who installed electric or telephone lines. The internal commerce of the region was interrupted due to this serious situation, and the entire population suffered to an intense degree.¹⁶

IV. The roads leading to conflict resolution

The conflict started to worsen in 1981 and it was not until 1984 when steps were taken towards conflict resolution. The following strategies were used in that regard:

- Peace negotiations were undertaken with armed Indigenous groups inside and outside of Nicaragua;
- Consultations were held in order to incorporate the rights of Indigenous Peoples and Afro-descendants into the Constitution of Nicaragua;
- A solution to the historic conflict was sought by taking initial steps for the establishment of a multi-ethnic autonomous region, recognizing and respecting an ancestral Indigenous governance system;
- Measures were taken to reduce the impact of the war and to improve living conditions in affected communities.

16. *Revista Envio*, no. 82 (April 1988).

These measures were the beginning of a new political dynamic in the region and they paved the way for goodwill and internal peace making. At the same time, these strategies created the basic conditions for the development of public consultations concerning the project on autonomy.¹⁷

These measures started at the beginning of December 1983, when the government decreed a pardon for all the Miskitus convicted of counterrevolutionary activities in the plan called "Navidad Roja" (which means "Red Christmas" because of the bloody event that took place at the end of 1981). Amnesty was granted for all those who had left Nicaragua and wanted to return, with the exception of counterrevolutionary leaders.

V. Peace negotiations

The peace negotiations in these communities were carried out through various spaces and processes.

a) Peace and autonomy commissions in the communities

One of the most important spaces where the peace negotiations began was within the communities themselves. Within these communities, especially in the Miskitu communities, the women and members of religious organizations were the ones who organized commissions to promote peace, cease-fire, repatriation, respect for human rights, and autonomy. In order to achieve this, letters were written to their families in Honduras, they traveled to the encampments to speak to armed groups, and organized religious and other types of activities to promote peace accords and cease-fires. In many cases, those commissions served as a bridge between the armed groups and the government, which later led to the successful signing of the peace accords. There is no information available on how many such commissions there were, but they signified a vast movement at the grassroots level.

17. G. Gurdían and C.R. Hale, "¿Integración o participación? El proyecto de autonomía costeña en la revolución popular sandinista," *Revista Trimestral Encuentro* (April–September 1985): 24–25.

b) Indigenous organizations in the peace process

As mentioned earlier, the revolutionary government had supported the creation of the Indigenous organization MISURASATA (Miskitus, Sumus, and Ramas united with the Sandinistas). As the name indicates, the Sandinistas were combined with three Indigenous Peoples: Miskitus, Sumus¹⁸ and Ramas. It was through this organization that the first agreements with government were made. For example, one of these agreements was the naming of Steadman Fagot as a member of the State Council, which was the first parliamentary council established after the triumph of the revolution.

At the beginning of 1981, disagreement began to take place between MISURASATA and the government. Some leaders of MISURASATA were arrested under the orders of the government in February of 1981 and in May of the same year, this Indigenous organization divided itself into MISURA and MISURASATA. The difference in the names is the syllable SA, which referred to the alliance with the Sandinistas.

The division was maintained during the entire war and the geographic location of the armed groups was also different: the armed groups close to MISURA, headed by Steadman Fagot, were located in Honduras and they established alliances with non-Indigenous armed groups; in contrast, the group identified as MISURASATA was aligned with the Democratic Revolutionary Alliance (in Spanish, ARDE) in Costa Rica and was headed by Brooklyn Rivera, who had been expelled from Honduras.

MISURA aligned itself with Legion 15 de Septiembre, a counterrevolutionary group made up of Somozan ex-guards in Honduras. Honduran and Argentine officials and ex-guards of Somoza were in charge of the military training of the Indigenous armed group, with the help of the Central Intelligence Agency of America (the CIA).¹⁹

The Miskitu leaders were pressured to "unite" and not accept the negotiations with the Sandinista government throughout the entire

18. The Sumu people subsequently agreed to change their name to Mayangna, a denomination under which there are four linguistic Mayangna communities: Panamaka, Twaska, Ulwa and Yuskus.

19. *Revista Envio*, *supra* note 15.

negotiation process. There is one account of a case where \$300,000 dollars was given by the CIA in exchange for the forces to unite and continue the war while becoming a part of the UNO (in Spanish, *Unión Nicaragüense de Oposición*). The UNO was the civic-military counterrevolutionary organization, which was created, among other things, to administer the millions of "humanitarian" aid approved by the North American Congress in June of 1985.²⁰ At an assembly, it was agreed that they would accept all the required conditions in order to receive the \$300,000 dollars from the North Americans, including rejecting any dialogue with the Nicaraguan government. At the end of the assembly, it was announced that both MISURA and MISURASATA had been dissolved and a new united organization would be formed called KISAN, the acronym for "*Kos Indianka Aslasa Nicaragua*" which in the Miskitu language means "United Indigenous of the Nicaraguan Coast. "

Brooklyn Rivera, a leader of the MISURASATA, was prevented by Honduran government officials from entering Honduras during the four days of the assembly, because he supported negotiation with the Nicaraguan government.²¹ Another organization or alliance was the Southern Indigenous Creole Council (SICC), which signed some public notices with MISURASATA during this period of negotiation. In 1987, after a lot of pressure by groups that supported the counter revolution and alongside the advances of the autonomy process within Nicaragua, another Indigenous organization was formed in Rus Rus called YATAMA, meaning Los hijos de la Madre Tierra (Children of Mother Earth). Its mandate was defined as a civic-political and military organization intended to participate in the process of autonomy.

Within the country, in July of 1984, another Indigenous organization was formed. It was called MISATAN (in Spanish, *Organización*

20. May 10, 1985, the United States Congress approved a blockade against Nicaragua. In June of that year, U.S. Congress approved \$14 million of "humanitarian aid" for the Nicaraguan Contras. In June of 1986, the House and then in August the Senate approved \$100 million of aid for the Contras, made up of \$70 million for military aid and \$30 million for humanitarian aid, which went into effect in October of 1986. In August of 1987, Reagan insisted on approving \$270 million for the Contras, which clearly indicated an effort to sabotage the Esquipulas peace negotiations. See http://nuso.org/media/articles/downloads/1716_1.pdf

21. *Revista Envio*, *supra* note 15.

de Miskitus de Nicaragua). During that same month, Sukawala, an organization of the Sumus which had been formed in 1974, restarted its activities.

It was within this context that negotiations with various armed groups were carried out almost simultaneously.

c) Peace negotiations with armed indigenous groups

The negotiations between the government of Nicaragua²² and the various armed Indigenous groups took place between 1984 and 1989, the period during which approximately 400 peace accords were signed in the Nicaraguan Caribbean communities.

i) Negotiations with MISURASATA

MISURASATA responded to the amnesty law at the end of 1983 with a press release signed by MISURASATA-SICC. This communiqué recognized the measure as a positive step and asked for similar action to be taken as proof of goodwill of the FSLN to resolve the situation. Among the six initial proposals included in the document were the following: "recognition of MISURASATA-SICC as the legitimate and sole Indigenous representative" and "a decision to dialogue about territory and autonomy with the authentic Indigenous leaders."

The reason that the government of Nicaragua justified its dialogue with this group was because its spokesperson, Brooklyn Rivera, had declared that they were fighting only for the rights of Indigenous Peoples and did not intend to overthrow the revolutionary government. The first contacts with Rivera were done through groups in Germany and Canada in 1984 that supported the Indigenous movement. At the beginning of October 1984, Senator Edward Kennedy, who developed an interest in the Indigenous issue after having a meeting with Rivera, prepared a conversation between Rivera and Daniel Ortega, who was

22. When this document refers to the government of Nicaragua, it should be noted that within the negotiation group, at different levels, there were representatives from Indigenous Peoples and Afro-descendants of the region in addition to the representatives from the central government of Nicaragua.

attending the General Assembly of United Nations.²³ During that meeting, Ortega invited Rivera to visit Nicaragua to travel the coast and to meet with other revolutionary leaders. During this meeting, they committed to push forward the negotiations on principal issues such as a cease-fire and the right to land and autonomy.

The conversation between Rivera's delegation and representatives of the Nicaraguan government started on December 8th in Bogotá, Colombia, under the auspices of the government of Belisario Betancur. Rivera's delegation arrived for this dialogue with a four-page document entitled "Negotiation Process towards a Peace Treaty and the Recognition of Indigenous Territory and Autonomy among the Miskitos, Sumus, Ramas and the State of Nicaragua" (in Spanish, "Proceso de Negociaciones hacía un Tratado de Paz y de Reconocimiento del Territorio y Autonomía Indígena entre los pueblos nativos Mískitos, Sumus y Ramas y el Estado de Nicaragua").²⁴

Subsequent conversations took place in December 1984 and in March 1985 in Colombia and later, in April 1985, they were transferred to Mexico at the headquarters of the Mexican Foreign Affairs Secretariat. Among the agreements of this last round was the commitment of the government to facilitate the supply of food and medicines to the communities within the war zones, as well as to give them aid to restart their agricultural and fishing activities. The government also committed to freeing the detained Indigenous persons, and both parties committed to "avoid offensive armed actions."

But simultaneously, the Nicaraguan government was negotiating with other Indigenous armed groups in the communities within Nicaragua. After the internal negotiations with other groups such as MISURA and KISAN were made public, Rivera broke off the dialogue with the government because his central argument was that MISURASATA should be the sole representative organization of the Indigenous Peoples.

23. *Revista Envio*, *supra* note 15.

24. Some participants in the negotiations were representing the MISURASATA delegation, including Brooklyn Rivera, Armstrong Wiggins, Julian Holmes, and Centuriano Knight. Also among their advisors was a Native American attorney, James Anaya. Representatives of the Nicaraguan government were Luis Carrion, Omar Cabezas, Augusto Zamora, Lumberto Campbell, William Ramirez, and Mirna Cunningham, among others.

Subsequently, Rivera clandestinely traveled to Nicaragua along with Native Americans of the United States and members of the World Council for Indigenous Peoples (in Spanish, the Consejo Mundial de Pueblos Indígenas or CMPI) to try to reorganize forces. After that experience, which according to his complaints was not a positive experience, a sporadic relationship was maintained between the government and the MISURASATA group, without arriving at any concrete agreement. Rivera returned to Nicaragua to participate in the elections of 1990 on behalf of YATAMA.

After the national elections in 1990, Rivera was named Minister of the INDERA by Violeta Chamorro's government. Alfonso Smith from YATAMA was elected member of the National Assembly (National Congress), and other members of the organization were given various public offices. The YATAMA organization subsequently took on multiple forms of identity: a "military" organization, an Indigenous political party, and an Indigenous civic organization. In 2006, in order to succeed in the formation of the Regional Government of the Autonomous Region of the Northern Caribbean Coast, the political organizations FSLN and YATAMA established a regional governability agreement,²⁵ which was maintained until 2014.

ii) Negotiations with MISURA

On the 17th of May, 1985, the first peace accords were signed by the commander of MISURA in Nicaragua, Eduardo Panting. He was also known as "Layan Pauni," the Red Lion, in the Yuli community in southern Bilwi, in Nicaragua. The agreement was basically a cease-fire negotiated between Panting and the regional commanders of the Ministry of the Interior and the Sandinista Army. Other commanders of MISURA began to meet to consider ways to support the agreement. One of the most important aspects of the agreement with Panting was the return of the Miskitu communities in Rio Coco.

Based on that agreement, many local agreements were added as a way to try to solve situations within various communities. Some

25. "Yatama sellará alianza con FSLN," *El Nuevo Diario* (May 2, 2006), <http://archivo.elnuevodiario.com.ni/politica/179999-yatama-sellara-alianza-fsln/>

Indigenous armed groups agreed to receive ammunition and other supplies from the Sandinista soldiers and cut their supply routes from Honduras. In some cases, the agreement included the commitment of the Indigenous armed group to defend their communities as well as other places against the counterrevolutionary incursions supported by the United States, which led to the organization of "joint armed groups" for the defense of communities made up of Sandinista and Indigenous troops.

In some cases, the withdrawal of the Sandinista army was negotiated on the basis of the agreements with those groups, such as the strategic Sisin Bridge, or the ferry barge over the Rio Wawa, and in communities of Sandi Bay, among other sites.

d) The rights of Indigenous Peoples in the Constitution of Nicaragua

A fundamental, strategic pillar for conflict resolution in this situation was the construction of a legal framework that could show the political will to transform the legal framework that had historically excluded Indigenous Peoples and Afro-descendants in Nicaragua. Within this context, it was necessary to include the rights of these peoples within the Constitution. Starting in 1984, consultations were carried out concerning the content of the new Constitution and several of these activities were carried out in the Caribbean coast of Nicaragua. Some actors²⁶ determined that one of the most important changes during this time period was the fact that starting in October 1984 and for the first time in the history of Nicaragua, the word "autonomy" started to be mentioned and proclaimed within a positive and constructive context: the context of peace. This was very moving for many Nicaraguans on both coasts of the country.

By using the word "autonomous" in this environment, the Nicaraguan state was taking a giant step forward in seeking to transform their relationship with Indigenous Peoples and ethnic communities who live in the former Moskitia, today known as the Caribbean coast of Nicaragua. The autonomous governance regime—regional

26. *Revista Envio*, *supra* note 15.

and multi-ethnic—was discussed and approved in the context of the process of the peace negotiations. Ethnic pluralism, or multi-ethnicity, became one of the guiding principles for the Nicaraguan state.

The principle of multi-ethnic autonomous governance was established based on three principles that were complementary and continue to be valid: the recognition of individual and collective rights of Indigenous Peoples and Afro-descendants; the principles of the Sandinista Popular Revolution; and the sovereignty of the state of Nicaragua. Thus, multi-ethnicity was conceived as a central element to maintain ties between the Autonomous Regions and the rest of the country, which would contribute to construct a consciousness of national unity while respecting ethnic and cultural diversity as well as creating political, economic, social and cultural conditions to establish an inter-ethnic coexistence.

The recognition of the collective identity of the Indigenous Peoples was included in the Constitution of Nicaragua. Within the Constitution, Indigenous Peoples, Afro-descendants, and mestizo communities on the Atlantic coast were guaranteed autonomous governance. Chapter VI of the Constitution refers to the rights of the communities on the Atlantic coast and defines the following rights:

“Article 89. - The communities of the Atlantic Coast are an indissoluble part of the Nicaraguan People and as such they shall enjoy the same rights and have the same obligations.

The communities of the Atlantic coast have the right to preserve and develop their cultural identity in national unity; provide their own forms of social organization and administer their own local affairs according to their traditions.

The State recognizes the communal types of property within the lands of the Communities of the Atlantic Coast. It also recognizes the usufruct, use and enjoyment of the waters and forests of its communal lands.

Article 90. - The Communities of the Atlantic Coast have the right to the free expression and preservation of their languages, art, and culture. The development of their culture

and values enrich the national culture. The State shall create special programs for the exercise of these rights.

Art. 91. - The State has the obligation to pass laws that promote actions that assure that not one of its citizens be the object of discrimination by reason of their language, culture and origin.”

Article 121 equally recognizes education in one's maternal language when it states that:

“The Communities of the Atlantic Coast shall have access within their region to education in their maternal language at the levels determined, in accordance with the national plans and programs.”

Chapter II, which refers to state organization concerning the Communities of the Atlantic Coast, establishes the following:

“Art. 180. - The Communities of the Atlantic Coast have the right to live and develop according to the types of social organization that correspond to their historical and cultural traditions.

The State guarantees these communities the enjoyment of their natural resources, the efficacy of their types of communal property and the free election of their authorities and representatives.

Likewise it guarantees the preservation of its cultures, languages, religions and customs.

Art. 181. - The State shall organize by means of a law, the autonomous governance of the regions where the Communities of the Atlantic Coast inhabit for the exercise of their rights.”²⁷

27. “Constitution of Nicaragua, Chapter VI: RIGHTS OF THE COMMUNITIES OF THE ATLANTIC COAST,” National Assembly of Nicaragua, https://www.constituteproject.org/constitution/Nicaragua_2014.pdf?lang=en

e) The establishment of an autonomous governance regime for Indigenous Peoples and ethnic communities

To complement the incorporation of the rights of Indigenous Peoples in the Constitution, another instrument was required: the Law of Autonomy of such peoples. To conduct a discussion on the process of autonomy, working groups were made up of national and international experts, members of the government and representatives of the Indigenous Peoples and communities of the regions and municipalities. They were known as Commissions of Autonomy. They had the responsibility of carrying out a consultation process about the content of the Law and of developing the draft bill to present at the National Assembly.

Among the options under consideration, the agreement was a model of multiethnic regional autonomy,²⁸ wherein Indigenous Peoples' ancestral structures as well as their forms of traditional self-governance at community levels were recognized and complemented with a regional parliament and a government that includes multiethnic representation.

Between 1984 and 1987, 40,000 consultation activities were carried out in homes, schools and labor centers, institutions of the state and with members of international organizations. Within this process, 600 persons participated as facilitators. The consultation process started with a document entitled, "Principles and Policies for the Exercise of the Rights of Autonomy of Indigenous Peoples and the Communities of the Atlantic Coast." Preliminary versions of the Law were used, including translations, popular versions and other modalities. The result of this process served as input to edit the draft bill. The process concluded with a Multiethnic Assembly with approximately 2,000 delegates from the Indigenous Peoples and ethnic communities in Bilwi.

For the members of the Commission of Autonomy, the discussion of Law 28 had different impacts in each Indigenous and ethnic

28. Among the options analyzed: Indigenous community autonomy, in the light of the experience of the Native American reserves in North America, and limited autonomy as to cultural aspects within the framework of the Declaration of Principles. As to the first, it was argued that it would contribute to dispersion in the process before the Central Government and it would exacerbate the inter-ethnic conflicts and, in the second case, rights would be severely reduced.

community precisely due to its intercultural character, which it attempted to address as indicated by J. Hogdson: "For the Indigenous peoples like the Ulwas, Garifuna, Mayangnas and Ramas the process was the real possibility of entering into circles of power and be at the helm of decision making in aspects tied to the development of their communities and territories; for the Miskitus and Creoles the possibility existed to recuperate the hegemony that they had exercised in past centuries. On the other hand, for the Mestizos, the hegemony they had exercised since the annexation of Nicaragua would be ripped from them."²⁹ The exercise of power in Law 28 assures the representation of each Indigenous Peoples and ethnic community in the Autonomous Regional Council, according to Article 19 of the Statute of Autonomy.³⁰

Some of the characteristics for the model of autonomy, in addition to being supported by the Constitution, include the following:

- The model is regional and those who live in the territory, specifically determined as corresponding to almost 50% of the Nicaraguan Territory, enjoy autonomous rights.
- It is multi-ethnic. Each Indigenous People and ethnic community has the right to be elected within determined electoral districts for the Autonomous Regional Council.
- It recognizes economic, social, cultural, ecological, and political rights while maintaining a comprehensive approach.
- It recognizes as autonomous authorities, the ancestral governance systems of the Indigenous communities.
- It establishes the right to natural and cultural heritage of the peoples, the right to include the autonomous government in the state budget to ensure autonomous administration.

29. Johny Hogdson, "Comentarios escritos para borrador del capitulo Gobernabilidad y Buen Gobierno," *Informe de Desarrollo Humano 2005: Las Regiones Autonomas de la Costa Caribe*. (Managua, Nicaragua: PNUD, 2005), http://hdr.undp.org/sites/default/files/nicaragua_costa_caribe_2005_sp.pdf

30. CEJUDHCAN, Statute on Autonomy, Art. 19: "Each Regional Council shall be made up of forty-five members elected by universal, fair, direct, free and secret vote, all the respective multi-ethnic communities of Autonomous Region shall be represented"

- It maintains the principle of national unity.
- It recognizes the rights of Indigenous Peoples to: communal territories, traditional organization and authorities, values, languages, customary administration of justice, and the usufruct and enjoyment of natural resources in their communal lands and waters.
- It recognizes the practice of traditional medicine and the use of Indigenous languages.
- It defines equal rights for men and women.
- It grants to the regional authorities jurisdiction over health, education, well-being, and local development, among others.
- It establishes the requirement of coordination between the regional authorities and the Central Government.³¹

Article 15 of the Law of Autonomy of the Autonomous Regions³² establishes the following bodies of administration:

- a. Regional Council
- b. Regional Government Coordinator
- c. Municipal and Communal Authorities
- d. Other corresponding bodies for the administrative subdivision of the Municipalities.

The Autonomous Regional Council: The Council is made up of 45 members elected from 15 constituencies. Members are elected by popular vote every five years. The Council is made up of national representatives, both men and women, with all rights ascribed to such a position within the Autonomous Regions. According to the law, in some constituencies the first name on the ballot should belong to a particular Indigenous People or ethnic community, in order to ensure a multi-ethnic composition. The Council is chaired by a Board of Directors composed of seven members, and must also be multi-ethnic.

31. Mirna Cunningham, "La autonomía regional multiétnica en la Costa Atlántica de Nicaragua," *Autonomías étnicas y Estados nacionales*, Miguel A. Bartolomé and Alicia Barabas eds., (México, D.F.: Instituto Nacional de Antropología e Historia/ Consejo Nacional para la Cultura y las Artes, 1998).
32. "Statute of Autonomy of the Autonomous Regions of the Atlantic Coast of Nicaragua," *La Gaceta* No. 238 (October 1987).

Its operations are organized into committees that analyze, make rulings on issues and present conflict-resolution initiatives to the plenary.

Regional Government Coordinator: This is the body responsible for executive duties. It is elected from the members of the Autonomous Regional Council. The Regional Government is organized into Secretariats for the performance of its duties.

Municipal Authorities: One of the responsibilities that Law 28 established for the Autonomous Regional Council was the definition of the municipal boundaries. In 1996, both Autonomous Councils presented a legislative proposal to the National Assembly, creating and ratifying 18 municipalities.³³

Territories and Indigenous Communities: In the case of territories and Indigenous communities in the Autonomous Regions, the Constitution recognizes their existence as collective subjects of rights, their bodies of communal and territorial government, and their competence over natural resource management, land management and planning development. The autonomy law defines the communities as entities of public administration within the Autonomous Regions, and the law of demarcation and titling (Law 445) establishes and defines the mechanisms for full participation in matters relating to the territories and Indigenous communities.³⁴

Since 1990, after the establishment of Autonomous Regional Governments, a process of transformation began in the Nicaraguan State, in which the definition of public policies regarding Indigenous Peoples' rights and the strengthening of autonomy has continued.

33. In 2004, the Municipality of Mulukuku was created in the Autonomous Region of the Atlantic Coast (in Spanish, RAAN).

34. The law of Demarcation and Titling of the Indigenous Lands establishes a procedure for the redistribution of the income generated by the use of the natural resources existing in the communal lands and territories. A percentage is destined for the territorial authority and/or Indigenous community. This element is redefined in the law of Forest Promotion and the bill for fishing.

f) Building bridges between government and Indigenous communities in order to ensure the supply of basic services

One of the most complex measures in the context of an armed conflict is to meet the basic needs of the population, such as maintaining food supplies, and providing medical care, health and transportation services. While some measures regarding this issue were addressed, a discussion began in order to define the jurisdiction of the central government and regional governments for the purpose of implementing regional autonomy. Proposals for regulation and decentralization were developed aimed at the regionalization of many government areas. Some of the measures implemented to promote conflict resolution were the following:

i) The appointment in 1984 of persons from the regions as Ministers Delegates of the Presidency in the two Regions of the Caribbean Coast. This step allowed the placement of officials from the Pacific region in high-level positions in the area by persons from the local communities. Another measure adopted was the establishment of an agreement with the Cuban government to ensure the basic supply of food, medicines, building materials and toys directly to the region, to avoid the traffic in the central region of the country, which was the focus of military confrontations.³⁵

ii) In May 1986, the government announced the "gradual, orderly and planned" return to the original communities of Miskitus of those who were evacuated in 1982 from the banks of the Rio Coco. The return to the river was a monumental undertaking and required several steps. It began with a census to determine the number of families, the members of each family and the possessions of each original community, who were scattered between Puerto Cabezas, Bluefields and Tasba Pri. The first trip of the advanced group was historic: when they reached Waspam and saw the river again, they all jumped into the river and prayed.

35. The boycott against Nicaragua declared by the government of the United States of America generated a lack of basic products. For the Caribbean coast, the situation was more complicated because of the historical disconnect from the rest of Nicaragua. For example, in 1979, there was no means of communication between the coast and the rest of the country.

A commission with the participation of MISATAN was organized. After distributing food and materials, the commission organized the return to the Rio Coco, community by community. After dismantling homes and gathering the materials, the trip back home started. Six private trucks were rented and 12 trucks belonging to the state were used for this relocation. This activity included communities from Alto Coco-Bocay until Cape Gracias a Dios and Bihmuna, for a total of 115 communities located all along the Wangki-Coco River.

iii) Another activity was the repatriation of Miskitus and Sumu who were in Honduras. This was a campaign promoted by MISATAN. Some had begun to return since the announcement of the amnesty in 1984, and others officially returned with the support of the UNHCR (United Nations High Commissioner for Refugees).

VI. Lessons learned

a) Conflict resolution requires diverse and complementary strategies

There are few experiences to draw upon regarding negotiation processes in armed conflict situations between Indigenous Peoples and states. In this case, it was in the context of a broader national process, supported openly by the U.S. government, in which Indigenous organizations chose to take up arms. This is a complex experience because of the cultural diversity and the particular historical link between Indigenous Peoples and states. An important lesson learned is that the analysis and the resolutions of military conflict that involves Indigenous Peoples requires the understanding of the particular geopolitical context and the direct involvement of external forces.

b) Address historical factors and military conflict simultaneously

This experience showed that a process of peace in which Indigenous Peoples are involved leads to better results when historical factors are

simultaneously addressed with immediate factors that have led to the military conflict.

The restructuring of the state by creating a multi-ethnic regional autonomous system was the confirmation that Nicaragua not only was looking to end a war, but also to begin a different state policy in regard to Indigenous and Afro-descendant peoples. The signing of the cease-fire and peace agreements with different groups was fundamental to the easing of tensions needed to achieve progress in the discussion on substantive issues. This process confirmed that the conflict on the Caribbean coast not only required a military solution but also long term solutions. The immediately tangible results were the inclusion of collective rights of Indigenous Peoples and Afro-descendants in the Constitution in 1986 and the adoption of the Law of Autonomy in 1987.

Consultations of autonomy in a context of war were the expression of a broad democratic experience. Fundamentally important sectors of society contributed to these consultations: religious and community leaders, political leaders, and leaders of Indigenous armed groups.

c) Polarization generates and recreates tensions over generations

At the same time, it should be noted that military conflicts generate polarization processes that tear apart family and community networks, and mainly disrupt ancestral models of governance. The experience in the case of Nicaragua shows that the polarization is maintained and perpetuated for generations. As a result, collective “healing” measures are required for victims, their families and community members. In a process of confrontation, protagonists lose their “emotional” relationship with communities and fail to perceive the damage they cause by relentlessly perpetuating and recreating the conflicts, even after many decades.

d) Impact of conflict on customary ancestral governance systems

Demobilized young men and women return to their homes and communities with values and models of "vertical" and "military"

governance. A huge collective effort from various institutions is required in order to reestablish traditional community structures. This effect also extends to the forms of organizational and daily struggle. Even if the Indigenous organizations that participated in the military struggle are transformed into civic and political movements, a militaristic structure may prevail in its forms of decision-making.

e) War “tax” affects civil and political transparent involvement

Similarly, the persons who were mobilized militarily consider that they are entitled to a right of "war" to represent the organization, which limits the intergenerational reinsertion into local communities and the civic and political engagement of its members.

f) Intersection between military, political and patriarchal values impact on women

The military and political organizations are patriarchal structures, and therefore, the impact on women is severe. This creates a new contradiction given that women who did not go to the war took the opportunity to study and access the labor market; however, once the men returned from war, these women were forced to return home as the only space recognized by them for women. There was a profound disconnect between the gains that a revolutionary movement generated for women that stayed in Nicaragua, and the losses experienced by the women and girls that spent the years of the war in camps in Honduras.

g) Individual and collective reconciliation and healing: hand in hand

Reconciliation as a measure to achieve peace helps to rebuild political processes, but social and cultural impacts generated by the acceptance of violations on victims and community values are considerably affected in the short- and medium- term. This is a question

that requires deeper analysis of issues to address when considering transitional justice in peace processes.

h) Peace accords should respect collective land rights

In the case of Nicaragua, one of the largest issues was to demobilize armed groups throughout the country, which included requirements for the peace process to take place within Indigenous, community, and regional sectors. For example, in this context, the places chosen for disarmament or areas where land was given to those who handed in their weapons coincided with Indigenous territories of collective ownership in the areas of Tasba Pri, Wangki Li Auhbra and Alto Wangki. This was completely contradictory to agreements on communal territories within the framework of autonomy.

Disarmed members of the various factions, including Indigenous armed groups, received “private lands” located in communal territories then sold them despite these being collective lands. This created complications that will have repercussions for two or three decades into the future. Many of the current conflicts with the presence of “mestizo” settlers in Indigenous territories in the autonomous region are a result of the sale of lands by Indigenous and non-Indigenous persons who turned in their weapons.

i) Indigenous women’s involvement in peace processes: Always invisible

Women from communities affected by the conflict played a major role as members of the Peace and Autonomy Commissions. They were organized, mobilized, promoted agreements for a cease-fire, and participated as facilitators in the consultation for autonomy, among other activities. However, it has become clear that in the documentation of the process, they are invisible. Similarly, the leading roles assumed in the process by ministers and preachers representing various churches, community elders, and members of organizations like the Red Cross, were very important. Their courage and determination should always be recognized.

j) International solidarity and networking

For both Indigenous peoples and the government of Nicaragua, lobbying at an international level was an opportunity to make problems and proposals visible and known. The Indigenous leadership abroad used the Inter-American Commission on Human Rights to file complaints on human rights violations in the context of war and the forced relocation of communities of Rio Coco. The participation of Indigenous leaders in the sessions of the Working Group on Indigenous Populations in the UN and other international forums was important to present the situation of Indigenous Peoples in Nicaragua.

Among other activities, the government of Nicaragua organized a visit for all the Nicaraguan ambassadors accredited abroad to see the zone where the peace agreements were signed. It also organized visits to exchange experiences and information between Indigenous delegations, intellectuals and support organizations from various countries that contributed to the content of the Autonomy law and who visited affected or demobilized communities.

Acronyms

JGRN - Governing Board of National Reconstruction

FSLN - Sandinista Front of the National Liberation

CADPI - Center for Autonomy and Development for Indigenous Peoples

ALPROMISU - Alliance for Progress of the Miskitu and Sumus Peoples

MISURASATA - Alliance among Miskitus, Sumus, Ramas and Sandinistas

ARDE - Democratic Revolutionary Alliance

CIA - Central Intelligence Agency

UNO - National Union of Opposition

KISAN - "Kos Indianka Aslasa Nicaragua" (United Indigenous of the Nicaraguan Coast)

YATAMA- Los Hijos de la Madre Tierra (Children of Mother Earth)

MISATAN - Organización de Miskitus de Nicaragua (Organization of Miskitus in Nicaragua)

CMPI - World Council for Indigenous Peoples (Consejo Mundial de Pueblos Indígenas)

INDERA- Instituto para el Desarrollo de las Regiones Autónomas (Institute for the Development of the Autonomous Regions)

UNHCR - United Nations High Commissioner for Refugees

Miskitu terms

Wangki River - Coco River

Unaccounted For: Indigenous Peoples as Victims of Conflicts in Africa

Albert K. Barume

Introduction

Over the last decades, the African continent has been hallmarked by conflicts, ranging from what is known as liberation or decolonization struggles to civil wars and severe political unrest.

Between 1960 and 1994, Africa experienced over twenty major civil wars.¹ At the beginning of the millennium, Africa reportedly had eighteen countries facing armed rebellions and eleven of them were facing challenges of severe political crises.² From West to East and North to South, no single part of Africa has been spared, as wars and conflicts in Sudan, Chad, Angola, Liberia, Sierra Leone, Somalia, Burundi, Rwanda, Central African Republic, Democratic Republic of Congo, Republic of Congo and Mozambique ravaged the continent.³ Several other African countries have been embroiled in border disputes that led to open armed conflicts, including between Ethiopia and Eritrea, Nigeria and Cameroon, Chad and Libya, and between Tanzania and Uganda.⁴

The costs of these conflicts—including the human costs—have been immense. A 2008 report by the African Development Bank estimated that over 8 million deaths and over 14 million internally displaced persons resulted from postcolonial conflicts in Africa.⁵ The World Health Organization (WHO)'s World Report on Violence and Health indicated that Africa recorded the highest rate of war-related deaths in 2001.⁶ These figures have certainly increased, following

1. S. Martin, "Collective Violence," *African Safety Promotion Journal* 22, no. 3 (2004): 49.
2. A. Bujra, "African Conflicts: Their Causes and Their Political and Social Environment," *DPMF Occasional Paper*, no. 4 (2002): 2–47.
3. J. Aremu, "Conflicts in Africa: Meaning, Causes, Impact and Solution," *African Research Review* 4, no. 4 (2011): 549–560.
4. *Ibid.*, 550.
5. ADB, "The Consequences of Conflict." *Security (C)*, (2008): 11–20.
6. WHO, "World Report on Violence," no. 45 (2002): 218.

recent conflicts in Africa, including in Sudan, Mali, Central African Republic and the Democratic Republic of Congo.

The impact of these conflicts on the most vulnerable or marginal social groups of African societies, notably Indigenous communities such as the San or “Bushmen,” Touareg, Maasai and Batwa or “pygmies”⁷ remains undocumented and often denied or sometime hidden.

Indigenous peoples are found in many African countries. They are communities that have suffered or continue to suffer from prejudiced views against their cultures, ways of life and livelihoods which are considered, by mainstream society and development paradigms, as not good enough to be legally protected and promoted.

The term “Indigenous Peoples” has been given a specific meaning in Africa by the African Commission on Human and Peoples’ Rights (the African Commission), which indicates that the term does not mean first inhabitant of a given land, country or a region:

*“It is a term through which those groups—among the variety of ethnic groups within a state—who identify themselves as Indigenous and who experience particular forms of systematic discrimination, subordination and marginalisation because of their particular cultures and ways of life and mode of production can analyse and call attention to their situation. It is a term through which they can voice the human rights abuses they suffer from—not only as individuals but also as groups or peoples.”*⁸

These African communities’ unique traditional lifestyles, construed around either hunting, gathering, nomadic pastoralist or shifting cultivation, made their ancestral lands and territories look unoccupied as if they belonged to no one. These lands were therefore either considered as public lands, transformed into protected areas or simply taken by neighboring communities:

“Indigenous pastoralist and hunter-gatherer communities in Africa have been losing their land incrementally over

7. “Pygmies” is a generic and often resented term used to designate Indigenous Peoples living in the Central African tropical forest, who are called by different names in over ten African countries where they live.
8. African Commission on Human and Peoples’ Rights, “Report of the Experts Working Group on Indigenous Populations/Communities,” (2005): 102.

the years. In many parts of Africa, this situation has been promoted by the assumption that the land occupied by the pastoralists and hunter-gatherers is terra nullius. The term terra nullius has traditionally been taken to mean 'land belonging to no-one'. The assumption that the land of pastoralists and hunter-gatherers is empty or not used productively has stimulated land alienation at all levels."⁹

This paper argues that conflicts affecting Africa have particularly impacted Indigenous Peoples in three major ways. Firstly, there are African Indigenous communities caught up in conflicts between major groups. Secondly, there are African Indigenous Peoples whose lands and territories are militarized for various reasons and that are, to a certain extent, forced to join armed conflicts. Thirdly, there are African Indigenous Peoples involved in land-related disputes resulting in open or latent conflicts, including with states and with private businesses.

I. Indigenous peoples in Africa caught-up between two major warring factions

As in many parts of the world, Indigenous Peoples in Africa are often numerically and politically insignificant in countries where they live. In Botswana and Namibia, for instance, the San peoples¹⁰ or "Bushmen"¹¹ are estimated to represent just 3 and 1.8 percent of the population respectively. Similarly, the Batwa or "pygmies" in Rwanda and Burundi represent only 0.2 percent and 0.6 percent of the national populations respectively.¹²

Starting from the African decolonization wars in the 1950s and 1960s to the major conflicts experienced by Africa in the 1990s, these numerically insignificant traditional communities that self-identify as

9. *Ibid.*, 21.

10. Sidsel Saugestad, "The Indigenous Peoples of Southern Africa: An Overview," in *Indigenous Peoples in Southern Africa*, Robert Hitchcock and Diana Viding eds. (Copenhagen, Denmark: IWGIA, 2004), 25.

11. The term "Bushmen" is often understood as a derogatory term, but many concerned communities prefer it instead of "San." This article will use the term "San." =

12. African Commission on Human and Peoples' Rights, *supra* note 8, at 16.

Indigenous Peoples have been caught between major warring factions, including being forced into alliance by either sides of conflicts.

Several communities of the San or “Bushmen” peoples of Southern Africa were forcibly relocated for military objectives and, on occasion, were forced to take side with the then-apartheid army, the South African Defense Force (SADF), which was fighting several liberation movements in Namibia, Zimbabwe and other countries.¹³

In the particular case of the Namibian Tsumkwe District, historical accounts reveal that “many San men worked for the SADF (South African Defense Forces) in the period prior to independence and most of them, including their families, were moved by the SADF to South Africa during the transition to independence....”¹⁴ The concerned San community members are today “... victimized because they were used in the 1970s and 1980s by the former South African government forces in its military operations against SWAPO’s liberation fighters.”¹⁵ Many people still criticize the San peoples for having fought on the wrong side of the decolonisation, ignoring that San were forced to side with the apartheid regime.

However, there is almost no account of how many San or Bushmen died in the liberation or decolonization wars in the whole of Southern Africa. The San’s numbers have sharply declined from over 300,000 to less than 200,000 today¹⁶ but no study has been undertaken to understand the reasons behind such decline.

The Amazigh Indigenous Peoples also played a key role in the independence wars of many Northern African States but the exact figures of how many died in these liberation struggles are unknown and often contested.¹⁷

13. Richard Pakleppa, “Civil Rights Legislation and Practice: A Case Study from Tsumkwe District, West Namibia,” in *Indigenous Peoples in Southern Africa*, Robert Hitchcock and Diana Viding eds. (Copenhagen, Denmark: IWGIA, 2004), 82.

14. R.E. Sylvain, “Disorderly Development: Globalisation and the Idea of Culture in the Kalahari,” *American Ethnologist* 32, no. 3 (2005): 354–370.

15. Clement Daniels, “Indigenous Rights in Namibia,” in *Indigenous Peoples in Southern Africa*, Robert Hitchcock and Diana Viding eds., (Copenhagen, Denmark: IWGIA, 2004), 50.

16. Sidsel Saugestad, *supra* note 10.

17. N. Boudraa and J. Krause, *North African Mosaic: A Cultural Reappraisal of Ethnic and Religious Minorities* (Cambridge, United Kingdom: Cambridge Scholars Publishing, 2007): 2.

In post-independence Africa, the trend of not documenting Indigenous victims of major conflicts continues. The 1994 Rwandan genocide led to the killing of over 800,000 Tutsi and moderate Hutus in a very short period of less than four months.¹⁸ One key United Nations Report on the Rwandan genocide indicated the killing of “the Tutsi population of the country but also targeting of moderate Hutus....”¹⁹ In his article “The Twa Pygmies: Rwanda’s Ignored People,” an anthropologist who has worked extensively in Batwa highlights the existence of three ethnic groups in Rwanda, namely Tutsis, Hutus and Batwa. The anthropologist shows, however, that almost all reports on the genocide in Rwanda make reference only to 800,000 Tutsis and moderate Hutus killed, as if no single Indigenous Batwa was killed during the tragic events.²⁰

“The horrifying number of Tutsi and moderate Hutu that died represent about 14 per cent of the nation. Although less than one per cent of Rwanda’s population, it is estimated that 30 per cent of the Rwandan Twa died or were killed during the Genocide and ensuing war. Despite having no interest or role in national politics, the Twa have suffered disproportionately as a consequence of the rivalries of others. ... This human tragedy remains ignored by almost all commentators on the Rwandan Genocide and war.”²¹

Similar unreported and overlooked impacts of wars and conflicts on Indigenous Peoples have occurred and continue to occur in the Democratic Republic of Congo (DRC) and Central African Republic. A 2004 report of Minority Rights Group International on the Congo war quoted witness statements alleging acts of cannibalism committed against Batwa or Bambuti peoples in the Ituri region of the Democratic

18. L. Heldring, “State Capacity and Violence: Evidence from the Rwandan Genocide,” *CSAE Working Paper WPS*, no. 44 (2014): 1.
19. S/1999/1257.
20. J. Lewis, “The Twa Pygmies: Rwanda’s Ignored People,” in *La Marginalisation Des Pygmées d’Afrique Centrale*, Sévérin Cécile Abega and Patrice Bigombe Logo eds., (France: Maisonneuve et Larose, 2006), 1–23.
21. *Ibid.*, 2.

Republic of Congo.²² Numerous global and reputable media outlets, including the Journal of the Royal Anthropological Institute,²³ echoed these allegations²⁴. These allegations were also mentioned at numerous international forums, including at sessions of the African Commission on Human and Peoples' Rights and the United Nations Permanent Forum on Indigenous Peoples Issues (UNPFII); but the concerned allegations were not investigated accordingly.

The Bambuti "pygmies" or Batwa Indigenous Peoples continue to suffer from the fate of being unaccounted for as victims of conflicts in several African countries.²⁵ In Central African Republic, several reports of victims of conflict contain no disaggregated data or figures on Baka Indigenous Peoples that have been killed or displaced, despite persistent allegations of targeted attacks against those communities.²⁶ In the DRC Katanga province, there are also recurrent reports and allegations of mass killing of Batwa Indigenous Peoples by local militia, including one case relating to a killing of over 30 Batwa women, men and children in April 2015.²⁷ As this paper is being finalised in October 2016, 16 Batwa Indigenous Peoples were reportedly killed by their neighbouring Bantous following a dispute over local delicacies (caterpillars). Despite the recurrence and gravity of this situation, little attention has been paid to the protection of the concerned Batwa peoples, including by the United Nations peacekeeping mission in the DRC (MONUSCO).

22. Minority Rights Group International, "'Erasing the Board': Report of the international research mission into crimes under international law committed against the Bambuti pygmies in the eastern Democratic Republic of Congo," (2004): 12.
23. M. Dynes, "Pygmies beg UN for aid to save them from Congo cannibals," *The London Times* (2004).
24. J. Pottier, "Rights violations, rumour, and rhetoric: Making sense of cannibalism in Mambasa, Ituri (Democratic Republic of Congo)," *Journal of the Royal Anthropological Institute* 13, no. 4 (2007).
25. J. Olivero, et al., "Distribution and Numbers of Pygmies in Central African Forests," *PLOS ONE* 11, no. 1 (2016): 1–16.
26. P.W. Jennings, "Central African Republic on the Eve of Elections: From Crisis to Reconciliation," Minority Rights Group International (2015): 5.
27. "DR Congo: Ethnic Militias Attack Civilians in Katanga," Human Rights Watch (2015), <https://www.hrw.org/news/2015/08/11/dr-congo-ethnic-militias-attack-civilians-katanga>

MONUSCO has no special programme aimed at addressing the particular vulnerability of Indigenous Peoples in conflict-affected areas or countries such as the DRC and Central African Republic.

II. African Indigenous Peoples involved in conflict and whose lands and territories are militarized

There are also, in Africa, Indigenous communities or peoples who are directly involved in armed conflicts, including as a way to express their grievances or force their claims onto discussion tables. The continuing marginalization of Indigenous Peoples has left several of them with no other option than confronting the status quo. This situation is generally followed by a heavy militarization of Indigenous Peoples' lands and territories by governments seeking to quash the uprising or address insecurity.

The Touareg of Mali, for instance, started their struggle or insurgent movement in the early 1960s²⁸ as a way to call for redress of “decades of fundamental grievances... [including]... decades of discrimination and exclusion from the political and economic processes by successive Bamako-based governments.”²⁹ There have been numerous peace agreements between the Malian government and the Touareg peoples,³⁰ the latest being in June 2015, which includes provisions for wide autonomy to local and community institutions as well as particular attention to economic opportunities for young people within Indigenous communities.

Heavy militarization of Indigenous Peoples' lands and territories has also occurred in the Karamoja region of Uganda, which is one of the most marginalized areas in the country and has been particularly affected by the armed conflict between the Lord's Resistance Army (LRA) and the government of Uganda for decades. The region is also

28. Stephanie Pezard and Michael Shirkin, *Achieving Peace in Northern Mali: Past Agreements, Local Conflicts and Prospects for a Durable Settlement* (Santa Monica, California: RAND Corporation, 2015), 5.

29. D.J. Francis, “The regional impact of the armed conflict and French intervention in Mali,” Norwegian Peacebuilding Resource Centre (April 2013): 1–16.

30. Pezard and Shirkin, *supra* note 28.

known for cattle raiding, considered as another cause of conflicts that affect communities.³¹

Sections of the terrorist movements or outside rebel or insurgent groups have often taken advantage of such conflicts between Indigenous communities and states to expand their networks, recruit and thereby exacerbate the security situation. In Mali, the al-Qa'ida in the Islamic Maghreb (AQIM) took advantage of the conflict between the Touareg Indigenous communities and the government. The Lord's Resistance Army (LRA) has also taken advantage of tensions between Karamojong peoples and the government of Uganda. In Cameroon, Nigeria and Chad, similar groups, including Boko Haram³² have occupied traditional lands and territories of Indigenous communities, transforming these lands into scenes for global antiterrorism operations with multiple implications on security and livelihoods.

III. African Indigenous Peoples affected by lands- and resources-related conflicts

The third major type of conflicts affecting Indigenous Peoples in Africa consists of disputes resulting from open or latent conflicts over lands and natural resources between Indigenous communities and other actors, including states.

The current strong and, to some extent, violent reactions of African Indigenous Peoples to land and resources dispossession is relatively recent. Most of these Indigenous Peoples are now living in the last perimeters of their traditional lands and territories, following decades of gradually being pushed back. Now that most of these communities have nowhere to push back to, they are forced to fight back and in many cases their resistance has resulted in violent clashes, including losses of human lives. Climate change consequences and the recent scramble for agro-business lands have aggravated the land and resources-related conflicts affecting Indigenous communities across Africa.

31. "Karamoja Conflict and Security Assessment," Saferworld (September 2010), <http://www.saferworld.org.uk/resources/view-resource/480-karamoja-conflict-and-security-assessment>

32. N. Ray, "Growing Threat of Terrorism in Africa : The Case of Boko Haram," Indian Council of World Affairs Issue Brief (February 2016).

How many Indigenous Peoples have been killed in land disputes or related conflicts on the African continent over the last decades? How many of their houses have been destroyed as a way to force them out of their ancestral lands and territories? How many of their livestock have been killed as a way to force them into different livelihoods? No one really knows the exact figures of human and non-human costs of these lands-related disputes affecting Indigenous Peoples. In Africa, it has become commonplace to hear government officials argue that numerically small communities wanting to continue exercising stone age-like lifestyles should not be allowed to block or become obstacles to jobs creation, investments, general interests and national development programmes.

Cases of disputes, sometimes leading to loss of life, between Mbororo and agriculturalist communities in Chad, Cameroon and Central African Republic are regularly reported.³³ “The dispute between Kouka farmers and Kréda pastoralists in the Moïto area left 80 dead in 2003 ... In March 2013, several people were killed in inter-communal clashes in the village of Koro, near Batangafo, and many homes were burned down in the commune of Nana Bakassa.”³⁴

There are also cases of governments seeking to force Indigenous Peoples out of their traditional lands and territories for conservation or private investment purposes, including tourism and agro-businesses. Lethal conflicts over lands and resources affecting Indigenous Peoples’ communities have become recurrent in Kenya, Tanzania, Ethiopia and Uganda. In Tanzania, for instance, Maasai Indigenous communities in Liliondo are involved in an open dispute with the Tanzanian government over community ancestral lands that have been granted to foreign safari and hunting companies, as repeatedly highlighted by the African Commission on Human and Peoples’ Rights through several Urgent Appeals.³⁵ The United Nations Special Rapporteur on the Rights

33. M. Moritz, “Understanding Herder-Farmer Conflicts in West Africa: Outline of a Processual Approach.” *Human Organization* 69, no. 2 (2010): 138–148.

34. “The Security Challenges of Pastoralism in Central Africa” *Africa Report N°215*, International Crisis Group (April 2014): 2.

35. “Urgent Appeal to the President of the United Republic of Tanzania, 2011,” African Commission on Human and Peoples’ Rights, <http://www.achpr.org/sessions/49th/inter-session-activity-reports/indigenous-populations/>

of Indigenous Peoples has also reported on this case, underlining allegations of burned houses, arbitrary arrests, rapes and even killings.³⁶

In Kenya, Ogiek Indigenous communities are involved in similar lands and natural resources-related conflicts with the federal government of Kenya, including one court case before the African Court of Human Rights in Arusha/Tanzania. In March 2016, a Minority Rights Group International release highlighted the killing of one Ogiek community member following a land dispute.³⁷ Similarly, Sumburu Indigenous community members have, on several occasions, been detained and killed in clashes with Kenyan state institutions over land and natural resources-related disputes.³⁸ Tensions are likewise rising in the Turkana area as the geothermal projects and a sub-regional railway network known as the Lamu Port Southern Sudan-Ethiopia Transport (LAPPSET) project gather momentum. The Kenyan Human Rights Commission, in its position paper regarding this project, has warned of this project's potential negative impact on Indigenous communities that have lived since time immemorial on the concerned lands and has called upon the involved governments to abide by international standards, including standards regarding Indigenous Peoples' rights.³⁹

In Ethiopia, there are also repeated cases of serious human rights violations, including killing of Indigenous community members over land and natural resources disputes.⁴⁰ Large-scale agricultural

The mechanism of Urgent Appeal is provided for in the African Charter as a way for the Commission to address an urgent situation of a human rights violation. The African Commission has addressed several Urgent Appeals to the government of Tanzania over the Liliondo case.

36. A/HRC/15/37/Add.1, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya," Human Rights Council, Fifteenth Session (September 15, 2010).
37. Minority Rights Group International, Press Release (24 March 2016). <http://minorityrights.org/2016/03/24/8329/>
38. "Violence Engulfs Kenyan Tribe Just Miles from Royal Hideaway," Survival International (December 13, 2011), <http://www.survivalinternational.org/news/7946>
39. "Forgotten In the Scramble for Lamu: A Position Paper on the LAPPSET Project In the Case of the Aweer and Fisherfolk," Kenya Human Rights Commission (2014), <http://www.khrc.or.ke/media-centre/news/230-forgotten-in-the-scramble-for-lamu.html>
40. "State of the World's Minority and Indigenous Peoples 2015: Ethiopia," Minority Rights Group International (July 2, 2015). <http://www.refworld.org/docid/55a4fa5ae.html>

plantations in the Gambella region and several other parts of the country have led to violence, including the reported killing of over 140 people in one single protest as reported by Human Rights Watch.⁴¹ Some of these tensions have recently developed into severe political unrest, leading to a state of emergency declared by the Ethiopian government in October 2016.

IV. Concluding reflections and potential policy paths

The conflicts affecting Africa have a particular but undocumented toll on African traditional communities that self-identify as Indigenous Peoples, as a way to seek recognition and protection of their unique land-based lifestyles, cultures and livelihoods.

There seem to exist several major drivers of this ‘blind-eye’ approach to conflicts affecting Indigenous Peoples in Africa, including non-recognition of the racial discrimination, stereotyped or prejudiced views against these communities’ ways of life, traditional economies and lifestyles by many public policies. Many African governments continue to deny the existence of Indigenous Peoples on the continent and thereby reject the idea of giving any attention to their particular situations. Yet these communities have much to offer, as the last guardians of Africa’s most pristine and purest traditions and cultures that they seek to preserve for future generations. Most of Indigenous Peoples’ lands and territories remain rich in biodiversity and natural resources as a result of, among others, the Indigenous traditional knowledge and modes of production, which make a unique contribution to climate change resilience efforts and the protection of biodiversity.

The numerical and political insignificance of most Indigenous communities or peoples in Africa could also explain why they are ignored by most mainstream media, national bureaus of statistics, government policy documents, peacekeeping operations, national human rights institutions, humanitarian organizations and other actors working on data and information gathering, who tend to focus on major groups that are politically or socially influential.

41. “Human Rights Watch: 140 People Killed Over Land Dispute,” Video (January 8, 2016), <https://www.youtube.com/watch?v=75ScGc-Nr3E>

There are several possible policy paths available to decision-makers in order to address the particular vulnerability of Indigenous Peoples to conflicts and their invisibility in conflict reporting. These include:

Firstly, African governments and policymakers should come to terms with their misunderstandings regarding Indigenous Peoples and align themselves with the work of the African Commission on Human and Peoples' Rights, which has conceptualized and clarified what the term "Indigenous Peoples" means and does not mean in Africa. The term "Indigenous Peoples" in Africa does not mean first occupant or inhabitant of any given country, lands or region. The term, in its human rights-based understanding put together by the African Commission, refers to a limited number of traditional African communities whose land-based livelihoods suffer from prejudiced views and are forced to abandon their cultures or traditional economies and integrate into mainstream lifestyles.

Several African countries have already internalized the African Commission's work and therefore either passed laws or adopted specific policies on Indigenous Peoples. These pioneering African States include the Republic of Congo, which passed the "Law No. 5-2011 of 25 February 2011, on the Promotion and Protection of Indigenous Populations." The new Constitution of Kenya also includes reference to Indigenous communities, and several regulations in the Democratic Republic of Congo use the term "Indigenous Peoples." In other words, there is no longer one common African position on Indigenous Peoples and each state or government should from now on speak for itself. With these ground-breaking examples, such as the above-mentioned law in Congo-Brazzaville, it has indeed become technically inaccurate for one African state or government to argue that there are no Indigenous Peoples in Africa or that the term Indigenous Peoples is not applicable in Africa. There is a diversified developing African state practice.

Secondly, in the context of globalized security problems and concerns, Africa's bilateral and multilateral partners on peace and security should take a wider approach to addressing the root causes of conflicts and insecurity, including redress of historical injustices that have pushed many communities, including Indigenous Peoples, into a life in the margins of society, thereby making these communities fertile

ground for extremism. The new African Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), illustrates the needed shift in approach by providing particular attention to traditional communities with special cultural attachment to their lands: “States Parties shall endeavour to protect communities with special attachment to, and dependency on, land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests.”

Many studies have shown that Indigenous Peoples are particularly vulnerable in conflict situations.⁴² The African Union and United Nations Peacekeeping Operations (DPKO) should therefore develop special guidelines that take into account this particular vulnerability of Indigenous Peoples to conflicts. Indigenous Peoples’ lands and territories should also be demilitarized, including through development projects and special programmes that offer economic opportunities to youth as a way of shielding them against extremism and recruitment into armed groups.

Thirdly, conservation agencies, safari companies, businesses, International Financial Institutions and similar actors should develop clear and updated guidelines or codes of conduct guided by international human rights standards on Indigenous Peoples, including their ownership rights over lands and natural resources. Such guidelines should be grounded in a rights-based approach, considering Indigenous Peoples as rights-holders as guaranteed by international standards such as the United Nations Declaration on the Rights of Indigenous Peoples.

Fourthly, UN agencies, governments, mainstream media and other actors working on data and information should generate disaggregated data on Indigenous Peoples as victims of conflicts, including through specific indicators and introducing variables in research and censuses.

42. The Fifteenth Session of the United Nations Permanent Forum (UNPFII) was devoted to conflicts affecting Indigenous Peoples. Numerous case studies and witness statements provided at this meeting revealed the particular vulnerability of Indigenous Peoples to conflicts. See on: <http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/backgrounderC1.pdf>

Indigenous Peoples' Rights, Conflict and Peace Building: Experiences from East Africa

Naomi Kipuri

I. Background

Indigenous Peoples in Africa, as in many parts of the world, experience human rights violations of all kinds, such that these violations have become persistent in their daily lives. Violations include discrimination; encroachment on and expropriation of their lands, territories and resources leading to tenure insecurity; political and social exclusion; violence, including forced relocations, killings, intimidation and maltreatment; deprivation of all means of livelihood; rape of women and young girls; destruction of communities and cultural heritage; psychological torture; and other gross violations of human rights.

Experiences vary from one country and community to another but in almost every case, the result is conflict of one form or another. In Kenya, during the colonial administration, hunter-gatherers were not recognized as distinct peoples. Instead, they were pressured to identify with their neighbors of the majority population. While this non-recognition amounted to discrimination and was clearly a violation of their civil and political rights, it has continued to date. The struggle for recognition has been a major struggle for Indigenous peoples, even many decades after independence. Similar to hunter-gatherers, pastoralists are continuously losing their lands and territories through encroachment by other economic activities sanctioned and encouraged by the state. This results in conflict over grazing, salt licks, water and other resources between the state and pastoralists, between pastoralists and farming communities, and, sometimes, among Indigenous communities themselves over scarce resources exacerbated in recent years by climate change.

Despite the seriousness of the violence associated with such conflicts and their frequency, many of these situations are rarely covered in national or international media hence they persist. In some cases, when the media does cover them, the style of reporting makes the violations lose the seriousness they deserve. Where peace initiatives have been

attempted, some measure of success has been realized, but the potential for Indigenous peace building institutions has yet to be fully realized.

This essay examines the experiences of Indigenous Peoples in East Africa in respect to violations of their human rights and ensuing conflict. It examines the mechanisms used to address and resolve these conflicts at the local and regional levels. It further assesses the efficacy of these methods of conflict resolution in the face of other peace building possibilities that have been attempted in the region in addressing and resolving persistent conflict involving Indigenous Peoples.

II. Indigenous Peoples of Eastern Africa

The peoples of Eastern Africa who identify with the international Indigenous Peoples' movement are mainly but not exclusively hunter-gatherers and pastoralists. The hunting-gathering and some small fishing communities include the Hadzabe and Akiye of Tanzania, the Ogiek, Sengwer, Yaaku, Elmolo, Waata, and Aweer of Kenya and the Batwa, Benet, and Ik of Uganda. These peoples claim to pre-date the migration of Bantu and agro-pastoralist peoples into their particular regions. The transhumant pastoralist peoples of the region include the Barbaig (and the wider Datoga), Baraguyu, Maasai, Samburu, Turkana, Rendille, Pokot, Borana, Endorois as well as the Basongora and the Karamojong of Uganda.¹ In Rwanda and Burundi, it is the hunting-gathering Batwa who have identified themselves as Indigenous. South Sudan, the newest member of the East African community, is said to have one of the largest livestock populations in Africa. These are raised by more than 85% of the country's almost 10 million inhabitants who

1. "Report of the African Commission's Working Group of Experts in Indigenous Populations/Communities," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2005), http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf; "Research and Information Visit Report to Uganda," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2009), http://www.achpr.org/files/sessions/43rd/mission-reports/uganda/misrep_specmec_indig_uganda_2006_eng.pdf; "Research and Information Visit Report to the United Republic of Tanzania," International Work Group for Indigenous Affairs and African Commission on Human and Peoples' Rights (2015), http://www.iwgia.org/iwgia_files_publications_files/0719_TANZANIA-ENGELSK.pdf

are engaged in the care of livestock.² Some of the most well known pure pastoralists of South Sudan include the Toposa and the Murle.

III. Resources and rights of Indigenous Peoples

Human rights violations affecting Indigenous Peoples center specifically on lands and resources. In Africa, as in many other parts of the world, much of the natural resources including oil, natural gas, bio fuels, timber and other minerals, lie within and beneath lands occupied by Indigenous Peoples.³ Agribusiness and nature conservation also offer investment opportunities that often target Indigenous Peoples' lands. The scramble for resources for immediate use or for speculation has also exacerbated violation of Indigenous Peoples' rights.

In East Africa, the recent discovery of raw materials for extraction in nearly all the countries of the region⁴ and the possibility that more remain to be discovered, coupled with what seems to be a global increase in the demand for food crops, has led to increased pressure for land—particularly Indigenous Peoples' land. This discovery has also involved subsequent and rapid expansion of infrastructure to facilitate the transportation and eventual export of these newly found products hence the extension of road and rail networks through some parts of Indigenous Peoples' territories. While this has been going on, wildlife, forests and nature reserves have also been experiencing pressure. All these factors have had negative impacts on Indigenous Peoples in general and specifically on women and children in these communities.

Following encroachment and expansion of development projects onto their lands and territories, Indigenous Peoples have resisted and asserted their rights, often triggering violent confrontations with

2. "The role of education among pastoralists in South Sudan," Comboni Missionaries of South Sudan (2014), <http://combonisouthsudan.org/the-role-of-education-among-pastoralists-in-south-sudan/>
3. Martin Mowforth, *Environmental Crises and Human Rights of Abuses in Central America*, (London, United Kingdom: Pluto Press, 2014).
4. In Kenya, oil has been discovered in areas belonging to the Turkana Indigenous pastoralists and the best locations for wind power in the country are located in areas occupied by the Maasai. The same is true with bio gas. In Tanzania, the home of the unique Tanzanite is Simanjiro District, home to the Maasai. In Uganda, the areas occupied by the Karamojong have also been discovered to harbor oil and natural gas.

state operatives. At times, investors have also been attacked in the ensuing confrontations. The root of the conflict centers on ideological differences and expectations of development paradigms from opposing parties. While states wish to implement projects that benefit broad national interests, Indigenous Peoples, with their specific experiences of exclusion and marginalization, prefer projects that do not exacerbate their already precarious situation. In the process, Indigenous Peoples are perceived as somewhat resisting development and, in doing so, are perceived as denying their respective countries a chance to achieve development visions or to emerge into middle-income economies. Some examples are highlighted below.

In Kenya, the discovery of oil and the potential for wind energy, geothermal power and other renewable energy are all located in the ancestral territories of Indigenous Peoples. Some of them include the Ngong Hills and Kipeto wind power projects as well as other wind energy projects of Olkaria, Longonot (Loonong'ot) and Suswa geothermal sites on the Great Rift Valley. All of these are located in Narok and Laikipia counties, which are ancestral territories of the Maasai people. The Lake Turkana Wind Power and geothermal sites in Turkana, Rendille, Borana and Samburu respectively are in ancestral territories of Indigenous Peoples going by those names; the Bogoria-Silali site is in the ancestral area of the Endorois and many others.

While many of the projects are in their initial stages of prospecting and extraction, so far the wind energy has already led to evictions and inhumane treatment of Indigenous Peoples in the areas concerned. Some people suffered attacks, including houses burnt to the ground along with all their property. Some were intimidated so they would move out of the area. At the end of the harassment, some negotiations took place and some families received compensation in the form of modern houses, although some people are still complaining that their lives are now far worse than before.⁵

In Tanzania, the Parakuyio (Baraguyu) Maasai of Morogoro have been evicted from lands they have occupied for close to one hundred

5. Kanyinge Sena, "Report number 21: Renewable energy projects and the right of marginalized/indigenous communities in Kenya," International Work Group for Indigenous Affairs (2015).

years so that sugarcane can be produced from the corridor of the Kilomero Valley, a project code-named the Southern Agricultural Corridor of Tanzania (SACGOT) that is sponsored by the World Bank.⁶ The Maasai of Ngorongoro have similarly been violently evicted and their rights violated many times in order to provide space for a hunting concession for the royal family of the United Arab Emirates.⁷

The Barbaig pastoralists of Tanzania have, in a similar vein, been removed from their ancestral territory to make room for wheat production sponsored by Canada.⁸ Even long after the project ended, their lands were never returned to the Barbaig, but rather distributed to other Tanzanians and a portion to yet another investor to grow wheat yet again.⁹

A common narrative in Tanzania is that Indigenous Peoples are destructive to the environment and that they cause conflict even in cases where this is not the case.¹⁰ This justifies their evictions even from environments they created and nurtured for decades to create the world-famous wildlife sanctuaries of the region. All the famous wildlife parks have been carved out of the best parts of Indigenous Peoples' ancestral territories.¹¹

In Uganda, the Batwa in the southwest corner of the country have been evicted from lands they have always occupied in order to make room for exclusive wildlife parks and supposedly to facilitate the

6. Mowforth, *supra* note 3.

7. "Research and Information visit to the United Republic of Tanzania," *supra* note 1.

8. Lane Charles, "Pastures Lost: alienation of Barabaig land in the context of land policy and legislation in Tanzania," *Nomadic Peoples* 34/35 (1994): 81–94.

9. "Research and Information visit to the United Republic of Tanzania," *supra* note 1.

10. Ringo Tenga et al., "A study on options for pastoralists to secure their livelihoods in Tanzania: Current policy, legal and economic issues" (2008), <https://www.scribd.com/document/14146287/A-Study-on-Options-for-Pastoralists-to-Secure-their-Livelihoods-in-Tanzania-Current-Policy-Legal-and-Economic-Issues>. See also Feminist Activist Coalition (FemAct), www.tgnp.org, and Pastoralist Forum Press Release about gross violations of human rights and citizenship rights in Ngorongoro District (TZ) carried out on behalf of the private investor ORTELLO Business Corporation (OBC): http://www.theecologist.org/News/news_analysis/2771261/tanzania_breaks_promise_thousands_of_maasai_evicted_to_make_way_for_lion_hunt.html

11. *Forest Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania*. Daniel Brokington ed. (Bloomington, Indiana: Indiana University Press, 2002).

protection and tracking of gorillas, hence the creation of the Bwindi-Mgahinga National Park. The creation of this park occurred without any consultation or free, prior and informed consent of the Indigenous Peoples upon whose land this park was being built. Without a proper resettlement plan, the Batwa were left vulnerable and at the mercy of faith-based organizations who have taken it upon themselves to house, clothe and feed them as impoverished internally displaced persons. Indigenous pastoralists, such as the Karamojong and Basongora, have in turn been “abandoned” to fend for themselves in the isolated parts of the country, with their rights to development being denied.¹²

Similarly, conflicts in Rwanda and Burundi have focused mainly on the two main ethnic groups in the country—the Hutu and Tutsi—while largely ignoring the fate of the Indigenous Batwa who also bears the brunt of the conflict in this country. However, it must be stated that through negotiation and affirmative action, Burundi had (prior to the recent conflict) succeeded in including a number of Batwa representatives in the Senate. Rwanda later followed suit with the inclusion of some Batwa in their Senate.

The addition of South Sudan to the East African community is too recent for any assessment of the experiences of Indigenous Peoples there to be made. However, the conflicts taking place in Northern Kenya have a similar effect on the Indigenous communities of South Sudan, since the Toposa and Murle are pastoralists whose situation is similar to that of their Turkana and Karamojong neighbors.

Many of the human rights violations and ensuing conflict discussed above often go unreported partly because of the isolated and often inaccessible areas that many Indigenous communities find themselves in within their respective countries. However, these also often go unreported because of the negative attitudes of many reporters and journalists, most of whom are often a product of dominant mainstream society and who look down upon Indigenous Peoples. Still other reporters suffer from a lack of appropriate training in the sensitivity required in the preparation and presentation of equally sensitive issues related to Indigenous communities. Consequently, when Indigenous issues are reported, they are

12. “Research and Information Visit Report to Uganda,” *supra* note 1.

trivialized and sometimes caricatured. For this reason, it is truly critical to train and expose the media—including editors and directors—to the human rights issues specifically affecting Indigenous peoples.¹³

IV. Experiences with litigation in resolving conflict in East Africa

Some Indigenous communities in East Africa have used the courts quite effectively to resolve conflicts and to defend their rights, particularly their rights to their lands and resources. Some litigation has resulted in the achievement of some degrees of success since a number of communities have received compensation and in others cases there have been cessations of hostilities, albeit temporarily. However, success in litigation has demonstrated only a modicum of success, as the situations below indicate.

In Kenya, the Endorois have been celebrated as the first Indigenous community in the region to win a case at the level of the regional court against the government for the denial of their fundamental human rights. That was in 2010, and to date, six years down the line, the implementation of the court decision has remained a problem. The community blames the government for their unwillingness to implement the court decisions and the government blames the community for failure to cooperate.¹⁴

Similarly, following evictions from their lands, the Benet of north-east Uganda took their case to court and won. In the settlement, they were granted restitution rights to their ancestral lands.¹⁵ However, the

13. In 2007, the Arid Lands Institute, in collaboration with Community Research and Development Services (CORDS) and with support from the International Work Group for Indigenous Affairs, conducted sensitization seminars for the media in Tanzania and for Eastern Africa. From the seminar, it became apparent that most of the participants were unaware or had never been exposed to Indigenous Peoples' issues. The reporters talked of challenges they faced convincing their editors to prioritize issues of importance to Indigenous Peoples but which mainstream media often considers insignificant.
14. Personal discussions with Endorois community members and the Attorney General's office at various times in early 2016.
15. "Research and Information Visit Report to Uganda," *supra* note 1: See also Jack Mukaili, "Hadzabe shut out land grabbers with own land title," International Work

implementation of the decision of the court has remained similarly problematic.

The Indigenous Ogiek community in Kenya has also pursued the litigation alternative to resolve their land disputes and seems to be facing similar frustrations.

In Tanzania, a number of Indigenous communities have either won cases or have pending cases in courts over violations of their rights in respect to evictions from village lands that rightly belong to them. Other litigations revolve around invasion of their lands by farmers and politically connected elite in government and in the ruling party. Outright removal and subsequent resettlement of Indigenous territory for large-scale farms, as in the case of the Barbaig of Hanang District, or for hunting concessions, as in the case of the Maasai of Ngorongoro District, have attracted litigation in local courts. Some of these Indigenous communities have exhausted all local legal remedies and are being considered for regional courts. The courts dismissed the Barbaig case because the Barbaig could not prove that they are Tanzanian citizens, despite their communities only being found in Tanzania.¹⁶ Indeed, all communities in Tanzania who identify themselves as Indigenous (with the exception of the hunter/gatherer Akiye) have taken cases to court on account of gross violation of one set of rights or another. They include the Hadzabe, Barbaig, Baraguyu (Parakuyio) and Maasai. Yet, while these cases are in court, the same violations continue unabated and in complete disregard of court procedure. Such impunity is repeated in every place these Indigenous disputes occur, apparently with no legal consequences or repercussions.¹⁷

Similar scenarios are repeated in other countries throughout the region where many Indigenous communities have legitimate claims against their states and are considering following litigation channels locally and regionally as a means to having their rights redressed.

Group for Indigenous Affairs (November 1, 2011), http://www.iwgia.org/news/search-news?news_id=371

16. Tenga, *supra* note 10.

17. Personal communication with the Maasai of Morogoro, Ngorongoro and Kiteto Districts in Tanzania.

It is noted that violations of rights of Indigenous Peoples takes place despite the existence of regional, national and international human rights instruments that are meant to protect against such violations.¹⁸ National constitutions also exist with clear clauses containing protection of human rights of all communities.

For example, in Kenya, a new Constitution was adopted in 2010 that mentions for the first time the rights of minorities and marginalized communities. It also specifically notes that hunter-gatherers should have legally affirmed land rights. Despite this, however, violence is frequently meted out by forest scouts against Indigenous Peoples in protected areas or in conserved forests. At the same time, harassment of people living in areas adjacent to wildlife parks and sanctuaries has similarly continued unabated, perpetuated by Kenya Wildlife Service scouts. This goes to show that effective implementation of the new instrument remains a challenge.

While litigation elsewhere in the region has encouraged Indigenous communities to pursue similar paths, and many of them are rightly doing so, with the poor record in implementation of court decisions, it is now becoming apparent that litigation can be lengthy, expensive, and cumbersome and may not necessarily achieve the desired result. Many cases filed in local courts, instead of being assessed on merit, have been thrown out on technical and petty grounds. This means that alternative possibilities may now need to be explored for the realization of human rights of Indigenous Peoples in the East African region. These include peace building and negotiated settlements.

V. Experiences with peace building and negotiated settlements

While the media rarely covers violations of Indigenous Peoples' rights, the same is also true of dispute settlements. Indigenous Peoples in the region still practice extensive peace building institutions that they employ to settle conflicts among themselves and with neighboring

18. All African countries have national human rights institutions that are expected to provide reports on their human rights situations every two years to the African Commission on Human and Peoples' Rights. There is also the new Partnership for African Development (NEPAD).

communities. Women play pivotal roles in these peace building activities. There is a need to investigate what these peace building methods are, to assess how effective they still are, and to explore possibilities of mainstreaming them for the purpose of utilizing them to resolve some of the intractable conflicts experienced by Indigenous communities.

One important and successful peace building initiative in the region was started by a woman athlete, Tegla Lorupe, from the Pokot community of Kenya, for the purpose of fostering peace and creating harmony among warring pastoralist communities including the Pokot, Turkana, Marakwet and Karamojong. Her initiative has succeeded in creating lasting peace accords between communities and also, most significantly, it has reportedly returned 1,000 children to school who were on the verge of becoming child soldiers.¹⁹

While Indigenous communities in this region have repeatedly demonstrated skill in utilizing their own Indigenous peace building mechanisms to resolve conflicts between and among themselves, it is clear that these skills have not been utilized outside their own communities. Yet most of the recent conflicts experienced by Indigenous communities are with governments and it is not clear whether local solutions can be utilized nationally or regionally. It is imperative, therefore, that the rich peace building institutions of Indigenous Peoples are recorded and mainstreamed for possible use at the national, regional and possibly international levels.

Negotiated settlements with states have also been witnessed in the resolution of some of the conflicts between Indigenous Peoples and states. For example, the government of Tanzania demonstrated a willingness to negotiate in creating an accord to address a cultural heritage site of significance to the Maasai community. It is known as *Endoinyioolmoruak* (the mountain of elders). This is a small mountain located between Mt. Kilimanjaro and Mt. Meru, in the Arusha region of Northern Tanzania. This Indigenous community used this heritage site for the generation of names for retiring successive age sets from one generation to the next over time and, in doing so, reckoning historical

19. See Tegla Lorupe's peace initiative here: <http://office.teglapeacefoundation.org>

events associated with this passage. Following the demarcation of Africa to European powers during the Berlin Treaty in 1884, the site was placed in Tanganyika, present day Tanzania, and it ceased to be easily accessible to the Kenya Maasai. Discussions were initiated on the matter around 2004–2005, but have never been completed because the East African Treaty seems to be silent on such trans-boundary resources of historical significance. Meanwhile, the heritage site is increasingly being encroached upon despite the expressed willingness and ability of the government through the then-Ministry of Education and Culture to protect and preserve it for posterity.

So far, under the auspices of the East African Community, a regional intergovernmental organization in East Africa, there has been a tradition of addressing conflicting between states. Accordingly, discussions took place to establish the Rwanda Tribunal and to organize the Burundi talks, both taking place in Arusha, Tanzania. Perhaps there is a possibility of extending this agreement among countries of the region to also cover internal peace settlements and solutions involving communities that cross borders, as in the case of shared cultural heritage sites of relevance to Indigenous communities found in one country, but also to trans-boundary Indigenous citizens of another country. To do so would be to seriously address cultural rights such as the example mentioned above.

VI. Recommendations to various actors

To states in Africa

1. Observe and implement instruments related to the rights of Indigenous peoples, both regional and international, especially the United Nations Declaration on the Rights of Indigenous Peoples.
2. Disseminate and popularize all declarations and treaties of relevance to the rights of Indigenous Peoples.
3. Implement and apply the law equally for all citizens by addressing impunity.

4. Create public fora to discuss Indigenous rights openly and seek participatory solutions that include Indigenous women in emerging conflict situations affecting them.
5. Identify and mainstream Indigenous conflict resolution methods of Indigenous communities; strengthen negotiating skills of Indigenous communities so that they are enabled to negotiate with their governments.

To regional bodies

6. Promote the work of the African Commission on Human and Peoples' Rights in all countries in the region.

To bilateral agencies and development partners

7. Work with states to promote efforts regarding the promotion and protection of the rights of Indigenous Peoples, and uphold corporate responsibility in the pursuit of business agendas.

Reflections on the Influence of the Current Political Development in Russia on Indigenous Peoples' Land Rights

Rodion Sulyandziga and Dmitry Berezhkov

I. Indigenous Peoples in Russia

There are forty distinct Indigenous Peoples in Russia. According to Russian law, they are called “Indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation.”¹ This is a collective term for peoples with populations of less than 50,000 each, which inhabit two-thirds of the Russian territory in the Arctic and Asian parts of the country. In Russian legislation and legal traditions, the standalone term “Indigenous Peoples” cannot be found anywhere. It appears only in conjunction with specific qualifiers referring to size and place.² The total number of the Indigenous Peoples of the Russian North is about 250,000 individuals in total and less than 0.2% of the Russian population. Their traditional livelihood is based on fishing, hunting, reindeer husbandry and gathering. More than two thirds of them continue to live in rural areas where these activities are indispensable sources of food and income. Due to their traditional livelihoods, most of the Indigenous peoples of the Russian North, especially those who preserve a nomadic way of life, usually need much more territory for subsistence than other populations. Indigenous Peoples in Russia remain one of the poorest parts of the population and their social and economic development, as well as their life expectancy, is far below the national average.³

1. There are another seven peoples in Russia that have the officially recognized status of small-numbered Indigenous Peoples of the Russian Federation but do not belong to the small-numbered Indigenous Peoples of the North, Siberia and the Far East. These are the Abasins, Besermens, Vod, Izhor, Nagaibaks, Seto and Shapshugs, who live mainly in the Southern territories of Russia and do not depend as much on traditional livelihoods as the Northern Indigenous Peoples.
2. J. Rohr, “Indigenous Peoples in the Russian Federation,” International Work Group for Indigenous Affairs Report 18 (2014), <http://bit.ly/2h4j0yz>
3. Dmitry Berezhkov, “New Political Realities for the Indigenous Movement in Russia,” Forum for Development Cooperation with Indigenous Peoples (2013), <http://bit.ly/1rqEkzg>

Most territories that are inhabited by Indigenous Peoples are rich in natural resources, including oil, gas, and minerals, and they are heavily affected by large energy and mining projects such as pipelines, hydroelectric dams, gold mining and other forms of resource extraction. The Russian Arctic macro-region traditionally plays a significant role within the Russian economy, providing about 60% of Russian natural resources produced in the Russian North including 93% of natural gas, 76% of oil, 100% of diamonds and platinum, 90% of nickel, and 63% of gold.⁴ At the same time, the share of mineral resources in general exports of the Russian Federation exceeds 70% as of 2014, with a value of about \$350 billion USD per year.⁵ Consequently, the land issue and control over the territories are significant issues for the Russian economic development and political agendas.

II. Indigenous Peoples' rights in Russian legislation

Russian legislation includes some obligations to protect Indigenous Peoples' access to lands, biological resources, culture, education, participation in decision-making and other areas. The legal context of Indigenous Peoples' rights in Russia consists of the articles of the Russian Constitution, a set of specialized federal and regional laws, along with individual articles in different Russian resource, land and environmental legislations. The most important provision lies in article 69 of the Russian Constitution, which guarantees the rights of the small-numbered Indigenous Peoples in Russia according to generally recognized norms of international law. At the same time, in accordance with Russian legal tradition, the only rules of international law binding for Russia are those appropriately ratified by the Russian Federation.⁶

4. Matveev, A.S. "From the Paradigm of Conquering the Arctic to the Paradigm of its Habitation." The current status and the ways of development of small numbered Indigenous peoples of the North, Siberia and the Far East of the Russian Federation, The Federation Council of the Federal Assembly (October 2012), <http://bit.ly/2h4faoZ>
5. Russian State Statistics Agency, http://www.gks.ru/bgd/regl/b15_13/Main.htm
6. V.A. Kryazhkov, "Legal Regulation of Relations Between Small-Numbered Indigenous Peoples and Subsoil Users in Russian Federation," (Moscow, Russia: National Research University, Higher School of Economics, 2014), <http://bit.ly/2h4pzRl>

Therefore, neither the provisions of ILO Convention 169 nor the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) are parts of the Russian legal system.

Hence the framework of cultural, territorial and political rights of Indigenous Peoples and their communities in Russia consists of the articles of the Constitution together with three federal framework laws: “On the Guarantees of the Rights of the Indigenous Small-Numbered Peoples of the Russian Federation” (1999); “On General Principles of the Organization of Communities [Obshinas] of the Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation” (2000); “On Territories of Traditional Nature Use of the Indigenous Small-Numbered Peoples of the North, Siberia and the Far East of the Russian Federation” (2001). There are also some relevant provisions in articles of other federal and regional laws.⁷

Observers have noted that this web of legislation suffers from a lack of consistency and stability, greatly inhibiting effective protection of Indigenous rights. First of all, there are substantive deficiencies in legislation, including its incompleteness and lack of robustness with regard to the protection of Indigenous rights set out in the UNDRIP, and also its partial incompatibility with these rights. Secondly, there is a poorly working legislative process often resulting in poorly crafted and contradictory regulations. Thirdly, there is an implementation gap. Many positive-sounding regulations remain on paper only, allowing Russia to cite them before international human rights bodies without actually giving effect to them on the ground. Indigenous Peoples’ rights to their traditional territories and livelihoods are still not effectively protected. Crucially, legislation does not acknowledge Indigenous Peoples’ inherent right to their ancestral territories. Indigenous Peoples are not regarded as the owners of their ancestral lands. Based on their traditional occupancy, they are merely granted usufruct rights to hunt, fish, to herd their reindeer on the land, etc.⁸

7. Berezikov, *supra* note 3.

8. Rohr, *supra* note 2.

III. Changes in the Russian legal environment according to the “evolution” of the political regime

During the last few years, the level of respect and protection of Indigenous Peoples' rights as well as of human rights and ecological rights in Russia has declined significantly. Since the mid-2000s, the government of the Russian Federation, with the aim to promote economic development, has removed administrative barriers, supported geological exploration, and has been consistently applying the concept of “un-ecologization” to federal legislation. This process has been accelerated since Vladimir Putin took the position of Prime Minister after his first job swap with Dmitry Medvedev in 2008.

From 2006 to 2009, requirements of the State Environmental Evaluation, which is the main official ecological assessment tool for any development projects including extractive projects or establishment of natural reserves, was significantly reduced in order to make access to lands easier for business. A good number of items that were formerly under the State Environmental Evaluation, including almost all development programs and technical regulations, were excluded from the application of its regulation.⁹ The procedure of public hearings within the Evaluation was revised in order to exclude any opportunity to stop or significantly influence any development project. Protocols of public hearings became a ceremonial appendix to materials of the State Environmental Evaluation.

Through the revision of federal laws on hunting and fishing, commercial auctions were introduced in 2008 for Indigenous communities to obtain fishing and hunting grounds. In these auctions, Indigenous Peoples had to compete with commercial companies, which led to many Indigenous Peoples losing their traditional fishing and hunting grounds due to a lack of capacity and financial resources.¹⁰

The 2001 Federal Law on Territories of Traditional Nature Use (TTNU) aimed to protect Indigenous Peoples' traditional lands from

9. D.V. Afinogenov, “Analysis of Legal Changes of the Status of the Environmental Assessment,” *Public Environmental Review* (2007), <http://bit.ly/2gkwp14>

10. Alexey Limanzo, “Current Legislation on Hunting Excludes the Ability for Indigenous Peoples' Priority Access to Hunting Resources,” *Indigenous World/Living Arctic*, no. 27 (2011), <http://bit.ly/2gYfO3d>

industrial development, but was not fully implemented and not even one federal TTNU was established. Attempts to establish one such territory over the past 15 years were blocked by the federal government, with the argument that there is no special regulation (subordinate act) that would allow the establishment of such territories. The issue is that the federal government is responsible for introducing such regulations and has not done so since the TTNU law's adoption in 2001. TTNUs at a regional level were established in some regions by regional authorities, but their legal status is rather shaky as most forestlands in the country belong to the federal government and regional governments do not have enough power and authority to parcel out such territories on their own.¹¹

In 2013, the federal government made the situation worse through the initiative of a new version of the law on natural protected areas (natural reserves), which allowed construction and business activity, including tourism, on territories of natural reserves. Through the same law, territories of traditional natural use of Indigenous Peoples lost the status of natural protected areas, which weakened their potential to protect Indigenous Peoples' traditional lands from development projects.¹²

In 2016, a new federal law entitled "On the Far East Hectare" was initiated by the federal government to stop the out-migration from the Far East regions. Based on this law, the government started a program according to which every person in the country can receive for free a hectare parcel of land in any Far East region for personal use. Regional authorities then started to compile lists of lands appropriate for use in this program, thus resulting in massive land withdrawal from regional TTNUs. Fifteen million hectares were consequently withdrawn from regional TTNU land registers in Khabarovsk Krai, which is about 50% of the total area of TTNUs in the region.¹³

11. In 2001, the regional prosecutor of the Koryak Autonomous Region, under the pressure of a gold-mining company, filed a protest against a regional TTNU of Itelmen people, called "Thsanom," using the argument that this territory (which was established by the regional governor) included federal lands. The TTNU was banned and, after several years of court trials, the Itelmen community lost the case in court.
12. O.A. Murashko, "The Territories of the Traditional Nature Use are Excluded from the Official List of Special Protected Areas," (2014), <http://bit.ly/2gTQEqb>
13. Ministry of Natural Resources of Khabarovsk Krai, "The Far East Hectare for Indigenous Peoples," (March 2016), <https://mpr.khabkrai.ru/events/Novosti/250>

Since the second job swap between Vladimir Putin and Dmitry Medvedev in 2012 when Putin returned to the Kremlin, besides the degradation of environmental legislation in Russia, the situation of human rights in the country in general has deteriorated rapidly. Dozens of new restrictive federal laws came into force, the most famous of which is the “Law on Foreign Agents.” This law allows the state to characterize as a “foreign agent” any non-governmental organization that receives financial support from abroad and is involved in political activity. Independent human rights work, as well as any environmental protection activity, is therefore viewed by the federal government as “political activities.” Thus, many ecological and human rights NGOs were recognized as “foreign agents,” including three Indigenous NGOs.¹⁴ This status implies a large penalty payment to the state, closes any available space for dialogue with governmental officials, increases state control over any financial activity of the NGO concerned, and imposes other restrictions which make it almost impossible to raise funds abroad. This great difficulty in attracting financial resources for independent human rights work inside Russia, combined with the aforementioned strong pressure from authorities and security/intelligence agencies, often leads to the shutdown of NGOs with such status.¹⁵

This legislative development, as well as the general context of political acrimony with Western countries and an atmosphere of spy hysteria, combine to reflect negatively on Indigenous Peoples' rights in Russia. Within the context of the weakening of the legal protection of Indigenous Peoples' lands and the decline of overall human rights protection in the country, private businesses have been allowed to act more aggressively in order to gain control over lands and resources. A protracted economic crisis, caused by the fall of oil prices and Western sanctions against Russia, has also served to influence accepted corporate behavior in Russia. Companies are now trying to save money by reducing environmental security and social programs. On

14. The Center for Support of Indigenous Peoples of the North/Russian Indigenous Training Center (CSIPN/RITC) was recognized as a “foreign agent” in November 2015. See <http://kommersant.ru/doc/3112136>

15. “Development of Civil Activities in Spite of Everything: Russian NGOs After the law ‘On Foreign Agents’,” Third Sector Lawyers Club, Human Rights Resource Center, (2016), http://hro.org/files/2016_NLC_report%20on%20FA_Rus.pdf

the ground, this leads to intensification of conflicts between Indigenous Peoples and business over land rights.

IV. Khanty people and Surgutneftegaz

The Khanty-Mansiysk Autonomous Okrug-Ugra (the official term for this autonomous region) is located in the northwest of Russian Siberia and is the main producer of Russian oil. The region's territory is comparable in size to the territory of France or Ukraine. The Khanty-Mansiysk Autonomous Okrug-Ugra is one of the Russian Federation's leaders in terms of industrial output, power generation, oil and gas production, and equity investment. 475 oil and gas fields have been discovered there since the start of oil exploration in the region in 1960s. This region's share of total Russian oil production in 2013 amounted to 48.8 %. 104 oil and gas production companies work in the Autonomous Okrug territory, which in total produce more than 250 million tons of crude oil per year. Ugra is an export-oriented region where export accounts for 95.6% and import for only 4.4 % of its foreign trade turnover. The main export product is crude oil (99.4 % of all exports). The population of the region is 1,597,200 people, of whom 32,000—or approximately 2%—are Indigenous Peoples of the North. These Peoples are the Khanty, the Mansi, and the Nenets, half of whom maintain their traditional way of life.¹⁶

The Khanty is one of the small-numbered Indigenous Peoples of the Russian North who belong to the Finno-Ugric peoples. There are 30,000 Khanty in Russia and 60 % of them live in the Khanty-Mansiysk Autonomous Okrug. Their traditional semi-nomadic livelihood consists mainly of reindeer herding, hunting and fishing, and is conducted over a large, dispersed area along the Ob River, which is one of the largest rivers both in Siberia and worldwide. Their culture is based on extensive clan systems, a native religion, a native language and a traditional way of life in widely separated family settlements on traditional hunting territories. The hunting territories vary in size depending on the number of family members, but usually

16. "About the Okrug," Official Site of the Public Authorities: Khanty-Mansiysk Autonomous Okrug-Ugra, <http://www.admhmao.ru/en/about/general/>

they are between 400 and 600 square kilometers. The family size varies between five and forty individuals. Their culture was born in and is specifically adapted to the forest and swamp ecosystem of the Western Siberian taiga.¹⁷ They are among the Indigenous Peoples of Russia who have best preserved their language, their cosmivision, and their traditional knowledge. Unlike many other Indigenous Peoples of Russia, they have the formal right to use their traditional lands in the form of so-called "ancestral lands" and these are officially recognized within the regional legislation as Territories of Traditional Nature Use (or TTNUs, as mentioned earlier).

The Khanty-Mansiysk Autonomous Okrug has a rather developed legislation dedicated to Indigenous Peoples' rights. Indigenous Peoples of the Okrug have representation in regional parliament, where they constitute a so-called Assembly of Small-Numbered Indigenous Peoples of the North. About 500 regional TTNUs are organized in the Okrug, with 300 of them located within the licensed areas of oil exploration and extraction.¹⁸ The region has a rich practice of agreements between oil companies and Indigenous communities. A company which begins oil activity within the officially recognized Indigenous Peoples' TTNU should reach an agreement with the Indigenous family concerned about using the land and, usually, this ends by signing an agreement of an economic nature.¹⁹

The Khanty-Mansiysk Autonomous Okrug is a region of numerous lakes that are rich in fish and play an important role in traditional Indigenous Peoples' economy. At the same time, many of them are sacred for the Indigenous Peoples of the region. Historically, Khanty people considered lakes with islands as the most sacred sites where

17. "West Siberia Oil Industry: Environmental and Social Profile, Final Report," IWACO Consultants for Water and Environment, Final Report for Greenpeace, (June 2001), <http://www.greenpeace.nl/Global/nederland/report/2001/5/west-siberia-oil-industry-envi.pdf>
18. "The Concept of Sustainable Development of Small-Numbered Indigenous Peoples of Khanty-Mansi Autonomous Region (Yugra)," <http://www.kmns.admhmao.ru/kontseptsiya/>
19. "On Territories of Traditional Nature Use of Small-Numbered Indigenous Peoples of the North in Khanty-Mansiysk Autonomous Region-Yugra," Regional Law, (last modified September 26, 2014), <http://bit.ly/2g6XBD4>

reindeer herders, fishers and hunters can pray in privacy and leave offerings to gods. Lakes also play a significant place in Khanty's oral traditions and their mythology. Khanty families have kept many of these sites secret for generations, so many of them have remained unknown to the general public until recently.

One of the most sacred places is Imlor Lake, which is located in the municipality of Surgut in the central part of the Khanty-Mansiysk region. According to the myths of Indigenous Peoples who live in this area, the island in the middle of the lake became a place where the final battle took place between the Yugansk god and the Stone Bear, who was a messenger of the god of heaven. Here the Stone Bear was fatally wounded and, after the battle, he went down under the ground to his mother for relief.²⁰ The lake and its neighboring area is a historical place for the traditional livelihood of several Khanty families. They, as well as Indigenous people from other districts who sometime travel for hundreds of kilometers to reach this location, use the lake and the island for their spiritual rituals.

The ancestral land of Sergey Kechimov, an Indigenous Khanty elder who is considered by local Indigenous Peoples as a keeper of sacred Lake Imlor, is spread over several dozen square kilometers around the lake. Kechimov and his family live there permanently. They use a traditional style of life, hardly speaking Russian and rather using the Khanty language in everyday activities. The oil company OJSC Surgutneftegas is operating drilling wells to extract oil from the Sarymo-Russkinskoye oil field in the same area. When the oil wells began to surround the lake, destroying the natural ecosystem that supported the life of the local Khanty people, including their cattle pastures, most of the Khanty left in exchange for financial compensation which allowed Surgutneftegaz to use their ancestral lands for oil extraction. Thus, Kechimov eventually became the last local Indigenous resident who lives there permanently and does not agree to leave the area in exchange for compensation. Living in the area, Kechimov conflicts fairly often with oil company representatives,

20. M. Favorskaya, "The Old Man and the Sea of Oil," *Snob* (June 2015), <http://bit.ly/2fYpa2I>

as Surgutneftegas pollutes the territory and continues to inch nearer to the lake's shores. This conflict continued until 2014.

At that point, along with the oil wells, Surgutneftegaz employees put up small hunting and fishing lodges near the lake and brought dogs to the area. According to the laws of the Khanty-Mansiysk Autonomous Okrug, it is forbidden to keep dogs in the oil fields. Stray dogs and cats, poaching in hunting areas, are to be killed. In September 2014, according to Kechimov's testimony, dogs that were accompanying Surgutneftegas employees attacked Kechimov near the lake where he has a grazing pasture for his domestic reindeer; he alleges that he was forced to shoot the dogs. Soon thereafter, the local police visited Kechimov and recorded his testimony and asked him to sign some papers, without explaining the charges against him and without an interpreter. Kechimov, who speaks Russian poorly, did not clearly understand the situation and rather understood that the papers were related to him killing the dogs. However, it turned out that he had signed a confession to threatening the lives of two employees of OJSC Surgutneftegas, who had accused Kechimov some days earlier. The court trial is still ongoing and, because of media attention raised by Greenpeace, the case has become rather prominent in Russian and international mass media.²¹ In February 2017, the court convicted Kechimov of an offence of a murder threat and sentenced him to 30 hours of compulsory community service. At the same time, he was discharged from liability because of a legislative pardon that was announced by the State Duma (the Russian Parliament Low Chamber) in memory of the 70th anniversary of the end of the Second World War.²²

V. Cultural heritage sites

From a legal point of view, a most interesting issue is the methodology used by regional authorities to promote oil interests in this

21. "Russia: Guardian of Khanty sacred lake facing prison for defending himself against stray dogs brought in by oil workers," International Work Group for Indigenous Affairs, (July 2015), <http://bit.ly/2h8YwV5>
22. "The shaman was convicted in Ugra because of the murder threat to employees of Surgutneftegaz," Znak.com (February 3, 2017), <http://bit.ly/2nHEFiS>

conflict. Officially, the regional government stays out of the disagreement and is trying to find a solution that will accommodate all opposing parties. Several joint working groups were organized, which included representatives of Indigenous Peoples, representatives of the relevant oil company, and the authorities. The most important tool to protect Indigenous Peoples' interests, according to the authorities, was the creation of a special protected area: a municipal cultural heritage site called "the sacred Lake Imlor." According to regional regulations, construction, industrial pollution, the creation of hunting and fishing bivouacs, and wood logging are prohibited within the site's boundaries.²³ It should be noted that the municipal creation of protected areas in Russia is the lowest possible level of authority. The other important point to note is that cultural heritage sites, which are mainly located in cities and urbanized areas, have lower importance than specially protected *natural* areas for environmental protection, especially in the opinion of extractive companies. Cultural heritage sites are under the jurisdiction of the Federal Ministry of Culture, while the specially protected natural areas are under the jurisdiction of the Federal Ministry of Natural Resources.

But the most significant item of "the sacred Lake Imlor" site's regulations is their boundaries, as they almost exactly duplicate the shoreline of the lake.²⁴ The authorities thereby supported the Indigenous Peoples' demands on paper but in reality, the creation of the heritage site did not create any hindrance for the company to extract oil in this area. Moreover, the boundaries of the cultural heritage site had been revised at least once after a review of Surgutneftegas's demands²⁵ and today Indigenous locals are complaining that the company does not

23. "The Service of State Guard of the Cultural Sites of the Khanty-Maniysk Autonomous Region, The Regulation Order of the Boundaries, Protection Status, Territorial Use Regime of the Temporary Protection Zone of the Municipal Cultural Heritage Site 'the Sacred Lake Imlor'," (2013), <http://www.surgutneftegas.ru/uploaded/7NP.pdf>
24. "Interactive map of the Sacred Lake Imlor," <http://www.surgutneftegas.ru/ru/ecology/imlor/imlor1/>
25. "Minutes of the public hearings on rationalization of the borders and using the regime of cultural heritage site 'the Sacred Lake Imlor'," (2012), <http://bit.ly/2gFN1U3>

comply with the minimum final borders, which are separate production derricks from the lake.²⁶

According to our understanding, through creating a “municipal cultural heritage site,” the authorities and the Surgutneftegas corporation constructed an exploitative fictional platform which was not supposed to protect Indigenous Peoples’ rights, but rather would protect the authorities and the company from public opinion. The same ploy was used in the case of Numto Natural Park in the Beloyarsk municipality in the north of the Khanty-Mansiysk region a few years later.

VI. Heaven Lake “Numto”

A discussion between the Surgutneftegas oil company and local Indigenous communities around Numto Lake has been on-going for almost two decades. The Numto Lake, which is located near the border of Khanty-Mansiysk Autonomous Okrug and Yamal Nenets Autonomous Okrug,²⁷ is sacred for Indigenous Peoples from both regions. There is a sacred island located in the middle of the lake, which, translated from the Khanty language, is named Heaven Lake.²⁸

In 1997, local activists initiated the foundation of a regional natural park, “Numto,” to protect the fragile Northern Siberian ecosystem in this area and to preserve the traditional way of life of the local Indigenous population. The regional park was officially established by the regional government and approved by the Federal Ministry of Natural Resources. The Russian scientific community has recommended that the Numto wetlands be included in the List of Wetlands of International Importance (as defined by the Ramsar Convention) as an important site of waterfowl habitat. At the time of the creation of the natural park, the local government left a gap for oil companies within

26. “Minutes of the public hearings on the project of changing the zoning regime of natural park ‘Numto,’” (2016), <http://www.greenpeace.org/russia/Global/russia/report/2016/protocol-numto.pdf>

27. The Yamal Nenets Autonomous Okrug produces about 90% of the natural gas output of the Russian Federation.

28. Elena Sakirko and Konstantin Fomin. “Hope Floats at Heavenly Lake,” Greenpeace Russia (February 2016), <http://bit.ly/2fYLJzN>

the park's regulations which allowed oil extraction activity if it would be organized according the "environmentally safe" technologies.²⁹

In 1999, the Federal Ministry of Natural Resources issued an oil search license that covered the same area as the natural park. After some years, the Surgutneftegaz company, which received the license, confirmed positive oil reserves in the area and, in 2001, initiated a new zoning of the park that separated the territory into several zones. The area now included an oil extraction zone, a wildlife conservation zone, and a zone for traditional livelihood of Indigenous Peoples who still live permanently there on the territory of the natural park.³⁰

Since 2002, Surgutneftegaz started intensive oil field exploration in the area. In 2004, the company received a license for oil extraction and started to produce oil in the southern part of the park in 2007.³¹ After some years, the company initiated a new process of rezoning of the park's territory with the aim to gain more access to the wetlands, which previously were included in the park's wildlife zone and in the zone of Indigenous Peoples' traditional livelihood. Khanty families, the park's administration and environmental organizations brought urgent attention to the case among authorities and the general public with the aim to stop this new rezoning process. The public hearing organized by local authorities in February 2016 showed the depth of contradictions between the company's point of view and Indigenous Peoples' point of view. Khanty families refused to give the company their consent for the new rezoning of the park as they have no other territory for traditional livelihood and the oil infrastructure already surrounds them on all sides.³²

Unfortunately, Russian legislation does not include the concept of free, prior and informed consent of Indigenous Peoples. Through transformation of the federal legislation, which was described previously in this paper, a negative vote from a public hearing cannot significantly

29. "Regulations of 'Numto' Natural Park," (1997), <http://faolex.fao.org/docs/pdf/rus145795.pdf>
30. Tatiana Slanevskaya and Efrosinya Grigorieva. "The Natural Park 'Numto'— Looking for Compromise," (April 2016), <http://union-press.ru/rubrics/aktualno/772>
31. "The Environmental Impact Assessment of Changing the Zoning Regime of Natural Park 'Numto'," (2015), <http://bit.ly/2nshdW4>
32. "Minutes of the public hearings on the project of changing the zoning regime of Natural Park 'Numto'," *supra* note 26.

influence a development project and would only be considered by the Ministry of Natural Resources in the project planning.

In a situation of significant public attention to the rezoning process, the government of Khanty-Mansiysk Autonomous Okrug used their proven scheme and announced the creation of the cultural heritage site “Numto” and its exclusion from the oil-licensed area. Once again, the territory of the “cultural heritage site” covers mostly the surface of the lake, with a thin shred of land around the lake’s shore. Representatives of the local Indigenous community opposed such a rezoning scheme and pointed out the negative experience at Imlor Lake. However, their opinion was not considered in the final decision of the Federal Ministry of Natural Resources. After several months of negotiations, the new rezoning scheme of the Numto natural park was approved, and the wildlife zone and the zone of Indigenous Peoples' traditional livelihood within the park were crosscut by wide corridors of an oil-processing zone. The cultural heritage site “Numto” was thereby created at a regional level.

Authorities, the Surgutneftegas corporation, and co-opted media presented this decision as a success of Indigenous Peoples; they claimed the wildlife zone and the zone of Indigenous Peoples' traditional livelihoods were extended by 19% and the lake itself received an additional protective status.³³ At the same time, Greenpeace, independent experts, and Indigenous locals believe that this new rezoning has had a crucially negative effect on local biodiversity and the traditional livelihoods of local Indigenous Peoples, as the oil pipeline corridors cut through the most vulnerable lands of the natural park.³⁴

VII. Conclusions

The Khanty-Mansiysk region is considered one of the most developed regions in the Russian Federation, taking into account

33. “Indigenous Peoples have Protected the ‘Numto’ Park: New Zoning Regime Will Be Endorsed Before the End of the Year,” Ural.Polit.Ru, (October 2016), <http://bit.ly/2fZVDG7>
34. “They Give the Free Hand to Oil Producers to Destroy the ‘Numto’ Park Despite the Protests of Civil Society,” (October 2016), <http://www.rosbalt.ru/russia/2016/10/20/1560495.html>

economic development; quality of life; development of Indigenous Peoples' legislation; protection of their cultures, their languages, and their education; and other factors. This was the region where Russian authorities brought the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, in 2009 to present best practices of Indigenous Peoples' socio-economic and cultural development.³⁵ For many years, Khanty-Mansiysk Autonomous Okrug had one of the lowest levels of conflicts between Indigenous Peoples and extractive companies among other regions of the Russian Federation. Its experience was presented by the Russian government in many international fora as one of the best experiences of negotiations between Indigenous Peoples and extractive industry in the country.

Nevertheless, quite a number of experts believe that the region has no fewer challenges than other regions in the country; rather, those challenges were better covered because of significant financial resources concentrated in the region³⁶ and massive public relations campaigns in the media. The oil companies have enough financial resources to pay compensation immediately, so Indigenous families agreeing to sign contracts with companies giving up their ancestral lands usually do not typically raise the issue of free, prior and informed consent or environmental pollution.

But as soon as Indigenous Peoples' representatives refuse to agree with oil extraction, they are met with the joint efforts of both powers—administrative and the oil industry. These powers use public relations campaigns, cheating through legislative measures, judicial pressure and other tools to gain access to land and overcome the resistance of the local community. Extractive business takes advantage of the gaps in national legislation and, if this is not enough, starts to apply pressure on people through the police, courts, and intelligence agencies, as is the case in some other areas in Russia.

35. Khanty-Mansiysk region was one of two Russian regions visited by Professor James Anaya in 2009. The second region was Krasnoyarsk Krai.

36. Khanty-Mansiysk is the third richest region of the country after the two metropolises of Moscow and St. Petersburg.

Because of the general political evolution of the country, the typical human rights tools of public opinion or international law are not working properly to protect Indigenous Peoples' land and cultural rights. Leaders and activists of Indigenous Peoples in Russia are increasingly encountering the threat of arrest for their civic position, and some of them have already been convicted or are under threat of conviction. Businesses in Russia use the political situation in the country more and more often to neutralize any obstacles to their economic benefits, such as the advocacy of Indigenous, ecological or human rights' activists, who, with increased frequency, are called "foreign agents," "spies," or "Western servants."

Today's oft-used voluntary guidelines for business do not work in the legal environment in Russia and can sometimes make the situation even worse in practice through the pretense of adherence to international standards by companies. Joint public relations capacities of authorities and companies allow the cover-up of human rights violations by pretending to follow "high international standards."

Authorities not only support business and do not support Indigenous Peoples' rights, but they are actively involved in the promotion of business interests by way of the oppression of differing points of view. Disagreements with the official vision are significantly trivialized by government and corporations, which call ecological and human rights activists "Western agents, whose aim is to prevent the economic development of Russia." State propaganda and media efforts are focused on projecting only positive experiences or aspects of Indigenous Peoples' social and cultural lives, out of touch of (or in isolation from) land rights and access to natural resources. A current shift away from the international legal framework also compounds the negative impact on—and general insecurity of—Indigenous Peoples' rights in the country. It is also rather disquieting for the international Indigenous Peoples' movement when such a large and powerful country as Russia makes an abrupt move backward in the field of the protection of Indigenous Peoples' rights, especially after some decades of positive democratic development. In this situation, there is a need for the international Indigenous movement to act jointly on emerging challenges and to find appropriate solutions in cooperation with partners and allies.

Environmental Violence: Impacts on Indigenous Women and Girls

Andrea Carmen

I. Environmental Violence

During the Expert Group Meeting (EGM) of the UN Permanent Forum on Indigenous Issues (UNPFII) in January 2012 on “Combatting Violence Against Indigenous Women and Girls,” the International Indian Treaty Council, in conjunction with the Native Village of Savoonga in Alaska, presented a paper entitled “Indigenous Women and Environmental Violence: A Rights-Based Approach Addressing Impacts of Environmental Contamination on Indigenous Women, Girls and Future Generations.”¹ This was the first time that the term “environmental violence” was presented at a UN forum to describe a pervasive form of human rights violation caused by the deliberate exposure by states and corporations of women and girls to environmental contaminants that are well-known and well-documented to cause illnesses, reproductive system cancers, disabilities, birth defects, untold suffering and death.

Environmental Violence was identified and defined in the “Declaration for Health, Life and Defense of our Lands, Rights and Future Generations” adopted by consensus by 52 Indigenous women and girls ages 14 to 92 from five regions at the 2nd International Indigenous Women’s Symposium on Environmental and Reproductive Health held in April 2012 in Chickaloon Village, Alaska.

“Environmental contaminants causing disease, birth defects and death are deliberately released into the environment because they are toxic to living things (i.e. pesticides), or as a result of industrial or military processes that are judged by States and corporations to pose an “acceptable risk” and “allowable harm.” States and corporations deny “provable” impacts despite the clear evidence that they cause

1. This paper can be downloaded in its entirety from the UNPFII website under “Documents Submitted for the Expert Group Meeting” at: http://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf

a range of serious health and reproductive impacts which disproportionately affect Indigenous women and children. This constitutes “environmental violence” by States and corporations and must be identified as such by Indigenous Peoples and human rights bodies.”

This concept was formally recognized by a UN body in the report of the 2012 UNPFII EGM to the UNPFII 12th session.² It was also included in the Lima Declaration from the International Conference of Indigenous Women in October 2013, which called for “zero tolerance” for any form of violence against Indigenous women and girls, including environmental violence.

II. The Human Rights Framework

The human rights framework affirming the rights of Indigenous Peoples, including Indigenous women and children, provides the context for addressing human rights violations caused by the deliberate exposure by States and corporations to toxic contaminants including pesticides, which are known to have devastating impacts on reproductive health.

The relevant human rights framework begins with the Universal Declaration on Human Rights which affirms in Article 25(1) that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food....” Other relevant international standards include:

- a) Convention on the Rights of the Child, Article 24, which calls upon States Parties to “*recognize the right of the child to the enjoyment of the highest attainable standard of health*” and to “*pursue full implementation of this right and, in particular, shall take appropriate measures... (c) To combat disease and malnutrition, ...through the provision of adequate nutritious foods and clean drinking-water, taking*

2. E/C.19/2012/6, “Combating violence against Indigenous women and girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples. Report of the International Expert Group Meeting,” (February 28, 2012).

into consideration the dangers and risks of environmental pollution”;

- b) United Nations Declaration on the Rights of Indigenous Peoples, which includes provisions affirming rights to health, subsistence, culture, productive capacity of the environment, rights of Indigenous women and children to be protected from all forms of violence, and the right to free, prior and informed consent regarding dumping and disposing of hazardous materials. Articles of primary relevance include:

Article 22, paragraph 2: *“States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”*

Article 24, paragraph 2: *“Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.”*

Article 29, paragraph 2: *“States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of Indigenous peoples without their free, prior and informed consent.”*

III. Documented Impacts

In Rio Yaqui, Sonora, Mexico, Yaqui children are still sick and dying. Their families are poor and do not have funds to buy medicines, pay for transplants or operations, or in many cases, even purchase wheelchairs for disabled children. Young women, even teenage girls, already have signs of breast cancer. Collective reproductive capacity is undermined and families continue to be devastated while chemical

companies rake in profits with impunity and both the importing states (such as Mexico) and the exporting states (such as the United States) turn a blind eye. Since 2001, the International Indian Treaty Council (IITC) has submitted cases of death and untold suffering to the UN Rapporteurs on Toxics, Rights of Indigenous Peoples, Right to Health and Right to Food, to various sessions and two Expert Ground Meetings of the UN Permanent Forum on Indigenous Issues; to the UN Working Group on Human Rights, Transnational Corporations and other Business Enterprises; to the UN Stockholm Convention Conference of the Parties; to the Committee on the Elimination of Racial Discrimination in its Periodic Reviews of the United States in 2008 and 2014; to the UN Commission on Human Rights; and to the Human Rights Council. In 2015, the IITC submitted 39 testimonies documenting direct impacts on children's and maternal health. More than 25 cases of death attributed to pesticides are among these submissions.

The studies of Dr. Elizabeth Guillette of the University of Arizona and University of Florida and her colleagues, conducted in Rio Yaqui, document reproductive and intergenerational health effects including links between prenatal exposure to pesticides and developmental defects in young children.³ She documented a range of such impacts on young children whose mothers had worked as farm workers. Pregnant women are also exposed to pesticides carried home by their farmworker husbands and fathers, via storage of toxic pesticides near homes, and via aerial spraying affecting entire neighborhoods and communities. Dr. Guillette also documented abnormal breast development including pre-cancerous conditions in pre-teen and teenage girls whose mothers were exposed to toxic pesticides, including pre-cancerous cells and failure to develop glandular tissue essential for breast feeding, further confirming multi-generational reproductive health impacts.

3. Elizabeth Guillette et al., "An Anthropological Approach to the Evaluation of Children Exposed to Pesticides in Mexico," *Environmental Health Perspectives* 106, no. 6 (June 1998): 347–353; and Elizabeth Guillette et al., "Altered Breast Development in Young Girls from an Agricultural Environment," *Environmental Health Perspectives* 114, no. 3 (March 2006): 471–475.

Many of the pesticides still being used in Rio Yaqui have been banned for use in their exporting countries because of their known deadly health impacts including those on reproductive and sexual health. Well-documented impacts of these banned pesticides include high pesticide levels in breast milk and cord blood, infant mortality, severe birth defects, infant and childhood cancers such as leukemia, arrested physical, mental and reproductive development including atrophies of the uterus in newborn girls, developmental impacts in children, malformation of sexual organs in infants of both sexes, premature and late menses, sterility in both sexes, early menopause and endometriosis.⁴

Over 80 community testimonies collected to date by IITC and its affiliate Jittoa Bat Natkia Weria from 2006–2016 in Indigenous agricultural communities in Rio Yaqui, Sonora, Mexico, document deaths, miscarriages, still births, severe illnesses and disabilities caused by the production, use and export of highly toxic pesticides including at least 25 deaths. Many of these testimonies were submitted by mothers, traditional health practitioners and community midwives, documenting newborn babies born with severe birth defects, cancers or other deadly illnesses due to prenatal exposure.

4. United Nations Committee on the Rights of the Child, 69th Session (May 18–June 5, 2015), “Consideration of the Fourth and Fifth Periodic Reports of Mexico under Article 44 of the United Nations Convention on the Rights of the Child.” Co-submitted by the International Indian Treaty Council/Consejo Internacional de Tratados Indios (Non-Governmental Organization in General Consultative Status to the United Nations Economic and Social Council), and the Affiliates of IITC in Mexico (April 15, 2015), http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/MEX/INT_CRC_NGO_MEX_20330_E.pdf; and S. Byrne et al., “Persistent organochlorine pesticide exposure related to a formerly used defense site on St. Lawrence Island, Alaska: Data from sentinel fish and human sera,” *Toxicology and Environmental Health* 78 (2015): 976–992; and S.D. Mitro et al., “Cumulative chemical exposures during pregnancy and early development,” *Current Environmental Health* 2, no. 4 (2015): 367–378; and R.H. Weldon et al., “A pilot study of pesticides and PCBs in breast milk of women residing in urban and agricultural communities of California,” *Environmental Monitor* 13, no. 11 (2011): 3136–3144; and S. Reuben, “Presidents Cancer Panel Report: Reducing Environmental Cancer Risk,” National Institutes of Health (2010); and A. Gore et al., “The Endocrine Society’s Second Scientific Statement on Endocrine-Disrupting Chemicals,” *Endocr Rev* 36, no. 6 (2015): E1–E150; and EC Marquez and K Schafer, “Kids on the Line: How Pesticides Are Undermining the Health of Rural Children.” (Oakland, California: Pesticide Action Network North America, 2016).

A tragic case is that of Cristian Molina, born with multiple birth defects after his mother was exposed to toxic pesticides working without protection while a 17-year old pregnant field worker. Cristian was never able to walk and his growth was permanently stunted. He passed away as a result of his birth defects at age thirteen on March 15, 2008. His was the first but far from the last case of severe and eventually fatal birth defects presented by the IITC to the UN Special Rapporteur on Toxics and other human rights Rapporteurs and bodies since that time.

Another very difficult death to report was the passing on April 11, 2013, of two-year old Juan Antonio Rodriguez Coronado, born with cirrhosis of the liver. His medical report diagnosed him as being born with cirrhosis of the liver. His family home in Vicam, Rio Yaqui, is on the flight path of airplanes spraying agricultural pesticides overhead, including in the residential areas where he lived.

Examples of other cases presented in testimonies collected in Rio Yaqui by community members and submitted by IITC to UN bodies including the UN Committee on the Rights of the Child include:

- a) Mrs. Flor Reyna, the mother of a young woman who was born with deformities. Currently the young woman is 30 years old and is 1.20 meters [3'11"] tall. She says that when her daughter was born, the child's body was "watery and jelly-like." The girl, due to her scant growth, is unable to move her legs; she can only move her arms. Her vital organs are atrophied. Studies conducted on her reveal that the girl developed deformities while in her mother's womb. The midwife who delivered her, Sra. Jesús, made the following comments: "These deformities are the product of tumors produced by chemicals when young women are exposed to their application while working in the field without personal safety measures or other similar protection" (testimony collected by IITC and Jittoa Bat Natika Weria in December 2011).
- b) In September 2013, testimony was provided to IITC by Mr. Hermenejildo, a community traditional healer who visited

Sra. Francisca Gotopicio in the community of Huamuchil, Cocorit, Rio Yaqui. She is the mother of a baby girl born with birth defects who lived merely four hours. Mr. Hermenejildo reported that the baby's body was completely amorphous, gelatinous, the body slightly elongated and the upper and lower extremities slightly short. He also tells us that the family members of the baby girl have jobs related to pesticides.

IV. State and International Responsibility

The United States is the largest exporter of pesticides that it does not permit to be used within its own borders. Other countries, including Germany and Switzerland, also carry out this practice. It should be taken into consideration that the first UN Rapporteur on Human Rights and the Illicit Movement of Toxics Wastes, Madame Ouhachi-*Vesely*, called this practice by the US "immoral" during her country visit to the U.S. in 2001. However the practice continues and is, in fact, legal under both national law and the UN Rotterdam Convention.

In particular, the UN *Rotterdam Convention* on the *Prior Informed Consent* Procedure for Certain Hazardous Chemicals and Pesticides in International Trade permits this practice as long as the exporting country informs the importing country of the chemicals' non-registered or restricted legal status. However, Indigenous Peoples in Mexico, Guatemala, Nicaragua, and Ecuador as well as other regions where these chemicals are used are not asked for their consent, nor are they informed of the dangers or provided with any safety precautions for their use. In Rio Yaqui, men and women field workers are not even provided with basic respirators, gloves or water to wash their hands before they eat their lunch in the fields. Aerial spraying takes place over schools, communities and homes.

Scientific studies further contribute to the growing body of evidence documenting the long-term and accumulative impacts of this practice on reproductive health, which are well known to the exporting country, including inter-generational impacts.

For example, the U.S. Department on Health and Human Services Presidential Panel on Cancer reported in 2009 that girls who were

exposed to DDT before they reach puberty are five times more likely to develop breast cancer in middle age. When parents are exposed to pesticides before a child is conceived, that child's risk of cancer goes up. Pesticide exposures during pregnancy and throughout childhood also increase the risk of childhood cancer.⁵

For example, in November 2013, a new study released by the United States National Institute of Environmental Health Sciences found that the presence of two bio-accumulative organochlorine pesticides—mirex and beta-Hexachlorocyclohexane (beta-HCH)—in women's blood serum is associated with an increased risk of endometriosis, a gynecological disorder which often leads to severe pain and infertility. The study found that women with high levels of mirex have a 50% increased risk of developing endometriosis, and women with high levels of beta-HCH have a 30%–70% increased risk.⁶

The two pesticides linked by the study to endometriosis have both been banned for use in the United States. Mirex, a bioaccumulative insecticide, was banned in the U.S. in 1978. However, both continue to be exported by the United States under a federal law that states, "Pesticides that are not approved—or registered—for use in the U.S. may be manufactured in the U.S. and exported."

Such scientific studies and reports carried out in the U.S. and by the U.S. government itself, confirm that the persistent reproductive health impacts of toxic pesticides that have been banned for use in this country are well known and well documented. Nevertheless, with callous disregard for reproductive health in many Indigenous communities, the U.S. continues to allow the manufacture and export of such pesticides for the financial profit of chemical companies and agri-business. The impacts are also well known and well documented and demonstrate how this practice is killing Indigenous babies and undermining the reproductive capacity of Indigenous women in many

5. "President's Cancer Panel. Reducing Environmental Risk: What We Can Do Now," U.S. Department of Health and Human Services, (2009), http://deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp08-09rpt/PCP_Report_08-09_508.pdf
6. "Two Pesticides Tied to Higher Risk of Gynecological Disorder." *Health Day News* (November 2013), <http://consumer.healthday.com/women-s-health-information-34/endometriosis-news-232/briefs-emb-11-5-00-15-et-endometriosis-pesticides-ehp-fhrc-release-batch-995-681617.html>

communities. The deliberate nature of this practice and the extreme levels of harm it causes has led to it being called both Environmental Violence and Environmental Racism carried out by the exporting as well as the importing countries.

According to data obtained from U.S. Government Custom Service Records, “Pesticide Exports from U.S. Ports, 2001–2003” states that “analysis of U.S. Custom Service records for 2001–2003 indicates that nearly 1.7 billion pounds of pesticide products were exported from U.S. ports, a rate >32 tons/hour... including >27 million pounds of pesticides whose use is forbidden in the United States.”⁷

It has been an almost insurmountable challenge to obtain more up-to-date and comprehensive information on both production and export from U.S. government sources. Soon after the 2012 EGM, IITC decided to submit a Freedom of Information Act (FOIA) request seeking information from several U.S. government agencies in collaboration with Advocates for Environmental Human Rights.

In response to this legally mandated process, the U.S. Environmental Protection Agency in August 2012 provided us with a list of 32 pesticides and polymers (chemical components) considered to be extremely hazardous, including at least 10 that are listed as “un-registered” (or not permitted for use) in the U.S. and/or internationally. In 2010, the last year for which data was provided, they were being produced for export only in the United States by 24 companies, including multi-national giants such as Monsanto and Bayer Crop Science, at 28 different facilities in 23 U.S. states. IITC is currently working to obtain more current data as well as the specific destinations of these deadly exports. As stated above, obtaining this information from the United States government has been challenging to nearly impossible.

V. Other Forms of Environmental Violence

Another example of the export of human rights violations constituting environmental violence is sexual violence, abuse, and trafficking associated with the presence of extractive industries, in

7. C. Smith et al., “Pesticide exports from U.S. ports, 2001–2003.” *International Journal of Occupational and Environmental Health* 14, no. 3 (2008): 167–177.

particular mining and oil corporations, in Indigenous communities around the world. In 2014, the Council on Hemispheric Affairs reported that Canadian mining companies accounted for 50%–70% of mining in Latin America, in many cases through subsidiary companies.⁸ On April 2, 2016, *The New York Times* reported that eleven Mayan Q'eqchi' women from Lote Ocho, Guatemala, filed a case in Canadian court charging the Toronto-based mining company Hudbay Mineral with negligence for a 2007 gang rape committed during a forced eviction in which its local subsidiary's security guards took part.

The acceptance of this case in Canadian court marked an advance in terms of access to remedy for Indigenous women victimized by the actions of Canadian-owned mining interests, although anecdotal evidence suggests this type of violence is both widespread and under-reported. For example, on April 4, 2015, *The Sydney Morning Herald* reported that eleven women and girls who were raped, gang-raped or violently molested in the Papua New Guinea Highlands have reached an out-of-court settlement with the Canadian mining company Barrick Gold, having refused to accept the "insulting" compensation paid to 120 fellow victims. The Porgera community says security guards and mobile police at the mine have raped more than 200 women and girls over the past two decades.

In addition, growing concern is being expressed, including at United Nations bodies such as the UN Permanent Forum on Indigenous Issues in its thematic dialogue in 2016 on "Conflict, Peace and Resolution," regarding the targeting of Indigenous human rights defenders around the world. Many Indigenous community members being targeted for criminalization and violence are organizing in opposition to imposed development causing a range of human rights violations being carried out on Indigenous lands without their free, prior and informed consent.

During this discussion at the UNPFII, the IITC presented a statement focused on the increasing number of reports of death threats, intimidation, criminalization, imprisonment and outright killings of Indigenous human rights defenders in many states around the world.

8. Mercedes Garcia, "Canadian Mining: Still Controversial in Central America, The Case of Honduras," *The Council on Hemispheric Affairs* (May 2016), <http://www.coha.org/canadian-mining-still-controversial-in-central-america-the-case-of-honduras/>

IITC stated that “the repression carried out in response to legitimate human rights activism of Indigenous Peoples opposing, in particular, resource extraction and imposed development carried out on their lands without their free, prior and informed consent, only contributes to and perpetuates these conflicts.”⁹ IITC also highlighted the many reports of sexual violence, including gang rapes carried out on a regular basis against Indigenous women and girls, in the context of such conflicts.

IITC shares the profound concern, sadness and outrage expressed by many Indigenous Peoples, the UN Special Rapporteur on the Rights of Indigenous Peoples and members of the UNPFII during the UNPFII sessions regarding the Indigenous human rights activists who have been recent targets of assassinations in areas of conflict. This notably included the killing of Berta Cáceres and other member of her organization, COPINH, in Honduras in 2016 in response to their opposition to the construction of the Agua Zara hydroelectric dam. IITC noted in the session that this assassination was carried out even after the Inter-American Commission on Human Rights and the UN Special Rapporteur on the Rights of Indigenous Peoples called attention to the death threats against Berta and other members of her organization, and called upon Honduras to ensure her safety along with others under similar threats in that country.

Citing this and many other cases that were presented at the 2016 session of the UNPFII, IITC joined with others in calling for ramped up action and attention to the situation of Indigenous human rights and environmental defenders around the world, including at the 2017 session of the UNPFII.

VI. Signs of Progress in the International Arena

The causes, effects and proposed solutions to environmental violence described in this paper have begun to be noted by UN fora, including in groundbreaking recommendations of UN Treaty Bodies.

9. Statement by the International Indian Treaty Council, presented by Andrea Carmen, at the United Nations Permanent Forum on Indigenous Issues 15th session (May 17, 2016), http://cdn6.iitc.org/wp-content/uploads/UNPFII-2016-Item-5-Interactive-Dialogue-Indigenous-Peoples-Conflict-Peace-and-Resolution.-May-17-2016_web.pdf

In its 2007 and 2012 reviews of Canada and its 2008 and 2014 reviews of the United States, the Committee on the Elimination of Racial Discrimination recommended that these States Parties take measures to prevent human rights violations against Indigenous Peoples in other countries which occur as a result of activities by corporations licensed by the States Parties. For example, in February 2008, CERD called upon the US to take appropriate legislative and administrative measures to prevent transnational companies it registers “from negatively impacting on the enjoyment of rights of indigenous peoples in territories outside the United States.”¹⁰

These recommendations regarding state responsibility for corporate violations were made by the CERD as a result of information presented by IITC regarding the activities of Canadian mining companies in the United States, Mexico and Guatemala, as well as the impacts in Rio Yaqui of the U.S. export to Mexico of banned pesticides by U.S. corporations such as Monsanto.

In addition, the disconnect between the UN Chemical Conventions, in particular the Rotterdam Convention which permits countries to import and export banned pesticides, and international human rights standards, has been presented at several UN bodies. The need for action to address this was included in the UNPFII’s report of its 13th session (May 2014):

16. Considering their impact on the sexual health and reproductive rights of indigenous peoples, the Permanent Forum calls...for a legal review of United Nations chemical conventions, in particular the Rotterdam Convention, to ensure that they are in conformity with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities.

Finally, as a result of the submission by IITC in conjunction with Yaqui communities and a number of Indigenous organizations in Mexico to the 2015 review of Mexico by the UN Committee on the Rights of the Child, the CRC recognized “environmental health” as

10. CERD/C/USA/CO/6, para. 30.

a right protected under Article 24 of the Convention on the Rights of the Child. In addition, the CRC recommended that Mexico, as an importer of pesticides that have been banned for use in the U.S. and other countries:

(a) Assess the impact of air, water, soil and electromagnetic pollution on children and maternal health as a basis to design a well-resourced strategy at federal, state and local levels, in consultation with all communities and especially indigenous peoples, to remedy the situation and drastically decrease the exposure to pollutants;

(b) Prohibit the import and use of any pesticides or chemicals that have been banned or restricted for use in exporting countries;

(c) Further examine and adapt its legislative framework to ensure the legal accountability of business enterprises involved in activities having a negative impact on the environment, in the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.

These and other signs of progress to hold states and corporations accountable for the causes of environmental violence, as well as continued activities and advocacy by impacted Indigenous Peoples, provide increased access to remedies for victims and create a basis for greater understanding and recognition of these under-recognized and under-reported human rights violations.

Indigenous Women of Northeast India at the Forefront of a Strong Non-Violent Peace Movement

Binalakshmi Nepram¹

“I believe that peace is not merely an absence of war, but the nurture of human life.... Only in freedom is permanent peace possible. To unite women in all countries who are opposed to any kind of war, exploitation and oppression and who work for universal disarmament...and by the establishment of social, political, and economic justice for all without distinction of sex, race, class, or creeds.”²

Introduction

According to the United Nations “Study on the problem of discrimination against Indigenous populations,” conducted from the 1970s to the early 1980s, “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”³ Some of the international instruments for the protection of tribal people are the United Nations Declaration on the Rights of Indigenous Peoples (2007), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), ILO Convention No. 107 Concerning the Protection

1. The author is thankful for the research support given by team members at the Control Arms Foundation of India and the Manipur Women Gun Survivors Network for this article, especially that of Kalyani Mathur and Yuri Luikham.
2. This quote is by Jane Addams, a Nobel Peace Prize Laureate in 1931.
3. E/CN.4/Sub.2/1986/7, Addenda 1–4.

and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (1957), and ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989). Of course, the seminal Universal Declaration of Human Rights (1948) is a very important human rights instrument for Indigenous Peoples as well.

Indigenous Peoples have been estimated to be more than 370 million people living in more than 90 countries distributed across all regions of the world. There are at least 5000 different Indigenous groups in the world, representing different cultures of the existing diversity of our planet. While they constitute approximately 5% of the world's population, Indigenous Peoples make up 15% of the world's poor. They also make up about one-third of the world's 900 million extremely poor rural people. Most of the world's Indigenous languages are considered to be endangered, meaning they are at a high risk of being replaced by dominant languages by the end of the twenty-first century.⁴

Indigenous Peoples around the world strive to be in synergy with nature. They depend immensely on the available natural resources, yet at the same time comprehend the value of these resources for the survival of their future generations. In the 21st century, Indigenous Peoples have succumbed to the pressures of dwindling natural resources of the planet and the greed of mankind. States where these peoples live all too often do not recognize the diversity of their cultures and traditions and consider them secondary citizens. In the pursuit of fulfilling the requirements of capital intensive markets, these populations are forced to leave their natural habitats and face extreme violence and abuse often sponsored by the state. This violence can take several forms. As John Galtung suggests, there are three types of violence: one is physical, the second is cultural and the third is structural.⁵ Indigenous Peoples around the world are primarily subjected to the third kind of violence. Structural violence is inflicted by the social structure and social institutions that may deprive people of their basic human rights.

4. "International Day of the World's Indigenous People: Info Kit," UN Web Services Section, Department of Public Information, United Nations (August 9, 2007).
5. Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167–191.

These people face immense discrimination in the forms of racism, inadequate participation in public life, the illegal use of their lands and cultural violence. “The existence of rich natural resources in parts of countries, especially in large countries and with weak provincial administrative structures in some instances, could contribute to or even be a major cause for calls for separation or breakaway in some countries.”⁶ In the case of Northeast India, it can be argued that a natural resource-rich land is at the center of a prolonged armed conflict which is intensified due to the influx of small arms, drugs and weapons in the region.

I. Debate around Indigenous Peoples in India

Within the Indian context, there is a raging debate among academics and policy makers around the “applicability” of indigeneity. First, the critics of the issue are anthropologists like André Béteille and B.K. Roy Burman.⁷ Their argument is that the ideology is a borrowed concept popularised by western institutions and scholars, theorists and naive human rights activists. This, according to these authors, seldom encourages the rights movement of the affected population. Second, the right of Indigenous Peoples to self-determination should not be an excuse to exclude other communities. Such an attempt dilutes the entire fight for rights of Indigenous Peoples. Third, tribal and non-tribal populations have lived in close proximity to one other for a long time. This has led to their assimilation in the larger Hindu society. Fourth, some tribal populations settled in the country long after the non-tribal population. Lastly, national sovereignty is challenged by issues of self-determination and land ownership.

The 67.7 million people belonging to a “Scheduled Tribe” in India are generally considered to be “Adivasi” which literally

6. *Conflict over natural resources in South-East Asia and the Pacific*, L.T. Ghee and M.J. Valencia eds. (Oxford, United Kingdom: Oxford University Press, 1990); *Non-Traditional Security Issues*, A.T. Tan and J.D.K. Boutin eds. (Singapore: Institute of Defense and Strategic Studies, 2001).
7. Bengt G. Karlsson, “Anthropology and the ‘Indigenous Slot’: Claims to and Debates about Indigenous Peoples’ Status in India,” *Critique of Anthropology* 23, no. 4 (2003): 402–423.

means “Indigenous People” or original inhabitants, though the term “Scheduled Tribe” (ST) is not coterminous with the term “Adivasi.” Scheduled Tribe (ST) is an administrative term used for the purpose of “administering” certain specific constitutional privileges, protections and benefits for specific peoples historically considered disadvantaged and “backward.” However, this administrative term does not exactly match all the peoples called “Adivasi.” Out of the 5653 distinct communities in India, 635 are considered to be ‘tribes’ or “Adivasis.” In comparison, one finds that the estimated number of STs varies from 250 to 593.⁸ The state provides concessions to these Scheduled Tribes under Schedule V and VI of the constitution.⁹

It must, however, be stated that the Indian Constitution does not use the term “Adivasi” and instead refers to the STs as “Anusuchit Jana Jati.” Traditionally, “Jana” was the more popular term to refer to the tribes in the Hindi heartland.¹⁰

8. C.R. Bijoy, 2003, “The Adivasis of India: A History of Discrimination, Conflict and Resistance,” PUCL Bulletin (February 2003), <http://www.pucl.org/Topics/Dalit-tribal/2003/adivasi.htm>
9. Schedule V includes administration (Tribal Advisory Councils) and control of Scheduled Areas and Tribes (part C 6(3)): The criteria followed for declaring an area as a Scheduled Area are preponderance of tribal population; compactness and significant size of the area; under-developed nature of the area; and marked disparity in the economic standard of the people. These criteria are not spelled out in the Constitution of India but have become well established. In this understanding, India does not include the states of Assam, Meghalaya, Tripura and Mizoram. It includes areas of Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chattisgarh, Orissa and Rajasthan.

Schedule VI - Provisions for Administration of Tribal Area in Assam, Meghalaya, Tripura, and Mizoram & Arunachal Pradesh. This schedule provides for two kinds of governing units in the Tribal Areas: the Autonomous District Councils and the Autonomous Regions. A: The Governor has the Power to include, exclude or diminish any of these areas or define their boundaries [S 1]. B: There shall be a District Council for Each Autonomous District comprising no more than 30 members and a Regional Council for the Autonomous Regions. C: The powers of administration shall be vested in these Districts and Autonomous Council [S 2(4)]. The Governor shall be entitled to make rules for the constitution of the Councils, their composition, and terms of office, appointment of officers and staff and procedure and conduct of business.

[http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(2\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(2).pdf)

10. N. Ray, “Introductory Address,” *Tribal Situation in India*, K.S. Singh ed. (Shimla, India: Indian Institute of Advanced Studies, 1972).

II. Scheduled Tribes Population in India

According to the 2011 Indian census, 8.6% of the total population of the country is tribal. This constitutes 104 million people. India has the largest population of tribal people in the world. In the northeastern states of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland, up to 90% of the population is tribal. However, in the remaining northeast states of Assam, Manipur, Sikkim, and Tripura, tribal peoples make up between 20% and 30% of the population. The largest tribes are found in central India, although the tribal population accounts for only around 10% of the region's total population. Major concentrations of tribal people live in Maharashtra, Orissa, and West Bengal. In the south of the country, about 1% of the populations of Kerala and Tamil Nadu are tribal, whereas about 6% of the people living in Andhra Pradesh and Karnataka are members of tribes. A total of 6,793 crimes committed against tribals were reported in the country during 2013, as compared to 5,922 cases in 2012, an increase of 14.7%.¹¹

III. Violence in Northeast India

Northeast India is connected to the rest of the country by a 22 kilometer-long corridor. As mentioned above, 90% of the population in some parts of the country is comprised of tribal/Indigenous People. Northeast India shares international boundaries with Bangladesh, Bhutan, China, Myanmar and Nepal. The region has been facing the onslaught of multiple armed conflicts for many decades. The issues were aggravated after the introduction of the Armed Forces Special Power Act (AFSPA) in 1958. More than 50,000 lives have been lost in the violence. The total population of the Northeastern Region of India is 45 million, of which 19.1% are living below the poverty line. Northeast India deals with complex social and political issues, such as the struggle over natural resources, ethnic conflicts, illegal migration, displacement and social exclusion. These issues are, however, rarely

11. "India: Minorities Castes and Regions in India," www.factsanddetails.com, http://factsanddetails.com/india/Minorities_Castes_and_Regions_in_India/sub7_4h/entry-4216.html

reported in the mainstream media, which continues to neglect the region's growth and progress. The tribal/Indigenous Peoples are hugely influenced by the AFSPA as they are forced to leave their natural habitat, face extreme violence and, worst of all, have no relief from their plight and worsening living conditions.

The Armed Forces Special Powers Act is an act that provides special powers to the Indian Army. Under this Act, all security forces are given unrestricted and unaccounted power to carry out their operations once an area is declared to be "disturbed." Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain public order." Wherever AFSPA has been in operation, enforced disappearances, extra-judicial executions, torture, rape and arbitrary detention are regularly reported. The law allows security forces to get away with any brutality. While the government occasionally mulls repealing the Act, without following up on it, one issue has been receiving a lot of attention in recent times: the way soldiers who commit violence against women also manage to hide behind AFSPA's protective clauses.

AFSPA was first applied to the Northeastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the northeastern region of India. These are Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland, also known as the "seven sisters." Later, a variation of the Act was applied to Jammu and Kashmir in 1990 and even appeared in Punjab during the 1980s and the 1990s.

IV. Northeast Indian Women at the Forefront of a Non-Violent Peace Movement

Indigenous women all over the world face multiple discriminations on the basis of sex, race/ethnicity, language, culture, religion and class. For instance, Indigenous women in Taiwan are called "third class citizens" because of their inferior status in relation to men and in relation to non-Indigenous people. Concerns regarding racial discrimination faced by Indigenous women were raised by Indigenous women at the 1995 World Conference on Women. In 2004, the United

Nations Permanent Forum on Indigenous Issues (UNPFII) took note of the fact that the United Nations Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) does not make specific reference to Indigenous women and recommended that “special attention should be paid to the issues related to maintaining the integrity of Indigenous women and the gender dimension of racial discrimination against Indigenous Peoples.” Indigenous peoples are particularly vulnerable to such violence both within their own communities and in the broader society. Indigenous women experience many kinds of violence in times of peace and war, including female genital mutilation, forced marriages, early marriages, polygamy, beatings and forced labour. Indigenous women are trafficked for prostitution and forced labour. In some cases, they are treated as exotic, decorative, sexual objects and study-objects by media and various communications systems.¹²

Indigenous women around the world have been at the forefront of a strong non-violent peace, security and disarmament movement. Over the last 200 years or so, women of Northeast India have been leaders in non-violent peace movements. Women play an indispensable role in preserving peace and order. They hold community together by stepping out of socially ascribed roles, transforming gender stereotypes, and by opening up opportunities for empowerment. Women’s groups in Northeast India have developed many a powerful programme of direct, non-violent action designed to confront the fire of insurgency that has engulfed this strategic region since the late 1940s. In India’s Northeast, women have always played a major role in many peace and social movements. Some of these important movements are:

a) Manipur Indigenous Women Against Colonialism

Manipuri women waged two non-violent peace protests in 1904 and 1939 against mass exploitation and artificial famine in the region.

12. “Gender and Indigenous Peoples,” United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues (February 2010), <http://www.un.org/esa/socdev/unpfii/documents/Briefing%20Notes%20Gender%20and%20Indigenous%20Women.pdf>

It was the women who protested against the then-Political Agent Maxwell, against the forced labor (“*lalupkaba*” in Manipuri) imposed on Manipuri men. Under their aggressive pressure, the British had to withdraw the use of forced labour in 1904. In 1939, women stood up against what they called “*chaktangba*” (inflation of food prices such as those for rice). Nupi Lan was an agitation started by Manipuri women against the oppressive policies of the maharaja, which were more export-oriented. These policies had a deep impact on the staple diet of Manipuri people, namely rice. Women who were directly involved in market activities took charge of the situation. Over the years, this movement has evolved to encapsulate other movements around constitutional, political and economic reforms of Manipur.

b) Meira Paibis, Women Torchbearers, Movement Against Counter-Insurgency

In the 1970s, the women of Manipur came out from their homes and started a mass movement for the maintenance of social order and peace in Manipur. They started an anti-liquor movement in urban as well as in rural areas when the peaceful social order in the localities was disturbed by persons involved in selling and drinking liquor. Women in the concerned localities gathered their strength and asserted their capabilities in checking and controlling the persons who were involved in the selling and drinking of liquor as well as those persons involved in the transactions of liquor business. From being an informal group to punish drunkards and anti-social elements, the movement has evolved into a political force. Women have since learned the power of group effort and have taken up many cases, one of them being the Manorama case when a dozen Manipuri women stripped naked to protest against military excesses in the state.

The Meira Paibis are also involved in resolving crimes against women happening in communities; in checking and controlling trafficking; in arresting and handing over persons who are involved in drug trafficking; in dealing with family disputes; and in solving land disputes between neighbours; and in providing shelter to many destitute women.

Current events in Manipur reflect how important women's groups are in civil society movements in Northeast India. The Meira Paibis have become an institution in their own right today.

c) Naga Indigenous Women and Peacebuilding

The Naga Mothers Association (NMA) of Nagaland has been very active in Northeast India. The NMA has rendered valuable service for the cause of peace. Their theme was "Shed No More Blood." An achievement of the NMA is the formation of the Peace Team in October 1994 to confront the deteriorating political situation in Nagaland. The NMA spoke against killings not only by the army but also by militants.

The NMA celebrates the 12th of May each year as Mother's Day and renews their appeal for peace. Apart from peace initiatives, the NMA has worked for social regeneration. The Association provides facilities for recovery from addiction and has also started anonymous HIV testing. They are likely the first women's organisation in the Northeast to test pregnant women for HIV. The NMA is providing pioneering services for the care of patients afflicted with AIDS. The NMA's greatest achievement is that most Naga women's organisations are their collaborators. The NMA has assumed enormous influence in Naga politics, which is borne out by the fact that they are the only women's group in South Asia who has participated in a ceasefire negotiation. In 1997, they mediated between the Government of India (GOI) and the National Socialist Council of Nagaland-Isak-Muivah (NSCN-IM) factions and facilitated a ceasefire between the two groups.

d) Indigenous Women's Movement in Assam

The women's movement in Assam is almost as old as the freedom movement in this region. Asom Mahila Samiti was established in 1926 under the leadership of Chandra Prabha Saikiani, and was later renamed as Asom Pradeshik Mahila Samiti. The Tezpur District Mahila Samiti, a major constituent of the Asom Pradeshik Mahila Samiti, was established in 1929, and it was under these two organisations that

the movement for empowerment of women made significant steps in empowering the womenfolk in Assam.

The long history of Assam is replete with instances of women's bold and strong roles in spite of their traditional roles in a patriarchal family set-up. Women of Assam also played a significant role in the Indian freedom struggle. Assam has innumerable examples of women who have shown excellence in different fields and who are at par with their male counterparts. Women have also played a significant role in politics in this region.

In Assam, there are a number of interventions for peace by women's groups and they are largely issue-based. During and after the army atrocities in Nalbari and North Lakhimpur in 1989 and 1991 respectively, a number of women's groups for peace sprung up. The most outstanding of these was the Matri Manch based in Guwahati. This group became the rallying point for mothers whose sons have disappeared. They rallied around the issue of abuse of women. They ran protest marches against sexual abuse and violence against women. Initially, they were tolerated when they protested against state acts of violence but when their protests became more general in nature, different insurgent groups threatened them.¹³ There are other similar groups such as the Bodo Women's Justice Forum, which organizes issue-based peace marches and protests. The Bodo and the Assamese women's peace movements demonstrate that in situations of chronic hatred and violence, women often organize on the basis of specific issues. They protest for specific violations. They remain organized for a short period of time, after which they disperse. This gives them a certain amount of anonymity and protection.¹⁴

e) Manipur Women Gun Survivors Network

The Manipur Women Gun Survivors Network was formed in an attempt to help women whose lives have been changed dramatically

13. Rajesh Verma, "Women's Movements in Northeast," *the Otherside* 21, no. 7 (August 2008): 32–34, <http://rviindia.blogspot.in/2008/09/womens-movements-in-northeast.html>
14. Paula Banerjee, "Women's interventions for Peace in the North-East," (Calcutta, India: University of Calcutta, 2014), 7.

because of the gun killings of their husbands, fathers or sons, be it by state or non-state actors or unidentified gunmen. The Network attempts to lift women above the trauma and agony faced in armed conflict by helping them to find ways to heal the scars that decades of violence have caused to the community.

The Network's direct intervention involves a gender-sensitive approach to the gun crisis; supports women economically; and brings them forward to play a crucial role in small arms policy. The network has extensively contributed in the field of disarmament. It has helped around 20,000 women whose lives have been devastated by gun violence in Manipur. It is the first



initiative of its kind in India to develop a National Action Plan for Women, Peace and Security following the fundamental components of Resolution 1325 of the United Nations Security Council. The formal launch of the Network took place on December 24, 2004, in Manipur's capital, Imphal.

V. Work on UNSCR 1325 by Indigenous Women of Northeast India

Loss of land, livelihood, culture, language and natural resources are part and parcel of Indigenous Peoples' realities in Northeast India. The daily lives of Indigenous Peoples are disrupted due to armed conflict and increasing militarization in the region at the hands of the state and insurgent groups alike. Indigenous cultures have diverse knowledge which can act as a resource for this world. However, traditional knowledge has been endangered under the pressures of globalization and modernization. This, among other reasons, has forced people of this region to live in abject poverty. Even these harsh conditions have not deterred the women of this region from amalgamating their knowledge of nature and channeling their inner strength and determination to be the forerunners of non-violent movements for

peace. Indigenous People are the original inhabitants of mother earth, and over millennia they have gathered immense knowledge. It is high time that these people should be the forerunners in decision-making processes about their own communities so that their knowledge and cultures are treasured and practiced for sustainable living.

Landmark United Nations Security Council Resolution 1325, adopted in 2000, is the first resolution to address the disproportionate and unique impact of armed conflict on women. It stresses the importance of women's equal and full participation as active agents in the prevention and resolution of conflicts, peace building and peacekeeping. It calls on member states to ensure women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and urges all actors to increase the participation of women and incorporate gender perspectives in all areas of peace building.

On the 2nd of July, 2014, the Government of India finally declared that wherever possible, women were to be consulted in peace negotiations. It should be recalled, however, that in 2007, India had stated that UNSCR 1325 would not be applicable in India because there existed no situation of "armed conflict." The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) insisted that a greater number of women should be part of peace negotiations, as women constitute half the population of conflict-affected people and they would help bring a better gender perspective when peace is being negotiated.

The Control Arms Foundation of India, the Manipur Women Gun Survivors Network, and the Northeast India Women Initiative for Peace have been working for the last ten years on women, peace and security. Women's network meetings were organized to address and respond to gender-based violence in conflict across the eight states in Northeast India with meetings and consultations in Manipur (4th June, 2014), Sikkim (28th June, 2014), Arunachal Pradesh (11th August, 2014), Meghalaya (7th October, 2014), Tripura (6th December, 2014), Nagaland (19th January, 2015), Assam (16th February, 2015), Mizoram (25th May, 2015) and Assam (28th April, 2016). Over 1,000 women participated in these gatherings. As a follow up to these meetings and

in order to formulate a common agenda to address women, peace and security issues in the region, in alignment with UNSCR 1325, on 25th March, 2015, the first Northeast Women Peace Congregation was successfully held in Manipur, bringing together women from all across the region to draft a National Action Plan and to call upon the Government of India to facilitate the development and adoption of a National Action Plan On Women, Peace and Security. Chief guest, Shri Okram Ibobi Singh, Chief Minister of Manipur, made a commitment to look into issues of women, peace and security in the region and the issue of repealing AFSPA. As a remarkable and historic step, on the occasion of the 15th anniversary of the UN Security Council Resolution 1325, which recognizes that the inclusion of women and gender perspectives in decision-making can strengthen the prospects for sustainable peace, women leaders of Northeast India, Myanmar and Bangladesh came together at an international conference. The event was entitled the South Asian Women's Peace and Security Conference: Formulating National Action Plans and the Way Forward and it was held on the 21st and 22nd of September, 2015, at the India International Centre in New Delhi.

Women leaders across the eight states of Northeast India and youth survivors of violence congregated on the 24th and 25th of August, 2016, at the second Northeast India Women Peace Congregation in Guwahati, Assam, for consultative meetings aimed at ensuring participation of women in peace processes, peace talks and decision-making forums; ensuring prevention of violations of women's rights in conflict; and bringing much-needed peace and development to the region.

Yet, given the enormity of the task, this is only the beginning of what the women of Northeast India can contribute toward a peaceful region. To galvanize change in a big way, there is a need for similar non-violent movements by Indigenous women to continue in full vigour and for voices from all corners to be heard for an organic change in society.

The Responsibility to Protect Indigenous Peoples? An Analysis of R2P’s Potential Application in the Chittagong Hill Tracts of Bangladesh

Shayna Halliwell

I. Introduction

“The atrocity crimes that stain humanity’s conscience make it imperative that leaders transform R2P (Responsibility to Protect) from a vital principle into visible practice.”¹

United Nations Secretary-General Ban Ki-moon made this statement in an informal dialogue on the Responsibility to Protect—frequently abbreviated to R2P or RtoP—on the occasion of the principle’s tenth anniversary in September of 2015. According to its supporters, this concept has achieved major, tangible successes since it was adopted in paragraphs 138–140 of the World Summit Outcome Document in 2005.² However, the norm’s applications and its sheer existence have not been devoid of controversies.

Gareth Evans, in *The Responsibility to Protect: Ending Mass Atrocities Once and For All*, stated that R2P must be invoked at the earliest possible point to protect vulnerable populations facing mass atrocities.³ Indigenous peoples the world over are marginalized and made vulnerable to targeted violence due to structural and systemic inequalities, outright discrimination, and the legacies of colonial oppression. Yet an R2P intervention has never been invoked in the instance of a mass atrocity committed against Indigenous peoples, despite evidence of targeted violence in many countries that would fall

1. United Nations, “Secretary-General’s Remarks to General Assembly Informal Interactive Dialogue on ‘A Vital and Enduring Commitment: Implementing the Responsibility to Protect’ [As Delivered]” (New York: United Nations Headquarters, September 8, 2015), <http://www.un.org/sg/statements/index.asp?nid=8950>.
2. A/RES/60/1, para. 139–141.
3. Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All* (Washington, D.C.: Brookings Institution Press, 2008), 79.

under one or more of the four crimes that invoke R2P: crimes against humanity, war crimes, genocide and ethnic cleansing.⁴

Today in Bangladesh, for example, there is a clear case of systemic violence against Indigenous Peoples that is underreported and still actively occurring. In the Chittagong Hill Tracts (CHT) in south-eastern Bangladesh, the Indigenous Peoples of the area have been socially, economically and politically marginalized for decades,^{5,6} while violence has steadily been perpetrated against them with impunity.^{7,8} There was a Peace Accord signed to protect Indigenous lands and foster self-governing institutions in the CHT in 1997,⁹ but it has not been effectively implemented.^{10,11} Under the premise of land disputes, the Bangladesh government has ordered this entire area of the country militarized and there are substantiated reports of targeted rapes, looting, arson of religious sites and murders of Indigenous Peoples in this region.^{12, 13} Why has R2P not yet even been mentioned within official United Nations documents on this conflict? Is it an appropriate mechanism for intervention in this instance?

To test whether R2P could be applicable in situations of violence against Indigenous Peoples, this contribution will first outline the

4. A/RES/60/1, para. 139.
5. Salahuddin Aminuzzaman, "Bangladesh: A Critical Review of the Chittagong Hill Tract (CHT) Peace Accord," Working Paper (Bangkok: United Nations Development Programme, Regional Centre Serving Asia and Pacific, 2005), 22.
6. "Bangladesh: Human Rights in the Chittagong Hill Tracts" (London, Amnesty International, July 31, 1991), 8–14.
7. Ishtiaq Jamil and Pranab Kumar Panday, "The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People," *Commonwealth & Comparative Politics* 46, no. 4 (November 1, 2008): 465.
8. Mark Levene, "The Chittagong Hill Tracts: A Case Study in the Political Economy of 'Creeping' Genocide," *Third World Quarterly* 20, no. 2 (April 1999): 359.
9. "Chittagong Hill Tracts Peace Accord (CHT)," *Peace Accords Matrix*, Kroc Institute for International Peace Studies, University of Notre Dame, <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.
10. E/C.19/2011/6, para. 2.
11. A/55/280/Add.2, para. 71.
12. Jamil and Panday, *supra* note 7.
13. Bhumitra Chakma, "The Post-Colonial State and Minorities: Ethnocide in the Chittagong Hill Tracts, Bangladesh," *Commonwealth & Comparative Politics* 48, no. 3 (July 1, 2010): 281.

history of the development of R2P and will discuss the literature around its normative elements. This chapter will use the United Nations Declaration on the Rights of Indigenous Peoples as a normative framework through which I will assess the Indigenous right to self-determination as it pertains to mass atrocity prevention and intervention in Indigenous communities. Using the case study of the Indigenous Peoples of the Chittagong Hill Tracts of Bangladesh, I will then analyze whether R2P could be an appropriate international humanitarian intervention mechanism in conflicts victimizing Indigenous Peoples. I will conclude with an assessment of how R2P could be better shaped to address situations of mass atrocities involving Indigenous Peoples, and how this paradigm shift may affect future iterations of the Responsibility to Protect as an evolving norm.

It is important to note that the Indigenous leaders interviewed for this piece do not speak for all Indigenous Peoples who live in this area of Bangladesh and the reader must keep in mind that not all Indigenous voices can or should be essentialized through interviews with a handful of Indigenous representatives. Finally, an analysis of such a sensitive topic requires that the reader be aware that the author does not identify as an Indigenous person and therefore writes with the many privileges associated with speaking from outside of the persecuted group discussed in this paper.

II. What is the Responsibility to Protect?

a. History and Content of the norm

In March 2000, then-Secretary-General Kofi Annan released a report entitled “We The Peoples: The Role of the UN in the 21st Century.” In what has now come to be known simply as the “Millennium Report,” Annan grappled with many pressing issues facing the world at the time, including how to respond to mass atrocities without violating the sovereignty of states. In the report, Annan plaintively asks the following:

“If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to

gross and systematic violations of human rights that offend every precept of our common humanity?”¹⁴

In 2001, the Canadian government gathered a panel of international experts to create the International Commission on Intervention and State Sovereignty (ICISS) in response to Kofi Annan’s call for a new global solution to such gross violations of human rights. The Commission released a report later that same year that outlined a three-pillared approach entitled the Responsibility to Protect.¹⁵ This report envisioned a shift in the concept of sovereignty from complete and total control over the people living within a state’s territory to “sovereignty as responsibility,”¹⁶ meaning a dual responsibility to both recognize other states’ sovereignty and to “respect the dignity and basic rights”¹⁷ of all those living within the state.

In 2003, Annan appointed a High Level Panel of Experts on Threats, Challenges and Change to assess the United Nations’ ability to respond to the most imminent dangers to the international community. The report this Panel produced, in December 2004, endorsed the emerging norm of the Responsibility to Protect and even acknowledged the occasional necessary use of international military intervention to stop a government from committing mass atrocities against its own peoples.¹⁸ Finally, R2P was officially adopted by all Member States in three paragraphs of the 2005 World Summit Outcome Document,¹⁹ which was a major turning point in the international acceptance and formalization of the concept.

14. Kofi Annan, “We the Peoples: The Role of the United Nations in the 21st Century” (New York, United States of America: United Nations Department of Public Information, March 2000), 48.

15. “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty” (Ottawa, Canada: International Development Research Centre, December 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

16. *Ibid.*, 13.

17. *Ibid.*, 8.

18. A/59/565, para. 201.

19. A/RES/60/1, paras. 138–140.

However, through the process of consultations with governments, civil society and academia, some of the core language of R2P was adjusted significantly from 2001 to 2005. The 2001 ICISS report deemed the threshold for international intervention to be the point at which the state involved was “unable or unwilling”²⁰ to protect its own citizens; the 2005 iteration of R2P raised the bar for international intervention to the point at which a state was “manifestly failing to protect their populations,”²¹ despite there being no clear guideline as to what that would mean in practical terms. In a major adjustment from 2001, the 2005 iteration of R2P clearly delineated four crimes that would invoke R2P: genocide, crimes against humanity, war crimes, and ethnic cleansing.²²

Genocide has been an internationally recognized and defined crime since the Convention on the Prevention and Punishment for the Crime of Genocide entered into force in 1951. This Convention establishes genocide as a set of five specific acts committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”²³ Crimes against humanity were defined much later, in 1998, with the Rome Statute treaty that established the International Criminal Court. While the actions that constitute crimes against humanity are too numerous to list here, their defining feature is that they are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”²⁴ These crimes include rape, torture and enforced disappearances.²⁵ War crimes are also defined in the Rome Statute, which came into force in 2002. These include any violations of the Geneva Conventions of 1949, including Common Article 3 relating to persons not taking active part in hostilities, or “other serious violations of the laws and customs

20. “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty,” *supra* note 15, at 29.

21. A/RES/60/1, para. 139.

22. A/RES/60/1, para. 138.

23. “Convention on the Prevention and Punishment of the Crimes of Genocide” (United Nations General Assembly, December 9, 1948), para. 2.

24. “Rome Statute of the International Criminal Court” (United Nations General Assembly, July 17, 1998), Article 7.

25. *Ibid.*

applicable in international armed conflict, within the established framework of international law.”²⁶

Ethnic cleansing, however, is not defined in any of the aforementioned treaties. According to the Final Report of the Commission of Experts that was established by the United Nations to investigate violations of international humanitarian law in the former Yugoslavia, “‘ethnic cleansing’ means rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area.”²⁷ This definition was further clarified in 1994 to mean “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas”;²⁸ this is typically “carried out in the name of misguided nationalism”²⁹ and its “purpose appears to be the occupation of territory to the exclusion of the purged group or groups.”³⁰ However, despite naming the four crimes that would invoke R2P, there is no clarification in the 2005 World Outcome Document as to which of these actions, or at what threshold, would invoke which or any kind of international response—political, economic, diplomatic, or military.

Unfortunately, the version of R2P agreed upon at the 2005 World Summit denied practically any other way for states to intervene aside from Security Council approval unless the General Assembly converged under the “Uniting for Peace” process as per UN Resolution 377; however, this process has never been used to invoke R2P.³¹ The Responsibility to Protect as it was adopted in 2005 sticks to a rigid reading of the UN Charter, stating that “collective action”³² against war crimes, crimes against humanity, genocide or ethnic cleansing

26. *Ibid.*, Article 8.

27. S/25274, para. 55.

28. S/1994/674, para. 130.

29. *Ibid.*

30. *Ibid.*

31. “Security Council Deadlocks and Uniting for Peace: An Abridged History” (Security Council Report, October 2013), http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Security_Council_Deadlocks_and_Uniting_for_Peace.pdf.

32. A/RES/60/1, para. 139.

has to go “through the Security Council”³³ for approval. The 2005 iteration of the norm made R2P more difficult to invoke, as any of the Permanent Members of the Security Council could simply veto intervention and the action would be blocked from proceeding, no matter how many lives were being lost. Disagreement among the Security Council members has proven to be “particularly damaging in the early stages of a crisis when space for dialogue is wider.”³⁴

Yet R2P continued to gain traction within the United Nations and in Member State capitals; it was first mentioned in the Security Council in April 2006, in a resolution regarding the protection of civilians in armed conflict.³⁵ In January 2009, Secretary-General Ban Ki-moon released his report “Implementing the Responsibility to Protect,” which was essential for the progression of R2P as it addressed the practical application of the norm in country-specific situations.³⁶

A wide-ranging debate on the subject—the longest General Assembly debate of the year, lasting three days—ensued in July 2009.³⁷ Since then, Secretary-General Ban Ki-moon has released a report every year on various components of R2P and has even appointed a Special Adviser on the Responsibility to Protect, thereby strongly expressing his support for the norm and its proliferation within the UN system. Additionally, the Security Council has invoked the Responsibility to Protect in various resolutions as they have addressed crises ranging from South Sudan in 2011³⁸ to the Central African Republic in 2013.³⁹ In April 2014, the Security Council adopted Resolution 2150, which reaffirmed the importance of the Secretary-General’s Special Advisers on the Prevention of Genocide and the Responsibility to Protect.⁴⁰ As of 2016, the protection of civilians’ component of R2P has been

33. *Ibid.*

34. A/70/999-S/2016/620, "Mobilizing Collective Action: The Next Decade of the Responsibility to Protect, Report of the Secretary-General" (New York, United Nations General Assembly, July 22, 2016), para. 15.

35. S/RES/1674.

36. A/63/677, para. 51.

37. A/63/PV.98; A/63/PV.99; A/63/PV.100; A/63/PV.101.

38. S/RES/1996.

39. S/RES/2121.

40. S/RES/2150.

incorporated in or guided ten Human Rights Council Resolutions and 40 Security Council Resolutions.⁴¹

The Responsibility to Protect has changed since its initial conception, but the principle has also made significant progress in terms of its acceptance. Despite the extent to which the principle has been internalized among some Member States and within parts of the UN system, however, R2P is still an emerging norm that continues to be contentious among states, civil society and academics.

II. What is the Responsibility to Protect?

b. Literature Review on the Normative Aspects of R2P

For the purposes of this essay, I will focus on the literature analyzing the agency of subjects of R2P interventions and concerns around the principle's roots in imperialist values. The subject of any R2P intervention is framed as a "population"⁴² as per Francis Deng's initial conceptualization of "sovereignty as responsibility,"⁴³ created during his tenure as the UN Special Rapporteur on the Human Rights of Internally Displaced Persons. However, the term "populations" refers to, as Bridget Conley-Zilkic describes, "objects of concern that can be studied, abstracted, queried, and deemed someone's responsibility, but they are not primarily subjects"⁴⁴ and this term serves to lump together oftentimes disparate communities who happen to share a geographic locality. The logic behind who is chosen to be the subject of an R2P intervention is also unclear. Anne Orford asks who decides who will be the subject of intervention and, likewise, who decides what level of intervention is necessary in any given situation.⁴⁵ Even though R2P condemns leaving power in the hands of those who commit

41. A/70/999-S/2016/620, para. 7.

42. Francis Deng et al., *Sovereignty as Responsibility* (Washington, D.C.: Brookings Institution Press), 221, <http://www.brookings.edu/research/books/1996/sovrnty>.

43. *Ibid.*

44. Bridget Conley-Zilkic, "Who Is the Subject of Atrocities Prevention?," *Global Responsibility to Protect* 6, no. 4 (November 27, 2014): 442.

45. Anne Orford, "From Promise to Practice? The Legal Significance of the Responsibility to Protect Concept," *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 422.

abuses, the principle does not propose passing this same power to those who have been victimized. Rather, the power of determining the kind of protection necessary in any R2P conflict is passed to the broader “international community”⁴⁶ which then decides the type of intervention necessary. This also removes agency from the subjects of these interventions.⁴⁷

Furthermore, the Responsibility to Protect principle continues to be plagued by accusations of thinly cloaked Western imperialism.⁴⁸ Linked innately to the suspicions of many former colonies that R2P will be used inappropriately in their states, some scholars have portrayed this principle as yet another projection of the interests of the world’s most powerful nations onto those with valuable resources and limited international influence. Particularly when the subject of the intervention is a state that was previously colonized, such as is the case for much of Africa and Asia, these countries are typically wary “of attempts to revise the rules of sovereignty”⁴⁹ as some envision R2P to do. Many non-Western states were concerned that they had only recently achieved statehood and the rights that come with it⁵⁰ and so the concept of sovereignty as responsibility, not only as a right to govern one’s peoples the way one’s government chooses, was met with strong opposition by many formerly colonized nations amid concern R2P may be abused by Western powers.⁵¹ Even Edward Luck, former UN Special Adviser on the Responsibility to Protect to Secretary-General Ban Ki-moon, acknowledged concerns about potential misuse of the

46. *Ibid.*, 423.

47. Conley-Zilkic, *supra* note 44, at 444. See also Anne Orford, *International Authority*, *supra* 45, at 139–188.

48. Siddharth Mallavarapu, “Colonialism and the Responsibility to Protect,” in *Theorising the Responsibility to Protect*, Ramesh Thakur and William Maley eds. (Cambridge: Cambridge University Press, 2015), 307, <http://ebooks.cambridge.org/ref/id/CBO9781139644518>.

49. Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: University of Chicago Press, 2013), 176.

50. *Ibid.*, 180.

51. Ian Williams, “Dueling Principles: National Sovereignty Vs. Responsibility to Protect,” *The Washington Report on Middle East Affairs* 32, no. 7 (September 2013): 29.

norm and issues of selectivity in his assessment of R2P's first decade in 2011.⁵²

Siddarth Mallavarapu describes the entrenched nature of North-South power imbalances that are now simply being resubmitted under the guise of the Responsibility to Protect.⁵³ Mallavarapu invokes Makau Mutua's "fiction of neutrality" in which the human rights regime itself is based on a paradigm of "savages-victims-saviors."⁵⁴ Mutua describes human rights, as framed by the Universal Declaration of Human Rights, as falling within the spectrum of the "Eurocentric colonial project"⁵⁵ and Mallavarapu, along with other scholars,⁵⁶ fears that R2P is yet another iteration of humanitarian intervention in which one group is cast as saviors and the rest as outsiders or saved "others."⁵⁷

It is at this nexus of debate around the agency of the subjects of R2P, concerns around sovereignty, and fears of Western imperialism that this paper situates the potential application of R2P in situations involving Indigenous peoples. There exists an extremely limited set of scholarly submissions on this topic. Federico Lenzerini's chapter "R2P and the 'Protection' of Indigenous Peoples" touches upon the paternalistic relationship between the "protector"⁵⁸ and the "protected"⁵⁹ wherein the former are inherently powerful and have the means and will to do the protecting and the latter are vulnerable and cannot save themselves. However, his chapter focuses mainly on the responsibility of each state—what Lenzerini deems a "State

52. Edward C. Luck, "The Responsibility to Protect: The First Decade," *Global Responsibility to Protect* 3, no. 4 (December 1, 2011): 396.

53. Mallavarapu, *supra* note 48, at 306.

54. Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no. 1 (n.d.): 201.

55. *Ibid.*, 204.

56. Frédéric Mégret, "Beyond the 'Salvation' Paradigm: Responsibility To Protect (Others) vs the Power of Protecting Oneself," *Security Dialogue* 40, no. 6 (December 1, 2009): 579.

57. Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge, United Kingdom: Cambridge University Press, 2003), 33.

58. Federico Lenzerini, "R2P and the 'Protection' of Indigenous Peoples," in *The Responsibility to Protect (R2P)*, Peter Hilpold ed., (Leiden: Brill, 2014), 329–347.

59. *Ibid.*

R2P”⁶⁰—towards the Indigenous Peoples who reside within the state’s territory to acknowledge their rights as per the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Lenzerini speaks to the importance of any form of so-called protection being implemented with the utmost cultural sensitivity, yet does not acknowledge the broader colonial, imperialist history that would complicate any attempt to apply the Responsibility to Protect by the international community to situations where Indigenous Peoples are involved.⁶¹

There are, however, scholarly works on the Responsibility to Protect and minorities. The rights of minorities and the ways in which they are violated by the state are similar to those of Indigenous Peoples in that minorities are often vulnerable to multiple forms of exploitation⁶² and they are frequently marginalized and cannot easily seek retribution for the atrocities of which they are the victims.⁶³ However, minorities research diverges from the literature on Indigenous Peoples in that the international minority rights regime is relatively under-developed in comparison to the international Indigenous rights regime and there have existed recognized differences between these two groupings since the adoption of International Labor Organization Convention No. 107 in 1957^{64,65} and the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Finally, the Responsibility to Protect has, in fact, been invoked in cases of violence among ethnic minorities,

60. *Ibid.*

61. *Ibid.*

62. Dan Kuwali and Gudmundur Alfredsson, “The Responsibility to Protect Minorities: The Question of Protection by Kin-States,” *Europa Ethnica* 71, no. 3/4 (2014): 68.

63. Nicholas Turner and Nanako Otsuki, “The Responsibility to Protect Minorities and the Problem of the Kin-State,” UNU-ISP Policy Briefs (United Nations University, February 27, 2010), 1, <http://collections.unu.edu/view/UNU:2936>.

64. Hurst Hannum, “New Developments in Indigenous Rights,” *Virginia Journal of International Law* 28, no. 3 (1988): 652.

65. Elsa Stamatopoulou, “Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic,” *Human Rights Quarterly* 16, no. 1 (February 1994): 65.

for example in Côte D'Ivoire, Kenya, and Guinea.⁶⁶ Yet, R2P has never been invoked in a situation in which specifically an Indigenous peoples are the victims of one of the four R2P crimes by their state or by a third party.

For the purposes of this chapter, it is key to understand the importance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in boldly changing the paradigm around the Indigenous right to self-determination and the right to full and effective participation in matters that involve Indigenous Peoples.⁶⁷ The UNDRIP represents, like all human rights instruments, a set of “minimum standards,”⁶⁸ but one that has established an entire normative framework for accessing justice for Indigenous Peoples. These rights must be understood in the historical context in which they were created—namely, one in which Indigenous Peoples have been oppressed, marginalized and persecuted for centuries—and they must be read comprehensively, as they are “inter-related, inter-dependent, indivisible, and inter-connected.”⁶⁹ Additionally, the creation of UNDRIP represents a watershed moment in the development of the international human rights regime in that it enshrines the rights of Indigenous Peoples to both conserve their own practices of conflict resolution and societal organization but also to “participate equally in the global normative arena.”⁷⁰ The hard-fought establishment of this set of rights—and its recognition by most governments the world over—demonstrates that Indigenous Peoples are not simply the passive recipients of Western interventions but rather have the right to be active participants in the creation of their futures and the futures of their societies.

66. “International Responsibility to Protect: Crises,” *International Coalition for the Responsibility to Protect*, <http://responsibilitytoprotect.org/index.php/crises>.

67. A/RES/61/295, “United Nations Declaration on the Rights of Indigenous Peoples” (New York, United Nations, September 13, 2007).

68. Dalee Sambo Dorough, “Indigenous Peoples’ Right to Self-Determination and Other Rights Related to Access to Justice: Normative Framework,” in *Indigenous Peoples’ Access To Justice, Including Truth And Reconciliation Processes* (New York: Institute for the Study of Human Rights, Columbia University, 2014), 5.

69. *Ibid.*

70. Genevieve Souillac and Douglas P. Fry, “Indigenous Lessons for Conflict Resolution,” in *The Handbook of Conflict Resolution : Theory and Practice*, 3rd ed. (San Francisco: Jossey-Bass, 2014), 608.

In relation to R2P, Liss argues that the right to self-determination, such as is outlined in UNDRIP Article 3, in fact provides a foundation in which R2P's rhetoric might be grounded, while R2P provides a possible framework and a minimum standard of operationalization for the right to self-determination.⁷¹ In this way, the right to self-determination and the Responsibility to Protect actually work to reinforce and ground one another. Additionally, Souillac and Fry outline how the concept of responsibility, such as that inherent to R2P, is aligned with conflict resolution methods intrinsic to many Indigenous peoples' "existence and survival."⁷² Unlike the United Nations' previously typical response of reacting to crises that are already unfolding, R2P encourages prevention as one of its core building blocks. R2P acknowledges the interconnected nature of the world as it exists today; therefore, it could be argued that R2P might align with traditional Indigenous methods of conflict resolution that see the conflict resolution process as more than simply "a means to an end"⁷³ but rather as part of a "consistent ethical approach to human and cultural survival."⁷⁴ In this realm of atrocity prevention and conflict resolution, Indigenous Peoples have much wisdom to impart on living cohesively not only with one's immediate neighbors but also with the land, as there is no life without a healthy earth. By viewing R2P through the lens of UNDRIP, it becomes clear that a symbiotic relationship could exist between the two to strengthen one another's impact and levels of acceptance and internalization at both the community and state levels.

III. Situation in the Chittagong Hill Tracts, Bangladesh

a. History of Conflict

The Chittagong Hill Tracts region of Bangladesh is home to 11 or 12 Indigenous Peoples, depending on the source one consults, which

71. Ryan Liss, "Responsibility Determined: Assessing the Relationship between the Doctrine of the Responsibility to Protect and the Right of Self-Determination," *UCL Human Rights Review* 4 (2011): 61.

72. Souillac and Fry, *supra* note 70, at 614.

73. *Ibid.*

74. *Ibid.*

amounts to roughly 500,000 people.⁷⁵ Before it came under colonial British rule, this area was self-governed and its peoples—who were almost exclusively Indigenous—were relatively independent.⁷⁶ Even under the reign of British India, the CHT had the status of an autonomously administered district that was protected by the CHT Regulation of 1900, which banned the sale or transfer of any part of these lands to non-Indigenous people and limited immigration of non-Indigenous peoples into the area.⁷⁷ However, this special status was eliminated via a constitutional amendment in 1963 while the area was still under the control of the Pakistani government, and the restoration of regional autonomy was rejected again during the creation of Bangladesh’s first constitution in 1972.⁷⁸ So began the long process of creating “a homogenous Bengali nationalism”⁷⁹ codified in the constitution, with “no recognition of a separate status or identity for the Indigenous People.”⁸⁰

Within a year, the CHT Indigenous political party Parbatya Chattagram Jana Samhati Samiti (PCJSS) formed an armed wing called the Shanti Bahini.⁸¹ The Shanti Bahini started a “low-intensity guerilla war”⁸² with the government of Bangladesh, although the fighting intensified following the assassination of the founding prime minister during a coup in 1975 when the military took control of the country.⁸³ The military regime decided to deploy nearly a third of the Bangladesh Armed Forces in the CHT to control the surge of civil disobedience and outbreaks of violence;⁸⁴ the army then started to bring into the CHT 400,000

75. E/C.19/2011/6, “Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997/ Submitted by the Special Rapporteur,” para. 1.

76. Amena Mohsin, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace*, International Peace Academy Occasional Paper Series, (Lynne Rienner Publishers, 2003), 16–17.

77. E/C.19/2011/6, para. 5.

78. “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” (London, United Kingdom: Amnesty International, 2013), 15.

79. Jamil and Panday, *supra* note 7, at 468.

80. *Ibid.*

81. E/C.19/2011/6, para. 6.

82. *Ibid.*

83. Aminuzzaman, “Bangladesh,” *supra* 5, 7.

84. Jamil and Panday, *supra* note 7, at 469.

Bengali settlers over only five years (between 1979–1984) through its “transmigration programme.”⁸⁵ This influx of Bengalis occurred without any warning, discussion, or consent of the inhabitants of the region,⁸⁶ which violates the Bangladesh-ratified ILO Convention 107 in that the Indigenous Peoples of this area have the rights to their traditional lands and to effective participation in decision-making over what happens on those lands.⁸⁷ It also violates the United Nations Declaration on the Rights of Indigenous Peoples in that Indigenous Peoples have the rights to “traditional lands, redress, effective participation and free, prior and informed consent”⁸⁸ regarding what happens on their traditional territory. In fact, the Bangladeshi government at the time denied there was any intentional program of Bengali settlement in the CHT when questioned by the UN Working Group on Indigenous Populations, although the government later admitted the process had been entirely deliberate.⁸⁹ This intentional migration process changed the demographics of the Chittagong Hill Tracts in a drastic way, with the percentage of Bengalis rising from 9% in 1951 to 26% in 1974 to 41% in 1981.⁹⁰ The Indigenous Peoples were largely relocated to “model villages”⁹¹ while Bengalis were settled in the original homes of those who had fled the increasing violence or those who were forcibly displaced, or beside military encampments in so-called “cluster villages.”⁹² This same five-year period of time also saw the establishment of approximately 500 military camps in the region.⁹³

85. E/C.19/2011/6, para. 6.

86. “Pushed to the Edge: Indigenous Rights Denied in Bangladesh’s Chittagong Hill Tracts,” *supra* note 78, at 27.

87. *Ibid.*

88. *Ibid.*

89. “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts,” (Amsterdam and Copenhagen: Chittagong Hill Tracts Commission, May 1991), 15.

90. E/C.19/2011/6, para. 7.

91. *Ibid.*

92. *Ibid.*

93. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” (Bangladesh: International Work Group on Indigenous Affairs, Organising Committee CHT Campaign, Shimin Gaikou Centre, 2012), 10, http://www.iwgia.org/iwgia_files_publications_files/0577_Igia_report_14_optimized.pdf.

Finally, in October 1996, then-Prime Minister Sheikh Hasina set up the National Committee on CHT.⁹⁴ After over a year of meetings between the National Committee and the PCJSS, the two groups agreed to a peace treaty that was signed on December 2, 1997.⁹⁵ The signing of the Accord created hope on both sides of the conflict, although it is worth noting that the provisions of the Accord were not mandated by any particular time frame and there was “no independent body overseeing its implementation.”⁹⁶ Additionally, the Accord was not and is still today not protected by the Bangladesh Constitution; this means that any incoming government that does not agree to devolve power over the CHT to the tribal authorities could potentially enact legislature to eliminate the accord or reduce its power.⁹⁷

However, almost all external sources point to the fact that the Accord has not been meaningfully implemented in the 19 years since its establishment. In 2000, the UN Special Rapporteur on Religious Intolerance said that the failure up until that point to implement the Chittagong Hill Tracts Peace Accord “threatened the survival of the cultural and religious identity of Indigenous populations”⁹⁸ in this region. In 2001, the Committee on the Elimination of Racial Discrimination (CERD) expressed its concern over the “slow progress in implementing”⁹⁹ the accord and urged the Bangladesh government to “intensify its efforts in this regard.”¹⁰⁰ The Compilation of UN Information Report and the Stakeholder Submissions Report submitted to the Working Group for the 2009 Universal Periodic Review cycle contained criticisms of the government for its continued marginalization and targeted violence of Indigenous Peoples in this region,^{101,102} despite the fact that by 2009, Bangladesh had already formally agreed

94. Jamil and Panday, *supra* note 7, at 471.

95. Aminuzzaman, *supra* note 5, at 14.

96. E/C.19/2011/6, para. 19.

97. *Ibid.*

98. A/55/280/Add.2, para. 73.

99. CERD/C/304/Add.118, para. 10.

100. *Ibid.*

101. A/HRC/WG.6/4/BGD/2, para. 39.

102. A/HRC/WG.6/4/BGD/3, paras. 46, 47, 49.

to many core human rights treaties.¹⁰³ While Bangladesh ratified the International Labour Organization's Convention No. 107 entitled "Indigenous and Tribal Populations Convention" in 1972, they had not and still have not signed or ratified the updated Indigenous and Tribal Peoples Convention, ILO Convention No. 169.¹⁰⁴ Similarly, Bangladesh abstained from the vote on the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

In his 2011 report "Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997," UN Permanent Forum on Indigenous Issues Special Rapporteur Lars-Anders Baer found that "thirteen years after the signing of the Accord, it is clear that many critical clauses remain unimplemented or only partially addressed"¹⁰⁵ such as those relating to providing power to local tribal administration and restoring original lands to the Indigenous Peoples whose homes had been illegally occupied by Bengali settlers.¹⁰⁶ The Special Rapporteur additionally noted an incident in which the Ministry issued a letter to various government officials in the CHT advising them to use the word "upajati" to address the Indigenous or tribal Peoples of the region rather than "adivasi."¹⁰⁷ Despite the fact that the use of the term "upajati" is mandated as per the 1997 peace agreement,¹⁰⁸ this still caused an uproar because "adivasi" is the Bengali equivalent of the term "Indigenous Peoples" while "upajati" translates to "sub-nation

103. Bangladesh acceded to the Convention on the Elimination of All Forms of Racial Discrimination in 1979; acceded to the Convention on the Elimination of all Forms of Discrimination Against Women in 1984; ratified the Convention on the Rights of the Child in 1990; acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 1998; acceded to the International Covenant on Economic, Social and Culture Rights in 1998; and acceded to the International Covenant on Civil and Political Rights in 2000.

104. "Ratifications of ILO Conventions: Ratifications for Bangladesh," *International Labour Organization*, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103500.

105. E/C.19/2011/6, para. 45.

106. *Ibid.*

107. *Ibid.*, para. 44.

108. "Chittagong Hill Tracts Peace Accord (CHT)," sec. B(1), <https://peaceaccords.nd.edu/accord/chittagong-hill-tracts-peace-accord-cht>.

or sub-ethnic group.”^{109,110} The Indigenous Peoples of the CHT are referred to by other names as well, such as “small peoples/nations” or “khudro jatishotta” and “ethnic sects and communities” or “nrigoshthi o shomprodai.”¹¹¹ This blatant disregard for the desire of Indigenous Peoples in the CHT to be called their proper names essentially denies these peoples their Indigenous identities at the state level.

It is, in fact, this issue of terminology surrounding the CHT’s tribal peoples that Iqbal Ahmed, First Secretary of the Permanent Mission of the People’s Republic of Bangladesh, first commented upon in his statement following the release of Baer’s report at the tenth session of the Permanent Forum on Indigenous Issues in May 2011. The information in this paragraph comes directly from his statement. Ahmed stated explicitly that “Bangladesh does not have any ‘Indigenous’ population” at all. He went on to say that the “ethnic minorities” living in the CHT experienced “sporadic unrest in that region from... 1975–1996” but that his government, under the leadership of Prime Minister Sheikh Hasina—the same Prime Minister who helped create and signed the 1997 Peace Accord—has “resumed the process of full implementation” of the Accord. The government representative stated that “the Accord has nothing to do with ‘Indigenous issues’” and therefore the Permanent Forum on Indigenous Issues is not the appropriate place to deal with the Accord. Additionally, he called the Rapporteur’s report “lopsided” and reiterated his government’s stance that they do not recognize “the authority of the Forum to discuss the issue of CHT Affairs.”¹¹²

This consistent denial of the Indigenous identity of those being oppressed in the Chittagong Hill Tracts contributes in a fundamental way to the conflict in this region and that has made the Accord even

109. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” *supra* note 93, at 41.

110. Sanjeeb Drong, In-person Interview, May 13, 2016.

111. “Militarization in the Chittagong Hill Tracts, Bangladesh: The Slow Demise of the Region’s Indigenous People,” *supra* 93, at 41.

112. “Statement by Bangladesh Delegation,” in *UNPFII’s Study on the Status of Implementation of the CHT Accord of 1997 and Statements Delivered at the UNPFII’s 10th Session on the Said Study*, ed. Mangal Kumar Chakma, (Dhaka, Bangladesh: Kapaeeng Foundation, 2011).

more difficult to implement. The 2013 Universal Periodic Review of Bangladesh captured many of the same issues that were present in the 2009 UPR. The Compilation of UN Information report cited UNICEF's assertion that Indigenous children living in the CHT still "often lack access to basic and specialized services"¹¹³ and "recommended that Bangladesh adopt specific measures to combat discrimination and inequity"¹¹⁴ against these children. Additionally, human rights violations by both state and non-state actors have continued unabated including "rape and sexual assault against women and children, killings, arson, grabbing of lands, unlawful arrest and torture, and structural forms of discrimination based upon ethnicity, religious affiliation and gender."¹¹⁵ Large-scale attacks against Indigenous villages in the CHT were "often fuelled by extremist propaganda and hate speeches"¹¹⁶ and politicians and police were frequently implicated in their incitement.¹¹⁷ When the author interviewed the Managing Director of the Chittagong Hill Tracts Foundation, Krishna Chakma, he called the CHT an "open prison"¹¹⁸ in which the military controls the lives of the Indigenous Peoples who live there, including by limiting press freedom, freedom of religion, freedom of expression, freedom of movement and freedom of free association.¹¹⁹

One may wonder why the government would take such extreme measures to remove or irrevocably damage the Indigenous communities of the CHT. These are targeted and systematic acts of violence, and the motivation for performing them is often cited as being part of the Bangladeshi exercise of national identity building.¹²⁰ Simply put, the Bangladeshi government is still attempting to distinguish itself from the nations that once ruled this territory by establishing the Bengali

113. "A/HRC/WG.6/16/BGD/2," para. 70.

114. *Ibid.*

115. "A/HRC/WG.6/16/BGD/3," para. 64.

116. *Ibid.*, para. 65.

117. *Ibid.*

118. Krishna Chakma, In-person Interview, June 6, 2016.

119. *Ibid.*

120. Chakma, *supra* note 13, at 282.

identity: one ethnic group, homogenously Muslim.¹²¹ Article 9 of the original 1972 Bangladesh Constitution focuses on this unique Bengali identity: “The unity and solidarity of the Bengali nation, which deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bengali nationalism.”¹²²

The identity of the Indigenous Peoples of Bangladesh, including those living outside of the CHT, was further minoritized with the Fifteenth Constitutional Amendment in 2011. This amendment reinserted the phrase “trust and faith in almighty Allah” to replace the word “secularism,” a change that was originally made in the Fifth Constitutional Amendment in 1979 by military ruler General Ziaur Rahman.¹²³ This alludes to the movement towards institutionalizing Islam as the state religion, as was done with the Eighth Constitutional Amendment under the military ruler General Hossain Mohammad Ershad in 1988, and which was retained during the Fifteenth Constitutional Amendment.¹²⁴ Article 6(2) of the Fifteenth Amendment creates a one-ethnicity state with the following words: “The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis.”¹²⁵ This Amendment denies the rights of Indigenous Peoples to identify as such, rather than as Bengalis, under the state. When Indigenous Peoples are identified in this Amendment, they are identified rather as tribes (“upajati”), minor races (“khudro jatishaotta”), or as ethnic sects and communities (“nrigoshthi o shomprodai”).¹²⁶ This furthers jeopardizes Indigenous

121. *Ibid.*, 289.

122. *Ibid.*, 287.

123. Sultana Kamal, Eric Avebury, and Elsa Stamatopoulou, “Concern Regarding the 15th Amendment of the Constitution,” Letter from the Chittagong Hill Tracts Commission to the Honourable Prime Minister Sheikh Hasina, (July 12, 2011), 1, http://www.iwgia.org/iwgia_files_news_files/0317_CHTCommission_LetterToPM_Constitution.pdf.

124. *Ibid.*

125. “Constitution of the People’s Republic of Bangladesh,” Government of the People’s Republic of Bangladesh: Legislative and Parliamentary Affairs Division, *Laws of Bangladesh*, (June 30, 2016), Article 6(2), http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367.

126. *Ibid.*, Article 23(A).

Peoples' legal status as citizens with equal rights under the Bangladeshi state. As Kuwoli and Alfredsson argue in "The Responsibility to Protect Minorities," if the national rhetoric is constantly "dominated by vague, emotive questions of 'national identity', minority issues will be vulnerable to exploitation"¹²⁷ and, in this case, the minorities in question will be subjected to discrimination and violence.

Ultimately, the legalization of discrimination against Indigenous Peoples leaves no space for the Indigenous identities, cultures and languages of the CHT peoples to thrive in this country. Indigenous Peoples ascribing to Buddhism, Christianity or traditional religious beliefs simply do not fit into the mold of the Bengali national identity,¹²⁸ and therefore have to be removed from Bangladeshi territory or must be made to be so inconsequential as a percentage of the population that their traditions, cultures and belief systems will eventually disappear. The evidence provided above additionally indicates the Bangladeshi government's intent behind their actions.

Unfortunately, while the 1997 Peace Accord could have been the turning point in Bangladesh, this conflict seems further entrenched now more than ever before. The ongoing militarization and discrimination against the CHT's Indigenous peoples simply has not gained international notoriety the same way other conflicts have. This lack of international attention allows the Bangladeshi government to insist they are implementing the Accord as they simultaneously work to undermine it.

III. Situation in the Chittagong Hill Tracts, Bangladesh

b. Opportunities for International Intervention under R2P

As outlined earlier, the Responsibility to Protect can only be invoked in situations in which one of four mass atrocity crimes is being committed. This author argues that the evidence provided above indicates that ethnic cleansing is occurring in the Chittagong Hill Tracts and has been ongoing for decades. In Scott Strauss's chapter in

127. Kuwoli and Alfredsson, *supra* note 62, at 68.

128. "Pushed to the Edge: Indigenous Rights Denied in Bangladesh's Chittagong Hill Tracts," *supra* 78, at 15.

Reconstructing Atrocity Prevention, Strauss refers to the lack of a formal definition in international humanitarian law of ethnic cleansing but reiterates that this term is widely understood to mean group-selective “forced migration and mass population displacement.”¹²⁹ While both ethnic cleansing and genocide require intent to target a specific group of civilians, the main difference between the two atrocity crimes is that the former refers to the removal of an ethnic group of civilians from a territory and the latter refers to an ethnic group’s destruction.¹³⁰ In 2008, the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples sent a communication to the Bangladesh government to express concern that the land-grabbing in Indigenous communities in the CHT was part of a “systematic campaign to support the settlement of non-Indigenous families in the Chittagong Hill Tracts, with the active support of the security forces, with the ultimate aim of displacing the Indigenous community.”¹³¹ The transmigration programme described earlier in this paper was the beginning of this systematic attempt by the Bangladeshi government to change the demographic composition of the CHT, which has continued with the unimpeded land grabbing and terrorization of the Indigenous peoples. Chakma Indigenous Circle Chief Devashish Roy and Secretary-General of the Bangladesh Indigenous Peoples’ Forum Sanjeeb Drong, in interviews with this author, independently called the programme an attempt to minoritize Indigenous peoples in the region.^{132,133} The displacement of Indigenous peoples was aided by increasing violence experienced at the hands of settlers and government authorities such as the military, which forced many Indigenous peoples to move across the border into Tripura, India, or to seek asylum abroad.

129. Scott Strauss, “What Is Being Prevented? Genocide, Mass Atrocity, and Conceptual Ambiguity in the Anti-Atrocity Movement,” in *Reconstructing Atrocity Prevention*, ed. Tibi Galis, Alex Zucker, and Sheri P. Rosenberg (Cambridge: Cambridge University Press, 2016), 24–25.

130. *Ibid.*, 25.

131. A/HRC/12/34/Add.1, para. 9.

132. Devashish Roy, In-person Interview, May 19, 2016.

133. Sanjeeb Drong, In-Person Interview, May 13, 2016.

Other authors argue that the violence experienced by the Indigenous peoples of the CHT rather constitutes a “creeping genocide”¹³⁴ or a “slow-motion process of ethnocide.”¹³⁵ Scholar Mark Levene cites Raphaël Lemkin in his analysis of the situation in the CHT: while Lemkin, deemed by many to be the originator of the term “genocide,” intended the word to indicate a “a coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves,” he still acknowledged that these actions did not have to include the group’s “immediate destruction” as long as they were part of an overall plan to produce the breakdown of the group’s “political and social institutions.”¹³⁶ This could include the “destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”¹³⁷ Levene argues that genocide represents “the extreme end of a continuum of repressive state strategies which might include marginalization, forced assimilation...and even massacre.”¹³⁸ As early as 1991 the International CHT Commission, an independent group of international activists and scholars who promote respect for human rights in the CHT and also promote the implementation of the CHT Peace Accord, stated that “a genocidal process ... threatens the hill people of the Chittagong Hill Tracts.”¹³⁹ Their report found that this genocidal process is ultimately the result of actions taken by the Bangladeshi military, who are agents of the state.¹⁴⁰ The violence currently happening in the CHT then certainly accounts for one, if not two or three, crimes that would appropriately invoke the Responsibility to Protect.

134. Levene, *supra* note 8, at 339.

135. Chakma, *supra* note 13, at 281.

136. Raphaël Lemkin, *Axis Rule in Occupied Europe : Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington, D.C.: Carnegie Endowment for International Peace, Division of International Law, 1944), 79.

137. *Ibid.*

138. Levene, *supra* note 8, at 342.

139. “‘Life Is Not Ours’: Land and Human Rights in the Chittagong Hill Tracts,” *supra* note 89, at 47.

140. *Ibid.*

The 1997 Chittagong Hill Tracts Peace Accord still represents hope for many on both sides of the conflict, as it has been the only tangible agreement between the PCJSS, representing many of the Indigenous peoples of the CHT, and the government. Additionally, Prime Minister Sheikh Hasina, who signed the agreement, is once again leading the country; this further encourages both locals and international observers that the government may hold up its end of this arrangement.

The R2P toolkit encompasses many potential avenues for conflict resolution but its first pillar, atrocity prevention typically through early warning mechanisms aimed at deterring violent conflict, is far beyond being useful in this situation. These crimes have been proven to be occurring against Indigenous peoples in the CHT, with the complicity and often active participation of state agents, and with the intent, as evidenced by long-term impunity, legislative and policy measures, to cleanse the area of Indigenous peoples or at least make them so marginal a presence as to render their groups inconsequential. Now what can be done within the R2P toolkit to resolve this situation?

The oppressive militarization of the CHT has been identified as the most important issue to be addressed here, by scholars and activists alike. The removal of military encampments was an important part of the 1997 Peace Accord that has yet to be implemented and this author argues that it is international intervention to have this part of the Accord upheld that would be the most effective application of R2P in the CHT. The Accord was an agreement between the government and the Indigenous peoples of the CHT that the government says it is still committed to,¹⁴¹ so the international community would not be forcing the implementation of an external agenda in Bangladesh. Still, it is important to question what form this intervention could best take.

There is a movement among some Indigenous peoples of Bangladesh to push for an international mediator to step in to create dialogue between the various high-level actors involved in the Accord¹⁴² or simply to monitor the implementation of the Accord,¹⁴³ which could fall within the R2P toolkit of diplomatic intervention. The Bangladesh

141. "A/HRC/WG.6/16/BGD/1," para. 109.

142. Drong, *supra* note 133.

143. *Ibid.*

Indigenous Peoples' Forum has invited European ambassadors and United Nations representatives to meetings they hold in Dhaka to sensitize them to the situation, however the Forum has also faced push-back from the federal government for involving foreigners in what is perceived at the state level to be a domestic issue.¹⁴⁴ External pressure through an international mediator could, for example, be used to establish a road map for implementation of the Peace Accord, as suggests Krishna Chakma, including the clause of the Accord that mandates de-militarization.¹⁴⁵

The final potential application of R2P would be military intervention by a foreign force or a United Nations peacekeeping operation. However, this option was rejected unanimously by all those consulted for this thesis who actually live in Bangladesh and it has not been suggested by any of the literature accessed for this research. The consensus among all sources consulted is that more violence is not the solution to decades of violence; rather, an inclusive political solution appears to be the best option as long as it acknowledges the legitimacy of the Indigenous peoples of the CHT and their rights to their culture and languages, lands, modes of governance and self-determination.

IV. Policy choices re: Protecting Indigenous peoples

a. Is R2P an appropriate method of intervention to protect Indigenous Peoples?

In determining whether or not R2P is an appropriate model for intervention to protect Indigenous peoples from either state or third party violence, it is important to first question why Indigenous Peoples have been neglected from R2P interventions thus far. Using the Chittagong Hill Tracts to illustrate, I argue the reasons for the international community turning a blind eye to the many situations around the world in which Indigenous Peoples are the victims of violent conflict is a lack of strategic interest and political will; limited advocacy and international attention to pressure international actors

144. *Ibid.*

145. Chakma, *supra* note 118.

to step in; and a state-controlled narrative that minimizes the violence taking place.

The United Nations Security Council has an extensive mandate and limited resources. As of right now, the situation in the CHT has not gained significant international media attention to force other governments to interfere in any meaningful way or to commit to get the implementation of the Peace Accord back on track. This inaction on behalf of the international community may in fact be entirely willful, since Bangladesh is one of the largest troop contributing countries to United Nations peacekeeping operations in the world¹⁴⁶ and pressure applied from other states could push them to withdraw their much-needed soldiers.

Tone Bleie, member of the International CHT Commission, argues that “Bangladesh isn’t important enough for the kind of international key actors which one could expect could propose in a persuasive way and have sufficient clout”¹⁴⁷ to force an intervention of some kind. Bleie believes that “as long as there isn’t anything happening towards citizens from other countries on a grand scale,”¹⁴⁸ the chances of international intervention are slim due to a sheer lack of political will. The CHT expert argues that only if this violence were affecting citizens from other nations—more than simply along Bangladesh’s borders with India and Myanmar—could there be a chance to seize international attention, since this would indicate that “the political system and development in Bangladesh is something which threatens security and development”¹⁴⁹ internationally.

Additionally, the international community may not want to be seen as promoting non-state actors in their resistance efforts, as the principle of R2P itself is premised on the primacy of the nation-state. When perceived as victims, those being terrorized fit more easily into the frame of civilian protection; but when they rebel against an

146. “Troop and Police Contributors: Contributions by Country,” *United Nations Peacekeeping*, <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml>.

147. Tone Bleie, Skype Interview (Internet Video Calling), June 13, 2016.

148. *Ibid.*

149. *Ibid.*

oppressive nation-state, victims are quickly re-framed as perpetrators even if they have acted under the impression that violence is their only option for recourse. Indigenous Peoples in other parts of the world have also had to take up arms in order to retain even a small part of the independence, territory or self-determination they once had. Unfortunately, this makes justifying an R2P intervention in a situation such as this even more difficult, despite the fact that in many cases the choices were limited to engaging in the conflict or Indigenous Peoples losing their homes or lives.

The issue of narrative framing is another reason why R2P has perhaps not been invoked where it has been needed in situations of mass atrocities committed against Indigenous Peoples. One of the main issues with the way many development programs have envisioned the situation in the Chittagong Hill Tracts is that the area is considered a “post-conflict zone.”¹⁵⁰ When framed this way, the donors and agencies involved are released from addressing the civil, political, economic, social and cultural rights that are still being violated in this region and can instead focus exclusively on economic development programming. For example, despite the fact that the Asian Development Bank report on their 2000–2009 CHT project was released in 2011—the same year that UN Special Rapporteur Lars-Anders Baer released his damning report of the oppression of the Indigenous Peoples of the CHT at the hands of their government¹⁵¹—the ADB only acknowledged a “20-year insurgency” in the CHT in the 1980s and 1990s.¹⁵² The overwhelming evidence, however, indicates that the area is nowhere close to being beyond conflict as violence is actively ongoing.¹⁵³ Even if there is mounting evidence that human rights violations are taking place here, the involved governments and

150. “Chittagong Hill Tracts Development Facility,” *UNDP in Bangladesh*, http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/crisis_prevention_and_recovery/chittagong-hill-tracts-development-facility.html.

151. E/C.19/2011/6, “Study on the Status of Implementation of the Chittagong Hill Tracts Accord of 1997 / Submitted by the Special Rapporteur.”

152. “Bangladesh Project Brief: Chittagong Hill Tracts Rural Development Project” (Asian Development Bank, South Asia Department, October 2011), 1.

153. “Pushed to the Edge,” *supra* note 78; E/C.19/2011/6, para. 19; “Militarization in the Chittagong Hill Tracts, Bangladesh,” *supra* note 93; A/HRC/WG.6/16/BGD/3.

agencies may not want to acknowledge this: sometimes in instances of mass atrocities, United Nations “Member States and international agencies supporting countries under stress are not sufficiently open to messages that might challenge their view that these societies are moving in the right direction.”¹⁵⁴ As Amartya Sen writes in *Strategies of Economic Development*, “when interests of groups differ and conflict with one another,”¹⁵⁵ development programming will end up reflecting the aspirations of the more powerful of the two groups.¹⁵⁶ In this case, the majority Bengali government is able to frame the development programming—and the discourse around the conflict in the CHT—to suit their agenda, to the detriment of the CHT’s Indigenous population.

Now that the potential reasons for the neglect of Indigenous-targeted conflicts has been laid out, the question still remains of whether R2P is an appropriate intervention mechanism for Indigenous Peoples or if there is a better alternative. Is there a way to apply R2P without further entrenching inequalities, some of which are rooted in colonialism?

Ultimately, for R2P to be applied in a situation in which Indigenous Peoples are the victims of mass atrocities, these Indigenous Peoples need to be acknowledged in the first place. If the state is the perpetrator of the crimes and does not acknowledge the Indigenous identities of those being victimized—perhaps to escape the obligation to respect, protect, and fulfill the rights that come with that identity—then under the R2P doctrine, it would fall to the international community to step in and ensure these crimes are prevented or stopped. In order for this principle to be applied to Indigenous Peoples specifically, it must also fall on the international community to acknowledge the Indigenous identity and the specific rights ascribed to this identity. The United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous Peoples’ rights to self-determination and their rights to have their Indigenous identities respected. The establishment of UNDRIP was such an accomplishment in the realm of Indigenous rights

154. A/70/999-S/2016/620, para. 29.

155. Amartya Sen, “Economic Development - Objectives and Obstacles,” in *Strategies of Economic Development: Readings in the Political Economy of Industrialization*, Kurt Martin ed. (London: Macmillan Academic and Professional, 1991), 87.

156. *Ibid.*

because it functions at the level of international law; the international community must, therefore, accept Indigenous Peoples' assertions about their identities as Indigenous peoples. This has been put into practice by the United Nations Permanent Forum on Indigenous Issues and its predecessor, the Working Group on Indigenous Populations. In instances of mass atrocities being committed against Indigenous Peoples, the international community could take the opportunity set by precedent to acknowledge the rights of Indigenous Peoples even if the state within whose territory the Indigenous Peoples reside does not acknowledge this same identity and set of rights. Perhaps this requirement on behalf of the international community could be incorporated into the R2P doctrine as the operationalization of the principle morphs over time.

As mentioned earlier, one of the major criticisms of R2P is that "R2P cannot be neatly disassociated from the prior modalities of colonial rule."¹⁵⁷ In "Colonialism and the Responsibility to Protect," Mallavarapu argues that R2P "needs to be treated as part of an older and much wider global history of interventionism."¹⁵⁸ Only by attributing more agency to local populations will R2P overcome this inherent weakness of the principle. If the self-determination of "local 'non-state actors,' civil society, social movements, indeed victims themselves"¹⁵⁹ is better recognized by the international community and better incorporated into the R2P doctrine, atrocity crimes could not only be addressed more quickly but also perhaps prevented more widely. The only hope for international efforts to be mobilized more quickly is if there is accurate risk assessment and early warning, especially for minority-related conflict.¹⁶⁰ Agency of non-state actors means not only the right to have a seat at the table when international intervention is being contemplated, but also means crediting all kinds of non-state actors with the "intelligence to figure out what might work best for their own political systems in crisis situations."¹⁶¹ This

157. Mallavarapu, *supra* note 48, at 319.

158. *Ibid.*, at 320.

159. Mégret, *supra* note 56, at 576.

160. Kuwali and Alfredsson, *supra* note 62, at 86.

161. Mallavarapu, *supra* note 48, at 319.

last component—engaging local people from all sides to provide an internal analysis of their specific cultural, economic, social and political context—is key because “Western intervention or doctrines like R2P cannot serve as a panacea to deeper structural problems which an unequal international order itself has in various ways perpetuated.”¹⁶² Tone Bleie makes the case that, in Bangladesh for example, the conflict in the CHT is actually symptomatic of a “core structural issue of a neo patrimonial state, where the military is one of the well functioning pillars.”¹⁶³ What is happening in the CHT, states Bleie, is actually “pivoting around a deep-rooted relationship between most of the political and military elites.”¹⁶⁴ Bleie argues that in order to understand the oppression and victimization of Indigenous Peoples of the CHT, one has to first recognize the role the neo patrimonial state plays in avoiding the implementation of the Peace Accord and, in particular, in refusing to “downsize the bloated army and put it to other kinds of civilian uses.”¹⁶⁵

This context-specific understanding of the situation on the ground only occurs when many actors—especially non-state actors—are included in framing the history and wider background to the conflict. Part of resolving the situation in the CHT may include, beyond ending the violence and withdrawing the military, actually “nurturing a new less fractured, collective memory, which is much less racial and hierarchical in terms of ethnicity.”¹⁶⁶ Unfortunately, the painful memory of atrocity crimes typically “contributes to the existence of deep distrust between communities as well as towards government institutions.”¹⁶⁷ In Bangladesh, a resolution to the conflict would likely also include an appreciation for the ways in which the Indigenous Peoples of the CHT have attempted to protect themselves without labelling them terrorists or secessionists, in order for Bangladeshi society to move forward as a whole. An alternative understanding of

162. *Ibid.*

163. Bleie, *supra* note 147.

164. *Ibid.*

165. *Ibid.*

166. *Ibid.*

167. “A/70/999-S/2016/620,” para. 56.

R2P in relation to Indigenous Peoples has the opportunity to take hold while the principle is still young, an understanding that is “rooted not in the international community’s ability to act but in the will of victims and civil society more generally to resist persecutions.”¹⁶⁸

IV. Policy choices re: Protecting Indigenous Peoples

b. What does this mean for the future of R2P as a norm?

The aforementioned criticisms of R2P are not meant to imply that the concept of R2P should be tossed aside because its frame is outdated for the way the world is evolving. This principle has been transformed before and it can be transformed again. As long as the incoming Secretary-General retains a focus on R2P as Ban Ki-moon and Kofi Annan did, this emerging norm has a viable chance of re-building consensus on how to handle the toughest security, human rights and humanitarian situations and of institutionalizing a system-wide approach to atrocity prevention within the United Nations. While Member States may continue to argue about R2P’s terms of engagement, there is a broad sense that a multi-lateral response to mass atrocities is not inappropriate in and of itself.¹⁶⁹ As the former Special Adviser to the Secretary-General on the Responsibility to Protect, Jennifer Welsh, has said, R2P sets expectations and provides a framework for action.¹⁷⁰ However, as with every other international principle, it cannot compel action in and of itself.¹⁷¹ As Welsh stated, “We must not shy away from a principle because it is demanding”,¹⁷² in fact, this should encourage the international community to invest in doing better.

168. Mégret, *supra* note 56, at 581.

169. “Statement by Professor the Hon Gareth Evans at the UN General Assembly Thematic Panel Discussion, 26 February 2016: Global Centre for the Responsibility to Protect,” *Global Centre for the Responsibility to Protect*, February 26, 2016, <http://www.globalr2p.org/publications/415>.

170. “Statement by Jennifer Welsh, Special Adviser to the UN Secretary-General on the Responsibility to Protect” (United Nations, February 26, 2016), <http://www.un.org/en/preventgenocide/adviser/pdf/PGA%20Event%20RtoP%20at%20Ten%20Welsh.pdf>.

171. *Ibid.*

172. *Ibid.*

The future of R2P must see the norm be invoked in consultation with all relevant stakeholders because “international responses to atrocity crimes tend to be most effective when the UN and regional and sub-regional arrangements work closely together.”¹⁷³ In his 2016 report entitled “Mobilizing Collective Action: The Next Decade of the Responsibility to Protect,” Secretary-General Ban Ki-moon emphasized the need to “encourage and support creative and bold innovations”¹⁷⁴ by non-state actors in resolving atrocity crimes. The future of R2P is threatened, however, by the “erosion of the credibility of institutions such as the United Nations”¹⁷⁵ based on the discrepancy between UN promises and actions in recent years. While the 2016 Secretary-General R2P report “calls upon every member of the international community to speak out whenever and wherever atrocity crimes are being committed,”¹⁷⁶ it is the responsibility of governments and the UN system to actually listen when those calls are being made—as they have been in Bangladesh for decades—and respond both appropriately and swiftly.

V. Conclusion

The Responsibility to Protect is a norm with immense potential to prevent and help resolve situations of mass atrocities involving Indigenous peoples. However, the norm’s current iteration simply does not hold any space for the self-determination of those being victimized to make it a useful tool for Indigenous Peoples and the struggles in which they are engaged. If R2P were to undergo a paradigm shift—part of which would require the international community to acknowledge Indigenous identities and the rights associated therein, and to pay attention to conflicts that challenge the dominant state-centric international order—then R2P could become a tool in the arsenal of Indigenous struggles the world over.

173. “A/70/999-S/2016/620,” para. 50.

174. *Ibid.*, para. 52.

175. *Ibid.*, para. 5.

176. *Ibid.*, para. 63.

When looking specifically at the Chittagong Hill Tracts in Bangladesh, the first step towards resolving this entrenched conflict is for the government to acknowledge there are Indigenous Peoples within its borders. Not only does the government have the obligation to acknowledge the Indigenous identity of the “adibashi” of the CHT, but they must also create a timeline by which they will implement the clauses agreed upon in the 1997 Peace Accord. The international community needs to better supervise this implementation; it is not enough for the Bangladesh government to simply say they are committed to implementation while their military continue to act with impunity and third party observers act as silent witnesses to the ongoing violence.

More research needs to be conducted on the potential for the successful application of R2P among Indigenous Peoples, including further case studies. This author suggests focusing on the ways in which R2P and Indigenous self-determination could further reinforce rather than oppose one another. R2P has not been invoked in a situation of mass atrocities against Indigenous Peoples for many reasons, but primarily because R2P is not yet appropriately formed to address the struggles experienced specifically by Indigenous peoples. These include the inherent connection between loss of land, loss of culture, and loss of life. Ultimately, the Responsibility to Protect must be flexible and adaptable as it contends with changing geopolitical and geostrategic factors and the contextual nuances that make each R2P application different from the last.

The Politics of Shaming and Sanctions: Rewriting the Anatomy of the Bangladeshi State

Tone Bleie

Introduction

In social science debates over the nature of the Bangladeshi state and change of regime, as well as about the state of human rights, one tends to speak of distinct eras as if changes have been abrupt, albeit systemic in nature. One speaks of early democratic Bangladesh under its charismatic founding father, Sheik Mujib. One talks of a turn to authoritarian rule under mainly two generals (1975–1990) after the assassination of most of the Mujib family in their own home in the capital of Dhaka. Finally, one employs the expressions “a return to democracy” or “reinstatement of parliamentary democracy” after 1990.

Too extravagant use of such terms, whose popular and scientific connotations overlap superficially, coexists uneasily with sparsely researched evidence of deep-seated continuity. In a similar fashion, international debates about trends in recognition/non-recognition and fulfillment of Indigenous rights and minority rights in the Chittagong Hill Tracts (CHT) are unclear, or even contradictory. One speaks of “before” and “after” the 1997 Peace Accord as if it were a watershed with profound political implications, while simultaneously being concerned with the continued militarization of the hill region and the selective implementation of the 1997 Accord. International and national human rights practitioners alike find progress not only painfully slow, but see reality as retrogressive.¹ The leading human rights NGOs, national and international, turn every page to identify an approach that satisfies the most effective combination of measures and mechanisms that can facilitate, steer or exert pressure to achieve

1. Tone Bleie, “Bangladesh’s challenges as elected member to the United Nations Human Rights Council,” in *Solidarity 2006: Indigenous peoples have the right to territory: land and natural resources*, (Dhaka, Bangladesh: Indigenous Peoples Forum, 2006), 28–29; CHTC, *Press Release* (January 15, 2015), http://www.chtcommission.org/backend/product_picture/850doc.pdf

substantive change. The framework that informs such international policy and advocacy efforts tends to treat civil-military relations and patrimonial leadership notions underlying cultural nationalist ideologies and constitutional culture, as context.

In contrast, coexisting with this Indigenous and minority rights-based discourse of continued violations² and lack of commitment to implement the Peace Accord,³ the “development camp” sees positive trends and narratives. They speak of Bangladesh’s impressive achievement in meeting several of the Millennium Development Goals⁴ in disaster management, social and economic development, economic growth and increasing international recognition for contributions to international peacekeeping.⁵ Bangladesh’s enhanced international standing due to improvements in socioeconomic international rankings has boosted the legitimacy of the current Bangladesh Awami League-led alliance government and its self-confidence. The government is getting tougher in setting its own terms, especially in the economic context of the past several years, with about 6% annual growth in GDP⁶ providing stronger financial “muscle.” For example, this trend is most notably demonstrated in the government’s dealings with the World Bank as prospective lead funder of the Padma Bridge Project and the government’s readiness to fund this mega project after the World Bank pulled out in mid-2012 over allegations of grand corruption.⁷

2. The Minority Group International, “Mapping Bangladesh’s Political Crisis,” *Asia Report* no. 264, (Brussels, Belgium: International Crisis Group, 2015).
3. See the International Chittagong Hill Tracts Commission’s Press Statement of December 2014, calling for a roadmap with milestones for the Accord’s full implementation: http://www.chtcommission.org/backend/product_picture/770doc.pdf
4. UNDP, “Millennium Development Goals: Bangladesh Progress Report 2015,” <http://www.bd.undp.org/content/bangladesh/en/home/library/mdg/mdg-progress-report-2015.html>
5. Erik Jansen, “På stille vei ut av fattigdommen,” *Aftenposten Innsikt* (2016): 54–55; Uz Rashed Zaman and Niloy Ranjan Biswas, “Bangladesh’s Participation in UN Peacekeeping Missions and Challenges for Civil-Military Relations: A Case for Concordance Theory.” *International Peacekeeping* 21, no. 3 (2014): 324–344.
6. See <http://www.tradingeconomics.com/bangladesh/gdp-growth>, assessed January 25, 2017.
7. A.K. Wheeler, R.J. Aves and C.J. Tolley, “Detailed design of the Padma Multipurpose Bridge, Bangladesh—An Overview,” in *IABSE_JSE Joint Conference on Advances in Bridge Engineering-2*, Okui Amin and Bhuian eds. (Dkaha, Bangladesh: August 8–10, 2010), www.iabse-bd.org; “The World Bank Statement on Padma

This paper aims to stimulate a shift from an “issue” or “problem” approach in CHT-studies to a comprehensive interdisciplinary study of civil-military relations, characterized by power-sharing arrangements, a culture of patronage and factionalist behavior. CHT is commonly wedged between two dominant, rather incompatible narratives; one nationalist and security-oriented, the other normative—anchored in a liberal democracy model and human rights. The latter position has been articulated by, among others, the International Chittagong Hill Tracts Commission (CHTC), mostly informed by international law and political science, less so by political anthropology’s descriptive emic (insiders’ points of view) approaches of norms, institutions and practices.⁸

Drawing on all these disciplines, this paper seeks to fill this gap, and to substantiate the paper’s main assumption: that alleged regime shifts should be substituted by an analytical emphasis of structural continuity, in order to better explain why the CHT Accord’s principal provisions remain largely unimplemented 20 years after the deal was signed, regardless of parties in executive power. In order to test the validity of this assertion, five main arguments will be sought substantiated.

First, civil-military relations are intertwined—a conglomerate—and cemented by patrimonial vertical and horizontal bonds of patronage, non-transparent control over state resources and a power-sharing arrangement that makes the categories “civilian” and “military” fuzzy and overlapping. Second, this tacit power-sharing arrangement has three distinct phases: an early antagonistic one; a second experimental, increasingly institutionalized phase during military rule (with partly civilian elements) and reign; and third, the current phase of uneasy opportunistic co-existence, with (until recently) caretaker governments as a safety valve.⁹ Fourth, during times of military rule, the armed conflict in CHT became integral to this tacit national power-sharing

Bridge,” The World Bank (June 29, 2012), <http://www.worldbank.org/en/news/press-release/2012/06/29/world-bank-statement-padma-bridge>

8. This author has been a member of the International CHT Commission since 2012.
9. Ahmed Fakhruddin, *The Caretakers: A First Hand Account of the Interim Government of Bangladesh (1990–1991)*, (Dhaka, Bangladesh: The University Press Limited, 1998); Nizam Ahmed, “Party Politics under a non-party caretaker government in Bangladesh: the Fakhruddin interregnum (2007–2009),” in *Commonwealth and Comparative Politics* 48, no. 1 (2010): 23–47.

structure, a civil-military complex not only in its own right, but one of the Bangladeshi state's bearing pillars.¹⁰ A final argument is that the sources of reproduction of a political culture of oral rhetoric (agitational in nature), patronage and factionalism need to be fully appreciated in order to explain striking structural continuity across institutions (political parties, military and bureaucracy).

Furthermore, a deeper understanding of such societal and system-wide deeply culturally coded behavioral patterns renders it possible to predict and develop approaches that may engender structural change and a new scope for national and international actors to facilitate, steer or help augment positive societal change.

I. Independence, contending ethno-nationalisms and the civil-military complex

a) Bengali ethno-nationalism and statehood trauma

In the nine-month long West-Pakistan–East-Pakistan war that led to Bangladesh's Independence in late 1971, it was not only West Pakistanis that were fighting East Pakistanis. Bengalis fought each other as whole regiments defected from the Pakistani army to fight side by side with civilians as Mukti Bahini or freedom fighters. The Islamist party Jamaat-e-Islami and the Islamic fronts Al-Shams and Al-Badr (better known as the dreaded Razakars) actively supported the Pakistani military.¹¹ The excessive brutality of the West Pakistani-led military crackdown by a well-equipped military, with weapons partly acquired as US military aid, execution-style mass murders and rape as weapons of war, would

10. The term civil-military complex has certain similarities with the military-industrial complex, a term originally coined by President Dwight Eisenhower in 1961, a civilian elected president and former top military official. The constellation of forces in America that Eisenhower sought to define throughout his terms in office was the collusion between the arms industry, the military services and the political leadership. Since a domestic arms industry is not a main defining feature in this case, the term civil–military complex is applied instead. What the two constructs share is an analytical foci on the intricate and many-stranded connections between armed forces (engaged in commercial ventures) and the political leadership. In this case, a string of interconnected national and regional institutions (in CHT) and state-owned enterprises have commercial interests in the CHT.
11. Sirajul Islam, ed. *Banglapedia: National Encyclopedia of Bangladesh (Second Edition)*. 10 Vol., (Dhaka, Bangladesh: Asiatic Society of Bangladesh, 2003).

have quelled the East Pakistani uprising had not India intervened. During its final weeks, the war morphed into a regional conflict. Much of the country was a denuded low delta, and therefore ill-suited to Mao-style guerilla warfare across the country for a protracted period, except for the Chittagong Hill Tracts and the country's eastern and northern hill regions. The bloody, momentous war ended as well over 90,000 Pakistani troops surrendered to the Indian army in the capital Dhaka.

The responses of the several dozen Adivasi nationalities of the hills and plains and their actual involvement on either side of the conflict varied. Most notably, the 50th Chakma Raja Tridiv Roy (1933–2012), who had been elected from his constituency as an independent member of the provincial Parliament in 1970, sided with the West Pakistani forces. Following the surrender, he abdicated in favor of his son Devashish Roy (b.1959)¹² and chose to remain a Pakistani citizen, pursuing a distinguished diplomatic and political career. The first-generation Bangladeshi narratives of the Liberation War depicted the 50th Raja as a traitor and war criminal due to his political positions during and after the war. Raja Tridiv's and some of his subjects' siding with Pakistan made it easy for Bengali nationalists to incriminate the demand that CHT should regain its status as a special administrative area (under the CHT 1900 Regulation) and to brand the budding Santi Bahini guerilla movement as a successor movement. After the war ended, the Mujib government used its new security force (see discussion below) to kill in discriminatively alleged Pakistani collaborators.¹³ The brutality of the Bangladesh army and Indo-Tibetan Border Police Special Forces created resentment and a strong impetus for locals to arm themselves in self-defense. Less well known is the involvement of the Mizo (an ethnic group of CHT and Lusai Hills)¹⁴ under the protection of the Pakistani

12. Devashish Roy, the current Raja of the Chakma Circle, is also a prominent lawyer. Roy is a political entrepreneur that mobilizes and mediates local, regional and international sources of legitimacy. His elected membership in the UN's Permanent Forum on Indigenous Issues and his appointment as Special Assistant with the rank of State Minister to the Caretaker Government (2007–2008) are manifestations of his successful career.
13. K. Montu, "Tribal Insurgency in Chittagong Hill Tracts," *Economic and Political Weekly* 15, no. 36 (September 6, 1981).
14. Willem Van Schendel, "A War Within a War: Mizo rebels and the Bangladesh liberation struggle," *Modern Asia Studies* 50 (2015): 1; "Genocide in the Chittagong

Army and Tripura National Volunteers in the war's latter phase and a special deal Dhaka and Delhi made in order to prevent Mizo militants from retaining a sanctuary in CHT.¹⁵ Other nationalities of the plains either actively supported the independence movement or fled for their lives across the border to safety in India, along with vast numbers of largely Hindu Bengalis. The Pakistani forces dealt with Hindus with even greater brutality than with their own brethren-in-faith.

The first Constitution promulgated in 1972 enshrined principles of nationalism, socialism, democracy, and secularism. The army was not systematically purged for pro-Pakistani and Islamist supporters. Some collaborators were tried, yet many alleged war criminals went into exile in Pakistan and the United Kingdom. Given the massive scale of the atrocities committed by the army and the sudden absence of an external enemy, the new Mujib-led government signed a 25-Year Treaty of Peace, Friendship and Cooperation with India. The new leadership thought it inconceivable to start courting and modernizing an army in tatters. Sheikh Mujib had himself endured more than a decade of imprisonment and mistreatment in Pakistani jails. Naturally, he came to hate the army. The new civilian government chose instead to create a domestic security force (Rakhi Bahini). The 25,000-strong modern-equipped force (a portion of them handpicked old Mukhti Bahini fighters), had to swear allegiance to Sheikh Mujib as incarnated supreme leader, rather than to the new motherland Bangladeshi in abstract. The paramilitary force was granted more or less free reign to harass and even murder troublesome members of the opposition. The new security policy and reform downsized the regular army but expanded the new and better-equipped high profile force. This alienated further sections of the army that became largely relegated to ceremonial and policing functions. This new Indo-Bangladeshi foreign policy, accompanied with this selective demilitarization and remilitarization (Rakhi Bahini

Hill tracts Bangladesh: IWGIA Document 51," Wolfgang Mey ed. (Copenhagen, Denmark: IWGIA, 1984).

15. The deal allowed India (after the 1971 war) to retain ground-forces, supported with Indian Air-Force (Mi-4) teams in Ruma, Thanchi, Mowdok and Bolipara (CHT) until a fatal chopper accident in Noakali on August 14, 1975. The fatal crash made deadlines only a day before the assassination of Sheikh Mujib. The coup makers quickly terminated this secret and overtly sensitive deal.

functioned in reality as stormtroopers), nurtured a dangerous sense of grievance among a neglected and humiliated military officer corps.

Sheikh Mujib Rahman's popularity started waning already in his second and third years in office. Elaborating in detail these reasons is beyond the scope of this chapter. To sum up shortly, however, a few notable reasons for the growing internal opposition to his civilian government¹⁶ were his removal of democratic checks and balances and denial of a platform for the political opposition under lofty rhetoric of saving nationalism, democracy, secularism, and socialism—through a “Second Revolution.”¹⁷ Opposition from the discredited Muslim League and the outlawed Jamaat-e-Islami and its military wings was but one force Mujib obviously disdained. Pro-Maoist and pro-Soviet communist parties (Communist Party of Bangladesh and National Awami Party) that had sided with Awami League (AL) under the resistance movement, saw the AL as bourgeois. In fact, Maoist guerillas fought both the Pakistani Army and the Mukti Bahini from border posts. The guerillas did not surrender arms after the brutal war, and continued intermittently to assassinate AL party members whom they defined as bourgeois enemies. Another contending force was Pakistani fighters who, alongside Bengali and Bihari collaborators, hid in the Chittagong Hill Tracts and were suspected of collaborating with local militants from some of the Hill Tribes.

Several coups were contemplated and planned in this early transition phase within the neglected, fractional yet politically conscious and divided officer corps. Some were carefully masterminded. Sheikh Mujib contributed to the factionalist tendencies by arbitrary promotions and perks.¹⁸ One “majors’ coup” was finally carried out on August

16. As president, brilliant speaker, demagogue and patron of adoring party members and citizens, Sheikh Mujib amended the Constitution to permit the build-up of a one-party apparatus that merged political and administrative functions in a multi-tiered committee apparatus. Only the Kingpin/Chairman could nominate candidates for future elections. The so-called BKSAL-system came into force in 1975, shortly before Mujib and his family were murdered. An almost unified press uncritically endorsed the “Second Revolution” though it effectively meant the closure of the country’s budding press freedom; see Anthony Mascarenhas, “Bangladesh: A Legacy of Blood,” (London: Hodder and Stoughton, 1986), 59.

17. From the 01.02.1975 edition of *Bangladesh Today*.

18. Mascarenhas, *supra* note 16, at 34.

15, 1975. A group of junior officers managed to assassinate Sheikh Mujib, the nation's founding father (*Bangabhandu*), and 20 of his close and extended family. Some were murdered in order to prevent dynastic succession to both civilian and military top positions.¹⁹ In the turbulent transition, the killers were pardoned, while sycophantic courtiers (earlier supporters of Mujib), including corrupt civil servants and executives, rallied behind the interim civil and military leadership in a cynical struggle for new positions, contracts, and favors.²⁰

Following the short-lived interim civilian-military government, a proxy-like government emerged under Bangladesh's first military ruler, Major General Ziaur (Zia) Rahman (1976–81). Zia was a former Pakistani intelligence officer. A later noted and decorated freedom fighter, he as most freedom fighters advanced quickly to senior positions after the Independence War.²¹ For cynical tactical reasons, Zia resigned briefly from his top post during the tumultuous counter-coup days in early November 1975. He subsequently regained power aided by an instigated mutiny among the rank and file *jawans* (soldiers). One of Zia's early achievements as first Deputy Chief Marital Law Administrator was to quell the mutiny. He used a mix of concessions, mass imprisonment, and courts-martial of the principal coup leaders. They were hanged or imprisoned after farcical judicial proceedings. The end of the mutiny did not bring an end to internal factionalism and attempted coups. A sizable number of soldiers reintegrated into the army had earlier defected and joined the freedom fighters. The soldiers' exposure to the warfare of operating in mobile small units, and predominantly young age, made it rather difficult for them to readjust within a conventional army structure. Their reputations and identities as freedom fighters and their disdain, or even hatred, for traitors who

19. Sheikh Mujib planned to groom his second son as new Chief of Staff and sent him for that purpose to the Yugoslav Military Academy and then to Britain's premier military academy Sandhurst; Mascarenhas, *supra* note 16, at 35.
20. Mascarenhas, *supra* note 16, at 79–92.
21. In October 1973, Sheikh Mujib's government granted two years of antedate seniority to all freedom fighters. This was not only done out of recognition of their service, but in order to stimulate mobility and recruitment as the army had many vacancies; the author would like to acknowledge this information from (Retired) Major General Syed Muhammed Ibrahim, himself a freedom fighter.

remained (some were returnees from West-Pakistan) within their ranks, bolstered a segmented army structure wherein mid-level officers with variable wartime records had their own dedicated followers.

Under Zia, the army's political control and more generous budgets increased recruitment and could have been used to introduce merit-based promotional systems. This did not happen because the political class shared the deep-seated culture of patronage across the civil-military divide. As noted, the first head of state Sheikh Mujib had himself resorted to similar divide-and-rule tactics. In technical terms, there was a merger into one army, but its reputation in the collective consciousness could not be restored in the short run. Still, Zia managed to survive until 1981, when he was eliminated by another group of younger officers.

b) Enemy projections, Muslim nationalism and army patronage

Zia clung to power with his combination of rule and reign by proclamation until the general elections of 1979 (presidential elections had been held a year earlier). Zia cleverly chose to retain the position Chief-of-Army, while a new party, Bangladesh National Party (BNP), galvanized support among a range of different constituencies (Jamaat-e-Islami was legalized) all of which shared a dislike of the AL's brand of Bengali nationalism. Otherwise, these right- and left-wing oppositional forces nurtured anything from absolutely conditional to wholesale support for an alternative nationalist narrative, crafted over ideas of religious belonging and territorial sovereignty. In a carefully formulated constitutional amendment that passed in 1977, the country was defined as a "Muslim" state and its citizens as "Bangladeshis" instead of "Bengalees." Whether the amendment should be considered a partial or fundamental breach of the former Constitution is a matter of debate. Certainly, secularism was removed in favor of a faith-based preamble: *Bismilla-ar-rahman-ar-rahim*—proclaiming "absolute trust and faith in the almighty Allah." Socialism, a left-wing term, was redefined as economic and social justice, a neo-liberal term of which the influential World Bank could approve. Most of the other paragraphs and clauses were left untouched.

The amendment hit a popular nerve among the numerical majority who were staunch nationalists and practicing Muslims. The term Bangladeshi rather than Bengali should theoretically weaken the conflation of the Bengali language with the country as a territorial realm and open for some level of recognition of “other” faiths, as the Koran recognizes Jews and Christians as “Peoples of the Book.” Arguably, there are two crucial factors in assessing what at best were limited benefits to majority–minority relations and specifically to the Plain *Adibasis* and *Pahari* (Hill) Peoples (the latter rallying under the occupational umbrella term *Jumma*).²² These two factors are BNP’s brand of nationalism and Bangladeshis’ shared civilizational outlook. First, by combining territory and religion, the BNP’s political ideology effectively mobilized the notion of national borders. AL’s competing ethno-nationalist position de-emphasized outer borders at the expense of a layered Bengali identity. The outer and relatively recent layer—the eastern lands of the vast Bengali-speaking nation—was rooted in the modern Bengali language movement. This movement transmuted in the 1960s into a popular struggle for greater federal autonomy within the geographically divided Pakistan. The more encompassing and historically rooted trans-border regional identity of a greater Bengal constituted a riparian, once jungle-covered ancient multi-racial eco-region.²³ This latter eco-regional construction was necessarily controversial in the ongoing political process of forging a definitional core as a new sovereign country whose external borders were the arbitrary result of a cynical colonial policy of divide-and-rule. AL’s brand of ethno-nationalism was

22. For an informed account, see, for example, Willem van Schendel, “The invention of the “Jummas”: State formation and ethnicity in Southeastern Bangladesh,” in *Indigenous Peoples of Asia*, Benedict Kingsbury et al. eds. (Ann Arbor, Michigan: Association of Asian Studies, 1995): 121–144.
23. These modern nationalist narratives appropriated and conflated the nouns Bengali and Bengal, a latter territorial term of ancient origin (*Bangal* pronounced *bango-aal*) dating at least back to a pre-Aryan era of Dravidian and Kolerian peoples. In other words, the ancestors of contemporary “tribal” Dravidian, Munda and Tibeto-Burmese speaking peoples were the early dwellers and rulers of the ancient famed *Bangal* and should, based on archaeological and linguistic evidence, claim as much if not more ownership to its territorial referent than contemporary ethnic Bengalis. See Anwarul Karim, *Water and Culture in Bangladesh: Past and Present* (Dhaka, Bangladesh: Sanjoy Majumder, 2016), 35–50.

arguably somewhat more accommodative to other ancient formations of the new borderlands that had had their own distinct cross-border political legacies of clan formations, chiefdoms, kingdoms, and their own *diku* (anti-foreigner) and anti-colonialist mass movements.²⁴ Nevertheless, this partly imagined ethno-nationalist narrative conflated Bengal and Bengalis as its defining core. This constellation relegated the historical and pre-historical legacies and narratives of several other descendants of the civilizational patchwork of ancient Bengal as “other” peoples. At a narrative level and literally, the Chakma, Tripura, and several other Hill peoples, the Garo and Khasi, and the Munda and Dravidian-speaking Plain Adivasis became situated in geographical peripheries, considered vulnerable borderlands to the east, north, and west of the new nation’s heartlands.²⁵ This Bengali-Bengal nexus, enshrined in the first Constitution, was unsuccessfully challenged by MP Manabendra Narayan Larma in his four-point demands.²⁶ The rejection led Parbatya Chattagrom Jana-Samhati Samiti (PCJSS) to resort to politics by extra-parliamentary and armed means.

A second reason why this wave of Bangladeshi nationalism from the late 1970s did little to further the recognition of minority faiths lies in the cultural undercurrent shared by all Bengalis regardless of nationalist outlook and party affiliation. The way the BNP, like AL supporters, view their civilizational history is from the point of view of the peasant. As rooted soil cultivators with a long legacy as private land proprietors, their ingrained view of peoples who mainly depend on forest resources, combined with shifting cultivation or permanent

24. Sontosh Bikash Tripura, *Blaming Jhum, Denying Jhumia: Challenges of Peoples Land Rights in the Chittagong Hill Tracts of Bangladesh: A case study of Chakma and Tripura*, Master’s Thesis (Tromsø, Norway: University of Tromsø, 2008), <http://munin.uit.no/handle/10037/1535>; Tone Bleie, *Tribal peoples, nationalism, and the human rights challenge: the Adivasis of Bangladesh* (Dhaka, Bangladesh: University Press, 2005).
25. Bleie, *supra* note 24, at 147–168; Willem Van Schendel et al., *The Chittagong Hill Tracts: Living in a Borderland* (Dhaka, Bangladesh: University Press Limited, 2001).
26. The four-point demands were: CHT should be declared an autonomous zone with its own legislative assembly within a federal structure; inclusion in the constitution of a statute like the 1900-Regulation; preservation of the offices of tribal chiefs, customs and laws; and prohibition of amendments that could allow settlements of Bengalis in CHT.

agriculture, is generally derogatory.²⁷ Such hill and plain peoples, in spite of massive pressure, managed to some degree to maintain their own distinct collective legacies of management and land use. As “simple cultivators,” they have been considered naïve and exploitable. From a Bengali vantage point, peoples of such dispositions and customary practices are primitive or tribal *lok* (people). The BNP alliance’s inclusion of Islamist parties who throughout the 1980s had received a Wahhabi purist religious education in *madrassas* funded by Saudi-Arabian oil money simply served to entrench the hegemonic minority–majority construction even further. Both the Islamist parties and their well-endowed religious NGOs wanted to purge local Islam of its non-Islamic ancient syncretistic influences.²⁸

c) War trauma, self-possession and closure of space for recognition

After Independence, a torturous path of state building and hegemonic majority-led and defined nation-building got underway. One has to appreciate the weight of the colonial experiences with the division of Greater Bengal, the Muslim League’s lofty two-nation theory and an administrative setup that was a distinctly colonial legacy. The Hill peoples had their own bitter experience of British overlords and the division of the Chittagong Hills between India, Pakistan, and Burma in 1947. The portion of the Hills that came under the rule of the state of Pakistan received, during the 1950s, special administrative status as it came to local authority and political control by the state and taxation practice. The largely retained chiefly structures and the CHT 1900 Manual were concessions of sorts. Into this cauldron of bitter—or at least mixed—colonial exposure, came a fresh collective war trauma that naturally gave way to an emotional, polarized debate structured

27. Tone Bleie and Logen Kisku, *Silent Forests: Culture, Environmental Degradation and Poverty among Santals of Bangladesh*, Commissioned Report (Bergen, Norway: The Chr. Michelsen Institute, 1999); Bleie, *supra* 24, at 213–255.
28. Asim Roy, *The Islamic Syncretistic Tradition in Bengal* (Princeton, New Jersey: Princeton University Press, 1983); Ali Riaz, *Interaction of “transnational” and “local” Islam in Bangladesh*, NIBR Report (Seattle, Washington: The National Bureau of Asia Research, April 2009).

around heroes and traitors. In this agitated atmosphere, the CHT leaders' call for constitutional recognition was vehemently rejected. The parliamentary debate around the CHT demand mobilized not only the polarized liberation discourse of the war-affected Bengali political elite and common people, but also the extremely engaging historical narratives of British rule-and-divide policy.

Within this context of emotionally charged narratives, the variable support of the Hill Peoples for the liberation movement and the Chakma Raja's primary standpoint in 1947²⁹ played into this heated discourse organized around partly factual, partly un-nuanced, partly unsubstantiated claims. The support of the Hill leaders for arguments of administrative autonomy anchored in a "pacification-motivated" treaty and a compromise between the former colonial masters and the Chakma Raja was unhelpful. A highly politically conscious Bengali polity that was proud of its current and ancestral resistance to the Raj, could not be won over. That Santals, Oraons, Mundas, Chakmas, and several other hill peoples could rightfully claim their own early impressive legacies of mass resistance was a non-issue to the Bengali majority preoccupied with an exercise in exclusionist nation-building. That former army and intelligence personnel had established operations in a far-flung forested Hill region, apparently with some degree of local collaboration, reinforced an understanding of CHT as the country's vulnerable underbelly. AL's somewhat muted approach of non-prosecution of many war criminals did little to help mend society's wounds. A poisonous climate of muted grievances, unmediated suffering, and suspicion prevailed.

The refusal to grant Constitutional recognition, seen through the lens of rational political theory of accommodation, is difficult to comprehend. Indeed, the claims underlying the demands of Constitutional recognition, extensive regional autonomy,³⁰ and recognition of cultural rights, are similar to the political causes and

29. The Raja's principle stance was that the whole CHT region should remain within India instead of being divided between the two nations in-waiting and colonial Burma.

30. CHT's painful division in 1947 can be compared to that of Greater Bengal. Bengal was first divided in 1905, a decision the British first revoked. A second division took place at Independence in 1947.

grievances that underpinned the movement for recognition of the Bengali language and greater regional autonomy. Arguably, the second Bengali renaissance as a brand of cultural nationalism was largely exclusionary and hegemonic. In the agitated atmosphere right after the war, it was almost impossible to counter and rationally challenge these narratives with evidence-based facts about the Plain Adibasis and Hill peoples' colonial and wartime resistance.³¹ Indeed, had their leaders attempted to publicly claim their rightful historical and pre-historical stakes in Bengal and the adjacent regions of Chota Nagpur, the Khasi and Garo Hills, and the Chittagong Hill Tracts, the public's reaction might have turned explosive. The propagated variant of Muslim nationalism produced, if anything, a more virulent hegemonic form of nationalism than that of the AL.

The emergence of new internal and external enemies was convenient for the army in legitimizing its dual role as national guardian and protector of state sovereignty by enforced border control. The militant revolutionary group led immediately after Independence by the legendary liberation hero Tiger Siddiqi (Abdul Kader Siddiqi) was protesting the killing of *Bangabandhu*. It was perhaps a minor security threat, but the outfit's importance (however short lived³²) could conveniently be exaggerated. By early 1976, the early skirmishes in the forest-clad CHT between guerrilla fighters and soldiers slid into regular low-intensity warfare, cleverly used in propaganda to defend a rapid military and police build-up and presence. The armed conflict was also used to justify a more pronounced role of the military in administration of CHT. At the divisional level, a high-ranking army officer administered the insurgency prone districts. A

31. These early-polarized narratives were conventionalized in first generation narratives. Second generation narratives, more nuanced and critical, are to some degree genuinely debated, but are also attempted at being discredited and marginalized by authoritarian means; see for example David Ludden, "The Politics of Independence in Bangladesh," *Economic and Political Weekly* 46, no. 35 (2011): 79–85; Naeem Mohaiemen, "Flying blind: Waiting for a Real Reckoning in 1971," *Economic and Political Weekly* 46, no. 36 (2011): 40–52; Amrit Ranjan, "Bangladesh Liberation War of 1971: Narratives, Impacts and the Actors," *India Quarterly* 72, no. 2 (2016): 132–145.
32. Tiger Siddiqi's group disappeared after a major confrontation with the Bangladesh Army and withdrawal of Indian support.

counter-insurgency, state-sponsored settler program, modeled on the approach used by the US army in Vietnam, got underway in the late 1970s. The program was backed by brutal punitive expeditions, land occupations, and stepped-up border patrols, the latter aimed at containing the guerrilla's operations on Bangladeshi soil sometimes launched from safe bases on the Indian side.³³

After one unsuccessful attempt to start dialogue with PCJSS, the Zia regime scaled-up its operations.³⁴ Quelling a "communist" rebellion could be counterproductive. Keeping the offensive running gave the army a solution to its search for an enemy it could conjure up as a threat to the motherland's sovereignty. Armed disobedience violated the state's monopoly of power. The demand for internal autonomy, based on the CHT 1900 Regulation, threatened the state authority's right to fully dispose of the vast hill region's valuable forests. The harnessing of inland water resources for development had been kick-started during the Pakistan period, and would continue. These perceived and deliberately magnified threats lent urgency to calls to strengthen the army, which grew from 17,000 in 1975 to 72,000 in 1981.³⁵ Apart from the army and the border police, a paramilitary security force (*Ansar*) was deployed, and Bengali settlers were trained as Village Defense Parties. The vast influx in 1978 of Burmese Muslim refugees (currently called *Rohingya*) provided another rationale for militarizing the Bangladeshi–Burma border.

33. Mey, *supra* note 14. Bangladesh had its own largely homegrown Disarmament, Demobilization and Reintegration (DDR) process. First, Zia offered amnesty to defecting fighters. A full-fledged DDR effort occurred only later as part of the 1997 Accord. For a general introduction to DDR, see: Tatjana Stankovic, Stina Torjesen and Tone Bleie, *Fresh Insights on Disarmament, Demobilization and Reintegration: A Survey for Practitioners*, (Kathmandu, Nepal: Success Foundation Pvt. Ltd., 2010).
34. By chance, the guerrilla leader MN Larma's younger brother JB Larma was arrested in Khagrachari town in 1976. Larma was persuaded (as a precondition for his otherwise unconditional release) by the then-Brigade Commander in Rangamati to carry a message from President Zia, who at this stage thought the uprising could possibly be quelled by economic development. Zia hoped to convince PCJSS to withdraw its ban on Hill People contributing labor to projects under the newly formed CHT Development Board. PCJSS and SB's leaders came to dismiss the offer.
35. Choudhury M Shamim, "Civil-Military Relations and the Future of Democracy in Bangladesh," *Journal of Political and Military Sociology* 22, no. 2 (1994): 351–366.

d) Checkered “civilian” leanings of the military and indirect uses of aid

The Zia era (1975–1981) brought back the army as a core pillar of the fledging state. Army expansion and improved financial and social benefits (following the November 1975 Sepoy/Jawan uprising mentioned above) did little to stamp out internal factionalism, a persistent problem Zia sought to mitigate through a balancing power game and by purging the military of his opponents. In the end, Zia was assassinated in a coup in May 1981, just two years after his newly established Bangladesh Nationalist Party made a move toward electoral democracy in the 1979 parliamentary election. This step toward a multi-party system provoked a counter-move within the ranks of the army.

Lieutenant-General Hussain Muhammad Ershad’s (1982–1990) coup did not simply eliminate Zia. Ershad disposed of the recently elected civilian president and stamped out a budding democratization. Bangladesh’s two major parties, the newcomer BNP and the established AL, were now led by two dynastic heirs, President Zia’s widow Begum Khaleda Zia and Sheikh Hasina, Mujib’s surviving daughter. The former first lady’s husband was at least indirectly complicit in the assassination of the Hasina family, including Sheikh Hasina’s own and the country’s elevated father figure. As leaders, they embodied literally and symbolically a legacy of bloodshed and alternative nationalist narratives in which the liberation struggle and ultimate sacrifices figured prominently. They were bitter personal enemies who were nevertheless united to some degree in their struggle to “restore” democracy. That would take another decade, as the new military and political strongman was a seasoned player.

Ershad founded the Jatio Party (JP). JP was a platform on which he managed to recruit rather liberally erstwhile AL and BNP members and so far unaffiliated army officers, civil servants, and business people. Under Ershad, an electoral local party organization was built. Muscle politics brutalized and militarized the country. Handguns were lavishly handed out to local party cadres from the 1986 elections onwards, a development this author observed at close hand in North-Western Bangladesh. The military’s footprint in CHT remained

heavy, in spite of international condemnation of new atrocities, as the international community had earlier condemned the Kalampati massacre in 1981 (and even earlier massacres) under the late General Zia. In spite of the media's attention to the brutality of and violations by the army, Bangladesh retained its status as a high priority recipient of international aid. Donor pressure made the Ershad government make certain rather cosmetic concessions, including a sham election in 1986 in which the AL chose to participate, and an amnesty offer in 1983 to "misguided" Santi Bahini.³⁶ In late 1987 the government and PCJSS met officially in the jungle. The negotiations stranded mainly due to two demands in PCJSS's charter; extensive provincial self-rule (interpreted by GoB³⁷ as tantamount to sessionism) and removal of the by then sizable Bengali settler population.

Foreign aid was a honey pot for rent-seeking behavior under Ershad's military rule. This rule thrived on "swing door politics" not only between the parties, but between the military, the civilian bureaucracy, and a partly government-controlled economy dominated by large corporations. In the CHT, a considerable number of private leases of forestland (Unclassified State Forest) for commercial horticulture and rubber plantations were issued to civil and military officials, to politicians and their relatives, and to business partners.³⁸ During the counter-insurgency, a Special Settlement Zone was set up, based on confidential circulars and hurried land acquisition procedures that disregarded legal land rights and land settlement practices.³⁹ During Ershad's rule and reign, a massive influx of development assistance made rapid expansion of the military budget possible. From 1981/82 to 1989/90, the army grew from 77,000 to 103,000 and was modernized by aid from China (equipment) and US (training and education in military academies in the US). In the latter half of the 1980s, the mass-supported student wings of the opposition parties managed to unite sufficiently and long enough to force Ershad to

36. Mey, *supra* note 14, at 169.

37. The author would like to acknowledge (Retired) Major General Syed Muhammad Ibrahim for this information. Ibrahim was party to the GoB's negotiation team.

38. Shapnan Adnan and Ranajit Dastadiar, *Alienation of the Lands of Indigenous Peoples in CHTs of Bangladesh*, (Dhaka, Bangladesh: CHTC and IWGIA, 2011): xxv.

39. *Ibid.*, xii.

resign in favor of a transition/interregnum mechanism, the so-called “caretaker government.”

e) Electoral democracy and power-sharing arrangements

The military-formed BNP, led by Begum Khaleda Zia, won the first free parliamentary election in February 1991.⁴⁰ The higher echelons of the army refrained from intervening this time. It was an early transition to an electoral democracy and a notable shift in civilian–military relations. Analysts have characterized it as a shift to an apolitical military willing to accept civilian rule. Nevertheless, it is essential to comprehend the nature of this uneasy power-sharing arrangement, in which caretaker governments were a key element, and why it has remained largely acceptable to both the major political parties and the military for the last twenty-five years or so.

This argument builds on several key factors. First, one needs to recognize that the timing of the transition to civilian rule coincided with the end of the Cold War. A number of dictatorships in Latin America, Africa, and Asia were either giving a greater role to genuine political parties and civil society actors in government, or democratic forces had replaced former autocratic regimes altogether. The higher tiers of the army and its close allies within the civil bureaucracy and business sector realized they needed to give way to the mounting demands for a democratic transition from the international aid community and its own vibrantly youth-dominated political population. The army and its close allies were seasoned players in supporting each other in establishing and running profitable business ventures that also benefited from the massive inflow of international assistance. Another boon for the army was the new BNP-led government’s (1991–1996) lack of full commitment to ending the low-intensity war against the internal enemy PCJSS and its armed wing Santi Bahini in the Chittagong Hill Tracts. The army could retain and even expand its military and commercial interests in CHT. The clever dispensation arrangement with a CHT ministry directly under the prime minister’s office was

40. Craig Baxter. “Bangladesh in 1991: A Parliamentary System,” *Asian Survey* 31, no. 2 (1992), 164–65.

retained. Arguably, in this first transition to an elective democracy, the CHT civil-military complex, started during Zia's rule, was allowed to mature and institutionalize further during BNP's two periods in power.

As argued above, the Khaleda Zia and Sheikh Hasina-led parties joined forces to have civilian rule "restored." The victory of the democratic forces led to an intermediary period of "normal," somewhat functional, parliamentary democracy. However, this early process of genuine democratic consolidation was reversed when old bitter animosities and dynastic rivalries became all too evident, leading to AL's boycott of the 1996 election. Giving in to mounting pressure from street mass politics, the ruling party supported the 13th Constitutional Amendment, which allowed for another caretaker government to take over. Parliament was dissolved during the voting period. This move brought the AL back into executive power for the first time since 1975. The election manifesto contained a promise to end the military conflict in CHT through a negotiated truce. This electoral promise was fulfilled in December 1997, anchored in the signed CHT Accord with its provisions for surrender, disarmament, demobilization and reintegration of the Santi Bahini, repatriation of refugees from India and rehabilitation of internally-displaced persons (IDPs). In addition to these rather short-term, doable provisions, the Accord also contained important long-term provisions such as securing IPs' land rights, cancellation of illegal leases to non-residents, establishment of a Land Commission to resolve the latter disputes, and measures to install a civilian administration through Hill District Councils.⁴¹ The AL-led government that had fronted the Accord from the government of Bangladesh put the most consequential provisions on the backburner while paying lip service to their election pledges. BNP (in opposition) reacted by mass agitation to the signed Accord.

41. "Chittagong Hill Tracts Treaty 1997," Government of Bangladesh and PCJSS, <https://drive.google.com/file/d/0B8ka4FwgZxAManF6cjhWczgxZ1U/edit>; Shapan Adnan, *Migration, Land Alienation and Ethnic Conflict: Causes of Poverty in the CHTs of Bangladesh* (Dhaka, Bangladesh: Research and Advisory Services, 2004); Md. Zahed Hassan, *Institutional Responsiveness to Indigenous Rights: The case of the Chittagong Hill Tracts Land Dispute Resolution Commission*, Master's Thesis (Tromsø, Norway: University of Tromsø, 2011).

A toxic mix of mutual distrust prevailed between the top dynastic leaders and a winner-takes-all mentality in terms of turfs, control of offices, institutions and territory. Dynastic wrangling, patronage, and factionalism made national politics excessively confrontational with mass-based street politics, both violent and non-violent. Another caretaker government was brought in to oversee the 2001 election, which brought the BNP back into power (2001–2006) in an alliance with the Jamaat-i-Islam and two other fringe parties. Their commitment to the implementation of the Peace Accord was at best lukewarm. Polarization and violent mass politics intensified prior to the 2006 election, leading to its postponement. The level and seriousness of political violence, nationwide strikes, the rise of Islamist militant groups, and massive economic losses, resulted in a military intervention on 11 January, 2007. A state of emergency was declared. A military-supported caretaker government ran the country until late 2008. The military's multiple roles as political intervener (rationalized as chief guardian of national security) and caretaker government installer rather than backstage facilitator, was in the beginning taken quite positively by sections of the electorate, civil society, and the international donor community. The government's honeymoon did not last long, due to mass arrests and prosecution of the two top female leaders. Among the most serious charges were grand corruption and conspiracy to murder opponents. Even initially popular measures to promote in-party democracy, the so-called "Two-Minus-Strategy," floundered. What was less noticed and opposed by the highly political polity was the military's expansion of its counter-insurgency operation in CHT.⁴² Notably, this occurred while the Chakma Raja and Circle Chief was Special Assistant to the caretaker government and in charge of the CHT Ministry, which is a telling testimony to the limits of civilian control over the military. Most of the undoubtedly incriminated top political leadership returned to the national scene, resorting to their old, mutually devastating rhetoric. The government's differential treatment of Sheikh Hasina and Begum Khaleda and their closest relations, made it so the BNP claimed that the military favored an AL victory. Indeed, the AL-headed alliance won an overwhelming

42. Adnan, *supra* note 41.

two-thirds majority, a result BNP took as strong evidence of vote rigging. The party's response was to boycott the 2014 election.

The window of opportunity provided by two terms of AL rule to deepen and consolidate democracy was squandered for a number of reasons. The June 2011 abolition of the caretaker system by the Supreme Court sanctioned by the 15th Amendment to the Constitution and the failure to introduce electoral reform, constitute perhaps the most visible and nationally polarizing policies, indicating a stronger will to rule by a "winner-takes-all" strategy among the top AL leadership displaying a distinctly authoritarian leadership legacy, rather akin to BNP's top leadership. It is in this wider political context the controversial amendment of the clause on ethnic minorities should be analyzed. This context includes the frustratingly (from a government point of view) internationally well connected Indigenous rights NGOs and the civil-military nexus with its power-sharing compulsions. Attempts have been made to contain these civil society voices. Branded as foreign agents, they have been spied on, intimidated, assaulted physically and denied access to CHT for alleged security reasons. The power-sharing compulsions also necessitate non-implementation of several important provisions of the CHT Accord. Perhaps needless to note, this is contrary to the lofty rhetoric of the AL government. Indeed, the influx of new settlers and illegal occupation and sale of *Pahari* (Hill) lands continued unabated, while no credible effort was made to rehabilitate earlier illegal settlers outside CHT.⁴³ Clearly, there is a modus operandi where the civil-military complex, operating through a number of tacit power-sharing arrangements, has rendered redundant public accountability for electoral promises to implement the Accord. This Accord, if fully implemented, would probably have to some degree demilitarized the hill region.⁴⁴ The situation amounts

43. Rajkumari Chandra Kalindi Roy, *Land rights of the indigenous Peoples of the CHTs, Bangladesh*, (Copenhagen, Denmark: IWGIA Documents No. 99, 2000); Raja Devashish Roy, *Land and Forest Rights in the CHT, Bangladesh*, (Kathmandu, Nepal: ICIMOD, 2002); Shapan Adnan, *Situation of Minorities of the CHTs under the Caretaker Government and their Participation in the Upcoming Elections*, Written Testimony submitted to USCIRF, Capitol Hill, Washington, D.C. (2008).

44. Full takeover by the civilian administration and reduced army presence is of course no guarantee for any immediate dramatic drop in armed violence due to arms

to nothing less than the execution of a “shock doctrine” involving cuts in the number of army battalions and reduced paramilitary presence, immediate action such as the massive reshuffling of personnel to other cantonments throughout the country, and a likely downsizing of the army over the longer term. Army personnel posted in CHT would be deprived of several illegal lucrative rent-seeking incomes, not to speak of handsome direct income from commercial ventures based on illegally acquired land. Vast numbers of Bengali settlers would face a reduced security guarantee and real prospects of having to return land de-facto controlled through land occupation or based on forged documents. A broad conglomerate of politicians (including retired army and police officers), bureaucrats, business corporations (to some degree owned by military persons), corrupt local leaders, and, not to forget, current army and police personnel, would all see their vested commercial interests and important sources of livelihoods threatened, or even lost.

The AL-led alliance could afford to ignore its Accord pledges, but not its pledge to try war criminals from the time of the Independence war. The trials led to mass violence orchestrated mainly by Jamaat activists, including attacks on police and security personnel after the verdicts started being announced from early 2013. A new antagonistic front of confrontational street politics opened, with youths led by moderate and secular activists rallying under the banner of the Shahabag Movement. Targeted street killings of advocates for a secular stance and for rights for sexual minorities followed. The government and courts responded by a High Court Judgment cancelling Jamaat’s registration with the Election Commission. BNP-led parties boycotted the last election of January 2014. It became the most violent in the country’s 45-year election history. The evidence of vote rigging and party-led organized violence is considerable. The armed police and the paramilitary Rapid Action Battalion met this street violence with excessively brutal counter measures.

The above account unravels key underlying facets of nation- and state-building, organized around a timeline from the early period of AL rule (1972–1975), through two periods of military rule with

controlled by Bengali settlers, CHT-based factions opposed to the Accord, and the presence of armed proxy actors.

certain civil leanings (1975–1990), ending with electoral democracy (1991–present). In this section, deep-seated continuities and changes in “the deep state” and in competing nationalist narratives have been identified which may help explain the status quo and also the space available to national and international NGOs and multilateral partners in negotiations with governing institutions embedded in a civil-military complex. Civil-military relations offer a neglected but valuable approach to tease out some important and inadequately understood culturally coded institutional behaviors and institutional dynamics, inexplicable by mainstream political theory of the pillars of the state, of civil-military relations, democratization, international law and good governance.

II. Civil-military relations—towards a grounded understanding

a) Limitations of classical civil-military theories

For more than a generation, theories of civil-military relations have been dominated by a normative theory of civil-military relations in “mature” democracies. Scholars have struggled to apply these theories to explain a variety of empirical cases for the global South and North demonstrating civil-military constellations characterized by blurred spheres. One has naturally struggled to think anew about how such enmeshments or conglomerates actually mold and stymie democracy, trample on peoples’ sovereignty at the expense of state sovereignty, and undermine a state’s human rights obligations.

The classical theories of respectively Samuel P. Huntington and Morris Janowitz address civilian objective political control over the military (in order to protect liberties and rights of individual citizens) and a civic republican theory.⁴⁵ Janowitz’s theory downplays Huntington’s liberal argument of the state as protector of individual rights. He instead emphasizes citizen participation in defending the

45. Samuel P. Huntington, Samuel, *The Soldier and the State. The Theory and Politics of Civil-Military Relations*, (Cambridge, United States of America: Belcap Press of Harvard University, 1957); Morris Janowitz, *The Professional Soldier: A Social and Political Portrait*, (New York: The Free Press, 1960).

state or the nation. Janowitz's republican theory renders the ideal of the citizen-soldier critical to foster civil participation. Without going into detail in this article, the posited distinction between political and military spheres is highly problematic, even in the US with its civil-military and civil-intelligence complexes. Huntington's theory does not explain how the citizen-soldier tradition can be sustained when there is no objective need for mass mobilization. Unlike Huntington, Janowitz at least acknowledges that the two spheres might be blurred, causing tensions. His insight largely remains at the empirical level. Another serious problem with relying on these classical theorists is that they, for rather obvious reasons, do not adequately address transnational civil-military relations as a result of regional defense organizations such as NATO ("out of area" operations), African Union forces ("in the area" operations), and intentional peace-keeping operations under the aegis of the UN or regional organizations.

This contextual remark about the legacy of this field of inquiry, and the (too) enduring influence of these theories, in spite of shortcomings, does not invalidate civil-military relations as a useful field for our purposes of understanding a largely homegrown civil-military nexus. In the following section, a number of synthesizing arguments based on the above inquiry of Bangladesh's Byzantine, conglomeratic civil-military complex will be outlined. Then the fraught constellation of transactional and national civil-military relations and democratic values, resulting from Bangladesh's peacekeeping role, will be analyzed. No scholarly agreement exists as to whether the peacekeeping engagement generally promotes democratization or rather subsidizes continued militarization of the CHT.⁴⁶ The two Bangladeshi international relations scholars Rashed U. Zaman and Niloy R. Biswas have argued that concordance theory which (building

46. "Militarization in the Chittagong Hill Tracts, Bangladesh: The slow demise of the region's indigenous peoples," IWGIA Report 14 (Copenhagen, Denmark: IWGIA, 2012); Rashed Uz Zaman and Niloy R. Biswas, "Bangladesh's Participation in UN Peacekeeping Missions and Challenges for Civil-Military Relations: A Case for Concordance Study," *International Peacekeeping* 21, no. 3 (2014): 324–344; Motiar Rahman, "Blue Berets in the UN Peacekeeping Process: The case of Bangladesh Police," *Indian Journal of Politics* 14, no. 1 (2009): 36; Kabilan Krishnasamy, "Bangladesh and UN Peacekeeping: Participation of a 'Small' State," *Commonwealth and Comparative Politics* 41, no. 1 (2003): 32–33.

on Janowitz's empirical insights) emphasizes that accommodation and shared values between the military, the political elites and polity is better suited to explain civil-military relations in Bangladesh. Not least, the peace operation's importance may be better explained by the conditions that decide domestic military intervention and agreement between the military, political elites and the polity.

b) The rise of a homegrown civil-military complex

Statehood in Bangladesh resulted from a ruthless military clampdown on a regional autonomy movement with ethno-nationalistic overtones.⁴⁷ This bloodstained and traumatic "birth" is in direct and indirect ways at the center of meta-narratives about the origin of the state and "the nation" as an imagined community of belonging. The sovereign post-*Raj* Pakistani state paradoxically acted as its colonial master, underestimating the long political legacies of mass action and agency of the peoples of East Pakistan as citizens. Pakistan's dictatorship set the terms for civil-military relations in East Pakistan and its policy shifts in CHT before and after the Kaptai Dam debacle.⁴⁸ The Pakistani army's eastern wing, built on the pioneering First and Second East Bengal Regiments, was staffed with Bengalis.⁴⁹ When the Pakistan Armed Forces, in March 1971, cracked down on the civilian movement and military personnel opposing mass executions, the East Bengal

47. Willem Van Schendel, *A History of Bangladesh* (Cambridge-New York: Cambridge University Press, 2009); Sarmilla Bose, *Dead Reckoning: Memories of the 1971 Bangladesh War* (Chichester, United Kingdom: Columbia University Press, 2011); "History, Culture and Politics," *The Bangladesh Reader*, Meghna Guhathakurta and Willem Van Schendel eds. (Durham, United States of America: Duke University Press, 2013).
48. The Government of Pakistan chose a softer approach to transition in the 1950s, retaining the hierarchy of semi-traditional office holders and accepting the CHT 1900 Regulation. This accommodation strategy, through a degree of indirect rule (controversial among the Chakma), was sacrificed for the Kaptai Dam Project. This was an interventionist prestige project that resulted in mass displacement of the Indigenous Peoples. Pakistan's powerful leader must have wanted to match the Indian government's socialist policy of mega-hydro projects. The CHT 1900 Regulation was also abolished.
49. Stephen Cohen, *The Pakistan Army* (Berkeley, California: University of California Press, 1984).

Regiment had eight battalions. The revolt of the Bengali personnel prompted the decision of the exiled interim government in June 1971 to deploy forces in guerrilla warfare alongside civilians. Mukti Bahini mobilized a combination of citizen-soldier ideals in protection of the motherland and civilians' ideals of the necessity of disobedience. That included armed action for freedom through secessionism.

Framed within an exclusionist ethno-nationalist ideology, the first generation war narrative only glorified Bengali freedom fighters. This narrative rendered invisible fighters and civilians from other ethnic plains and hills groups who had valiantly resisted and saved lives.⁵⁰ The Chakma Raja's "unpatriotic" act, siding with Pakistan and paramilitary fighters' operations in CHT, fortified the official national understanding of freedom as exclusively fought and won by Bengalis. The war trauma magnified this sense of betrayal, closing off any negotiation space for MP Larma's four-point demands in 1972. Until his sudden violent death, Sheikh Mujib's attitude to the demands of the Hill leaders remained unbendable and dismissive.

Immediately after Liberation in 1971, civil-military relations were largely antagonistic. The AL regime's security reform deliberately wing-clipped the army and established Rakkhi Bahini as a parallel force, operating as the charismatic and patrimonial Sheikh Mujib's stormtroopers. To the officers and the rank and file soldiers who remained inside the highly fractured politicized army, the reform was a major affront. A potent mix of grievances and patriotism, however misguided, motivated coup plans.

The liberation hero Zia Rahman, a career officer, joined coup makers and later abolished the Rakkhi Bahini. He chose patronage for the armed forces. The latter did not rise like a phoenix from the ashes of the war, but rather retained basic formal features modeled on the Pakistani/British military bureaucratic model. The forces' offensive three-brigade structure had already been altered in connection with Mujib's security reform. Zia wanted an army structure similar to that of other Commonwealth nations. As a military response to the early CHT

50. This exclusionist stance is officially carried forward to this day. Bangladesh Army's official list of freedom fighters contains only Bengalis. See the official website: https://www.army.mil.bd/List_Of_FreedomFighter

insurgency, Zia and his top ranking officers adopted the US Army's anti-communist counter insurgency doctrine, combat tactics, and training approach, largely overlooking the uprising's complex political, economic, social and cultural antecedents in Pakistani (1947–1971) and British (1860–1947) rule. The Counterinsurgency Doctrine's blatant failure in Vietnam did not hinder its use on a radicalized hill population with its own ancient martial traditions. As initially Chief of Army (CoA) and Dpt. Chief Marital Law Administrator (1975–1977), and later both President and CoA (1977–1982), Zia established the paramilitary force Bangladesh Ansars, the Village Defense Parties, a Settler Program, a supporting Special Settlement Zone Program, and the Chittagong Tracts Development Board. The army, police, and paramilitary operated under an executive mandate to conduct both rough military operations and civil-humanitarian operations. Later elected governments have never abolished this blurred civil-military dispensation, in spite of the CHT Accord's provisions to the contrary.

Arguably, the civil-military complex was institutionalized under General Zia. By playing the tainted internal and external enemy card,⁵¹ the military regime succeeded in building political legitimacy. The rhetoric was perfectly suited to BNP's territorial Muslim-centered propaganda. The regime secured substantial finances for the complex's build-up. In spite of weak democratic credentials and few peace initiatives in CHT, the Zia regime attracted more foreign aid than any other since Independence. It disposed aid to indirectly subsidize increased annual defense budgets, sanctioned without prior transparent executive or legislative debates. The developmental CHT policy was a strategic ploy largely to secure foreign funding for diverse purposes. In reality, the new infrastructure greatly facilitated military and police operations in what used to be a rugged, road-less terrain. Patronage networks appropriated development funds through a range of inventive arrangements, providing generous kickbacks to national and regional civil-military personnel and government contractors.⁵²

51. The CHT conflict has been creatively used as a "trump card." When played out, it would win the "game," removing any doubt about the existence of a threat of unruly hill subjects and foreign interference.

52. Mey, *supra* note 14, at 148.

In double executive positions as both President and Chief of Army, Zia provided the fractional army patronage, expanded it and modernized it. The authorities galvanized public fears and a sense of patriotism by claiming the CHT guerilla represented a genuine threat to state sovereignty. Still, it took more than the effective use of nationalist propaganda in the government-controlled media to fully restore the army's tarnished image. A new recruitment policy was actively used to strengthen the Armed Forces' appeal. During the Pakistani Independence struggle, the officer corps was mainly composed of recruits from the landed Bengali elite.⁵³ Zia and Ershad pushed for a more inclusive recruitment policy partly motivated by strategic state-building concerns, and partly as a response to the elite's declining interest in military careers. Improved access was notably confined to recruits of ethnic Bengali of urban and rural middle-class background.⁵⁴

The military rulers combined dictatorship with party building. Zia and Ershad respectively built the BNP and the Jatiya Party through state patronage, exploiting factionalism within the already established parties.⁵⁵ Arguably, this was nothing new. The Awami League, under Sheikh Mujib's leadership, resorted to similar techniques of governance while his military successors prohibited other mass-based parties at times in order to expand their own membership bases and to some degree contain popular protests and demands for genuine electoral and parliamentary democracy. Instead, Zia and Ershad organized and controlled unfair elections in order to cling to power. Consolidating power through combined rule and reign, they learned the political and administrative craft of civilizing their largely authoritarian regimes, thereby consolidating popular support. They built *Sarkar* party apparatus that established crosscutting ties with civilian-military institutions, or operated within them, extracting vast public resources. The civilian and military apparatus ultimately failed

53. *Supra* note 50.

54. Zaman and Biswas, *supra* note 46, at 336. This author (Bleie, *supra* note 24) studied barriers to Adivasi youth employment opportunities in the years 1982–1998 and found that a military career was virtually closed off due to discrimination against the Adivasi.

55. Rounaq Jahan, *Political Parties in Bangladesh*, CPI-CMI Working Paper Series (Bergen, Norway: Center for Policy Dialogue and Chr. Michelsen Institute, 2014).

to contain the build-up of a student-led mass movement demanding full civil and political rights. The level and severity of police and army violence, mass arrests, torture, extra-judicial killings and massacres in CHT were raised repeatedly by Dhaka's numerous diplomatic corps and a range of international human rights and good governance constituencies. However, the international community mostly stopped short of a robust policy of sanctions underpinned by tangible "sticks and carrots." They chose to rely on shaming, pressuring for state accountability through the UN's human rights mechanisms and funding massive good-governance initiatives.

The BNP-led government had limited ideological, normative, or pecuniary interest in the early 1990s in ending the low-intensity war with PCJSS. Importantly, PCJSS decision to withdraw their long-time demand for extensive self-rule, paved the ground for new peace negotiations. BNP was built by a former military dictator and was firmly embedded within the civil-military complex. Awami League, the main opposition party, went to the polls with a peace accord pledge, but in government it was trapped in an entrenched patron-client network involving politicians, civilians, military bureaucrats, and business people. Three AL-led governments have dragged their feet in implementing the most consequential provisions of the Accord. The oft-repeated recourse to caretaker government represents, undoubtedly, an incremental change in civil-military relations after a fairly free electoral democracy was instituted in 1991. In the polarized political climate, the caretaker mechanism allowed for a number of largely free and fair elections. Several analysts have understood it as a mediating civil-military mechanism, which goes a long way in explaining why no full-fledged military coup has occurred since 1990.

This caretaker dispensation functioned as a mediatory power-sharing safety valve, but not simply by keeping the mighty army "in the barracks" and avoiding political intervention as coup makers. Intriguingly, quite a sizable proportion of the standing army has for decades *not* been in the barracks, but on operative duty abroad for the UN and in the "securitized" CHT. The army operates in CHT as administrator and as force from a large number of main and satellite cantonments and camps. It can be maintained that it is this axis of

both transnational deployment and internal occupation of CHT that defines the parameters for negotiated space between the main political parties with their patrimonial leaders (in position and opposition) and a range of militarily vested actors. The militarily vested actors are widely distributed across institutions having the formal trappings of civil or military institutions, and in mandated hybrid institutions. Such vested actors also operate in elusive crosscutting vertical and horizontal kinship and friendship networks. They tend to be mobilized for specific illegal, quasi-legal, or legal purposes.

In this chapter, the term *rule* refers to the conduct of successive elected governments and interim caretaker governments. The verb *reign* (as distinct from the noun) is retained for the deep state or state-affiliated actors who actually dominate and control from behind. For nearly two decades of Bangladesh's 55-year history, formal rulers became governments by military takeover. They actually combined their rule with reign. Given the country's highly political polity, they were compelled to experiment with rule through new *Sarkar* (government) parties. When these parties attained a certain level of support, they assumed the trappings of regular parties with a popular electoral basis. Both the BNP and Jatio had quite broad voter appeal, but voter loyalty fluctuated considerably. The parties were and are highly centralistic with weak permanent local party bases.⁵⁶ The AL-alliance-led decision under Sheikh Hasina to abolish the caretaker dispensation in the Constitution may be an ominous sign of a more permanent power-sharing arrangement with the military. Alternatively, it may be a barometer showing the rise of an overconfident authoritarian leadership, echoing the late Sheik Mujib's turn to a one-party system. If so, have we come full circle? In other words, will the army again become openly interventionistic?

c) Peacekeeping as political asset and Achilles heel

This article will now return to Bangladesh's troop contributions to UN Peacekeeping, a key element in their current civil-military relations and the opaque power-sharing arrangements that was analyzed above.

56. Rounaq, *supra* note 55.

Firstly, the timing of the entry of Bangladesh into UN Peacekeeping operations was likely not accidental. In the late 1980s, General Ershad had prioritized public investment in army expansion. This was the decade when the most profiled national duty of the army, paramilitaries and police was to combat the insurgency in the CHT. Was the timing of the decision to start deploying troops to UN operations purely coincidental? While there is no hard evidence to prove this, it is nevertheless quite plausible that the aid-bloated military regime realized it needed to improve its own and the army's tarnished image, a result of breaches of international law in operations and treatment of civilian populations. The Ershad government first sent a group of military observers as part of the Iran-Iraq Military Observation Group. The subsequent civilian government (from 1991) expanded the number of peacekeepers. Over the last fifteen years, Bangladesh has become a main source of personnel to UN Peacekeeping missions. Between 2000 and 2013, Bangladesh provided nearly 120,000 personnel from the Armed Forces and the police.⁵⁷ This quite massive presence of Bangladeshi blue helmets has improved the country's reputation internationally, especially since there is hardly adequate coverage and international awareness of the military's atrocities and rampant impunity in the CHT.⁵⁸

A recent case demonstrates interesting implications for domestic politics (including CHT) and civil-military relations. In 2006, the country prepared its ninth parliamentary elections in a tense political atmosphere marked by escalating violence and a partial paralysis of public and private sector functions. I commented above that when the caretaker government took over in early 2007, this was largely welcomed by citizens and the international community. This community had a sizable diplomatic multilateral and bilateral representation in Dhaka. Although all facets of the main actors' motives behind the military facilitated takeover are not fully known, there is sufficient information to undertake a useful analysis.

57. Zaman and Bishwas, *supra* note 46, at 327.

58. Muhammed A. Islam, "Peacekeeping Operations and its Legal Implications," *Bangladesh Army Journal* (January 2001): 50–58. See several Press Statements by the CHTC between 2011–2016 on matters of impunity by army and police: <http://www.chtcommission.org/page.php?idn=19>

It is known that the diverse donor community largely supported Renata Dassallien's stance. As UNDP's erstwhile Resident Coordinator, she played an influential backstage role in pressuring for a caretaker government. Dassallien made it completely clear that if the army "allowed" the contested election to take place (with prospects of endless street politics by the main opposition parties), Bangladesh would risk its highly valued access to the UN Peacekeeping forces. There is evidence that Dassallien's rather unveiled threat of diplomatic sanctions was one of the decisive factors motivating the key military and political actors of the agitating parties to enter into a compromise and opt for the "interim" solution.⁵⁹ This is an illustrative case of how multilateral actors, through a resident coordinator (and with overt or tacit nods from several other diplomatic missions) could effectively mobilize and exercise diplomatic pressure, in this case Bangladesh's incorporation into a norm-based international community, from which substantial financial benefits could also be reaped. These benefits flow not only to a large number of troops, but also to the government via the Ministry of Defense. These substantial annual incomes have made it possible to purchase new equipment and, to some degree, to subsidize the army.⁶⁰ Importantly, the scope of acceptable political alternatives did preclude a coup, which would have radically questioned the army's democratic credentials and standing as a peacekeeping operator. What was at stake were numerous social and financial assets, which Zaman and Biswas⁶¹ quite aptly have termed prestige, economic assets, and political and institutional rationales. And what was at stake financially, one might add, was not only big money for the state coffers. Arguably, the hierarchical army and the civil bureaucracy are entrenched patronage systems, within which many benefit from corruption and rent seeking, starting from troop nominations/selections and ending when troops receive their final reimbursement having returned from these missions. The UN's Resident Coordinator in this case acted

59. There was a Press Statement of the UN Resident Coordinator (of 11/1/2007) that expressed this in fairly explicit language. See also "Restoring Democracy in Bangladesh: Asia Report No. 151," International Crisis Group (2008).

60. Islam, *supra* note 58; Zaman and Biswas, *supra* note 46.

61. Zaman and Biswas, *supra* note 46, at 330.

robustly (behind the scenes), bargaining with a precious political and financial asset for Bangladesh's civil-military elite. In terms of political outcome, this was (at that particular time) rather successful diplomacy. Dassallien, acting on behalf of the UN, nevertheless paid a price for these rather unusual realist politics. After this episode, both prominent members of the civil-military elite and several prominent Bengali and English daily newspapers called for Dassallien to be treated as *persona non grata* for the rest of her tenure in Bangladesh.⁶²

III. Conclusion: From a normative straight jacket to descriptive models

Media and the development industry have in recent decades characterized Bangladesh as a conundrum or paradox. Arguably, when analysts apply the term "paradox," it is often a façade hiding a lack of understanding of underlying structural causes. Portrayals of Bangladesh as both an extraordinary success story and a pariah state in terms of "good governance" warrant better answers than analysts have offered so far. Explanatory efforts too often end up as muddled exercises that highlight impressive results and the thriving NGO sector as a prime enabler and deliverer of goods and services compensating for a "weak" state. Within these grander incoherent narratives, human rights violations and the stranded 1997 Peace Accord are relegated the status of lower order issues or problems. One reads maps of Bangladesh as bounded sovereign territory, interpreting CHT's post-independence geographical location as an outer-lying border region. What is the result if such map reading is combined with scant knowledge of CHT's past as a bridge between the hills, plains and coasts and two cultural regions, of its rich exploitable resources and toxic potency in nationalist discourses? The result is a gross underestimation of the importance of this particular conflict between state sovereignty

62. The author thanks a former Scandinavian diplomat to Bangladesh for valuable insights into diplomacy's front and backstage activities in Dhaka during this particular period. The author would like to acknowledge insightful and critical comments from Elsa Stamatopoulou, Desmond Molloy, Syed Muhammad Ibrahim, Syed Mahmud Ali, Dev Raj Dahal, Ann-Lisbet Arn, Sontosh Tripura, Selja Vassnes and two anonymous reviewers.

and peoples' sovereignty. The latter anchored in the 1900 Manual, a compromise of sorts between the British authorities and militant hill peoples defying an imposed status as colonial subjects.

This piece has called for a less restrictive and exclusively normative theory and analysis in favor of an interdisciplinary approach, which accords greater weight to descriptive models of constitutional cultures, the nature of patronage-based factionalist politics and a largely homegrown civil-military complex. To end, this paper will present a conclusive observation on the merits of descriptive analysis of evidence of individual and collective action; their moral, emotional, and socio-economic underpinnings; and the scope such insights may provide for effective diplomacy and advocacy. But first of all, some conclusive comments, framed by this argument.

As I sought to highlight in this chapter, CHT's post-Raj political history of shifting allegiances, resistance movements and negotiated compromises, not forgetting CHT as a hotspot for armed actors, has to be factored in when explaining CHT as a site of competing ethno-nationalistic ideologies, geopolitics and resource wars. These factors, together with the exclusionary traits of Bengali and Bangladeshi nationalist narratives, makes it easier to comprehend why the demands for constitutional recognition and a return to the 1900 Manual have been vehemently rejected. This constitutes part of quite a complex series of arguments about patrimonial politics in Bangladesh, which I sought to develop in this chapter. Arguably, Bengali pride and grievances were effectively mobilized to legitimize the army's buildup after *Bangabhandu's* assassination. Continuity rather than abrupt change characterizes Zia's and Ershad's authoritarian patrimonial reign and rule, following the late Mujib's rule of declared state of emergency and a one-party state. Arguably, a civil-military complex formed, indirectly co-financed by international development assistance, which "bought" successive military governments (1975–1990) and the so-called CHT Development Board Initiative. Influential donors either underestimated or chose to overlook how development in CHT enabled militarization and politically engineered in-migration, spurred internal strife, social differentiation and provided lucrative opportunities for rent-seeking, corruption and territorially-based land occupations.

The politics of military occupation and land grabbing were pursued and were countered by a range of inventive modes of armed and peaceful resistance nationally. The *Jumma* ethno-political project was also lifted into the international arena. A new generation of able *Jumma* leaders, including heirs to semi-traditional offices of the Chakma and Tripura, did more than appropriating an expanding human rights regime. They actively contributed to the codification of Indigenous rights and advocated for these rights globally and regionally. It is the conversion of this normative regime back into Bangladeshi national constitutional politics and laws which has proved difficult. The underlying complex reasons for the conversion barrier have been highlighted above. Since shaming and the regular human rights accountability mechanisms have so far proved relatively ineffective, leading human rights actors have in recent years recalibrated their multipronged approach. That includes, for example, measurable milestones for the Accord's incomplete or unimplemented clauses and advocating for routine screening of applicants from Bangladesh army and police to UN Peacekeeping operations.

Informed by more recent approaches to the study of civil-military relations, this chapter has examined why the CHT Accord is likely to remain largely "a dead letter." There is nothing sensational about this finding, and least so among Bangladeshi human rights defenders, national and local CHT politicians, bureaucrats and security personnel. The question is rather, who is gaining and who is losing as a result of the current politics of pretense? It would require another essay to address this tangled and highly sensitive question with the nuances and rigor it deserves. For international human rights bodies, like the Chittagong Hill Tracts Commission (CHTC), to officially announce the Accord-track a permanent failure, would not only remove the rationale for its current mandated existence. This could also be used by a range of state and non-state spoilers who would like to intensify the use of violent means in CHT. Foreign assistance currently constitutes considerably less of Bangladesh's GDP than it did two decades ago. Yet CHT-dedicated constituencies remain partly integrated into the development industry and may, for a range of strategic, tactical and pecuniary reasons, find it too risky to announce the Accord dead and call for its eventual renegotiation. This chapter has analyzed major

shifts (most notably Bangladesh as a major troop-contributing country to UN Peacekeeping operations) and the major political parties' noticeable accommodation within the civil-military nexus.

A relatively recent signal of this subtle process of accommodation is the military's apparent preference for the Bangladesh Awami League and Sheik Hasina-led coalition and the League's unilateral abolishment in 2011 of the caretaker government mechanism through a constitutional amendment. Such indications of consolidation of the deep state do not bode well for either consolidation of parliamentary democracy, reduction of political violence or genuine stakes in renegotiation of the CHT Accord on terms PCJSS may accept. Importantly, behind these two Accord signatories is a hazy landscape of potential "spoilers" including fractions within PCJSS, the anti-Accord umbrella organization UPDR and a range of other dissident hill groups and Bengali settler organizations. In this volatile and spoiler-rich national and regional context, the CHTC's expanded scope lies in more extensive and synergic uses of both its national and international legs.

The evocative title "*Whose Ideas, Whose Interests*" of an aid policy study on Bangladesh from the mid-1990s comes to mind. It is quite telling of the international community's optimism after the alleged restoration of democracy and trust in its scope of influencing party and state politics, discriminatory ideas and ill-functioning public and private institutions.⁶³ The title nevertheless also conveys a warning: if these are our ideas, they might serve certain interests at the expense of others. The whole policy of trying to impose good governance in order to transform patrimonial factionalist practices and institutional culture into neutral decision-making, servicing and financial institutions, was ill-conceived and unrealistic in the first place. Western norm-driven

63. Geoffrey D. Wood, *Whose ideas, Whose interests?* (London: Intermediate Technology Publication, 1984); Stanley A. Kochanek, "Patronage Politics, and Democratization Transition in Bangladesh," *Asian Survey* 40, no. 3 (2000): 530–550; David Lewis, *Bangladesh Politics, Economy and the Civil Society*, (Cambridge, United Kingdom: Cambridge University Press, 2011); Mohammad M. Islam, "The Toxic Politics of Bangladesh: A Bipolar Competitive Neopatrimonial State?" *Asian Journal of Political Science* 21, no. 2 (2013): 148–168; Bert Suykens, *Segmentary Opposition: Vertical Integration of the Structure of Political Relations in Bangladesh: A Descriptive Model*, (Ghent University, Belgium: Conflict Research Group, 2016).

theories and policies have only to a limited degree been confronted with, and combined with, descriptive models of dominating and emerging collective and individual interests and behaviors in Bangladesh. Strategic alliances and interests can be successfully pursued if the negotiation space for bargaining or pressure is used wisely. The peacekeeping case is illustrative of “stick and carrot” diplomacy around a critical asset to be used sparingly. The asset at stake was Bangladesh’s incorporation in a norm-based international community, from which also substantial financial benefits could be reaped. Since this event in 2007, the relative importance of foreign assistance as a proportion of GDP has declined further. And notably, the Government of Bangladesh remains unwilling to be incorporated into the international norm-based community on Indigenous rights. This contrasts starkly with its continued commitment to UN Peacekeeping and sustaining the progress it has made in fulfilling social and economic rights. For CHT-focused human rights defenders, these current conversion barriers should not be seen as insurmountable.

Structural Violence Against Indigenous Peoples: Russian Federation¹

Ulia Gosart

Introduction

Traditionally, the idea of violence evokes the use of brutal force against one or many individuals. Often, however, brutal conduct originates far from the actual site of violence. Domestic and sexual violence, violence among and against youth, and violence upon oneself are usually consequences of other factors. Scholars refer to these indirect factors as *structural violence*. They examine the effects of institutional bureaucracies and normative institutions that sustain the systematic denial of rights to citizens.² Historical records indicate that structural violence is an effective form of long-term population oppression by means of laws and societal norms. Structural violence supports privileged positions among the elite, who use it to prioritize their own political agendas and sustaining ideologies. Its effects are manifested in disparities in political opportunities and social standing.

1. I am very grateful to Elsa Stamatopoulou for encouraging me to focus on this subject matter by providing an opportunity to share the findings from my research with Columbia University students and the Columbia University community, and for inviting me to contribute to this publication. I am also thankful to my great colleagues Dan Haley and Pamela Grieman for their help in editing this work. Finally, I would like to thank the UCLA American Indian Studies Center for supporting my research.
2. The following studies informed a conception of structural violence used in this work: for studies of violent conduct from the point of resource mobilization, see D. Gupta, *Understanding Terrorism and Political Violence: The Life Cycle of Birth, Growth, Transformation, and Demise* (New York: Routledge, 2008), 25–7; for an investigation of the connections between emotions and political violence, see R. Petersen, *Understanding Ethnic Violence: Fear, Hatred, and Resentment in Twentieth-Century Eastern Europe* (Cambridge, United Kingdom: Cambridge University Press, 2002), 17–40; for studies of cultural violence, see P. Bourdieu and L. Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992), 167–74. A helpful typology of forms of political violence that informed this study was created by Donatella Della Porta: Donatella Della Porta, *Social Movements, Political Violence, and the State: A Comparative analysis of Italy and Germany* (Cambridge: Cambridge University Press, 2006), 4.

Legitimized by public policy and legislation, structural violence supports cultural beliefs and legitimizes myths fostering inequality. It creates hostile attitudes among authorities and citizenry toward its victims, who in response may turn to violent resistance. The consequences of structural violence are no less destructive than those caused by direct use of brutal force.

Structural violence remains a fundamental property of the Russian state. It stems from the separation of state functions from the aspirations, needs and hopes of its citizens. The degree to which structural violence affects Russian citizens depends on a variety of factors, and varies greatly within different subgroups. Indigenous communities are among the most vulnerable and affected targets of this kind of violence. They are part of political, economic and legal systems that are not of their own making. Indigenous views and perceptions of rights, freedoms and justice historically have not served as the basis for the laws and resulting policies to which most Indigenous communities have been subject since the Soviet era. The federal government remains the main voice in deciding which rights and privileges are accorded to Indigenous Peoples. As a result, Russian-born Indigenous persons are subjected to violence from the day they are born.

This work emphasizes that structural violence toward Indigenous Peoples, as enacted through the workings of contemporary institutions of governance of the Russian state, recreates the oppression characteristic of the Soviet era. This study reveals continuity between Soviet treatment and political opportunities of the “small Peoples of the North,” as the official terminology goes—the original 26 communities who would gain Indigenous status with the establishment of the Russian state—and the legal and political institutions defining indigeneity in contemporary Russia. Further, it argues that the question of Indigenous rights stemmed from and remains a part of nationality policies, a state-wide set of measures focused on the political rights of the non-Russian groups within the multicultural federal system of Soviet and post-Soviet Russia. These policies institutionalized the notion of inferiority of (now Indigenous) communities as dependent on the guidance and financial assistance of the state. The notion of inferiority shaped the consciousness of Soviet and post-Soviet authorities who continue to

administer these Indigenous communities as populations dependent upon the state. And yet, the opportunities to participate in the state system of administration since the Soviet times shaped Indigenous politics in post-Soviet Russia; and the fact that Indigenous activists are able to envision their communities as “Indigenous Peoples,” or communities with a right to self-determined existence, signifies a step forward, despite increased oppression against non-Russian minorities today in response to the current use of nationality policies as a means toward centralization of the state.

This essay develops these claims in three interrelated essays, aimed at disseminating findings from Russian and western scholarship, and at stimulating more research in the areas examined. The first essay, “Legal and Institutional Framework Concerning Indigenous Rights,” reviews legal developments in the area of Indigenous rights and draws primarily from legal scholarship. The second essay, “Means of Resistance to Structural Violence: Indigenous Politics,” theorizes means of Indigenous advocacy, drawing upon studies of Soviet and post-Soviet political institutions supporting rights of Indigenous and other cultural minorities. It also investigates the history of post-Soviet Indigenous mobilizations. The final essay, “Consequences of Structural Violence,” examines the effects of structural violence and draws from the studies of Indigenous demographics and socio-economic conditions of Indigenous populations, and the recent 2010 census data. The essay advocates for the widening of political opportunities for Indigenous Peoples at the regional and local levels of the contemporary Russian state.

Use of terms and structure of this essay

There is no formal definition of the term “Indigenous Peoples” in international law and the prevailing view today is that no formal universal definition of the term is necessary. According to the fundamental right to self-determination contained in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and other human rights instruments, Indigenous status is through self-identification. Article 9 of UNDRIP stipulates that Indigenous Peoples and individuals have the right to

belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned.

The Soviet state did not ratify the International Labour Organization (*herein* ILO) Convention 107 (1957), arguing that it was relevant only to the post-colonial states' settings. Furthermore, during Soviet times, the question of Indigenous rights was a "taboo." The Russian state did not ratify the Convention either, and abstained from the vote during the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007. At the same time, based on the right to self-determination and self-identification enshrined in UNDRIP, it is possible for Indigenous communities to claim Indigenous status, even in cases when the government of the state where these communities are located does not recognize the relevant international instruments, as is the case in contemporary Russia. The underlying logic behind the application of the term "Indigenous" in this essay emerges from that very assumption: the term signifies communities that might claim the rights recognized in the UN Declaration on the Rights of Indigenous Peoples, including the right to autonomy. Further, the term specifically refers to groups classified as *korennie malochilennie narodi* by the Russian legislation.

Indigenous issues are part of larger policies in the Russian context, which focus on the relationship between the federal government and its subjects, and are termed nationality policies. Nationality policies in Russia consist of the set of norms and measures that have historically focused on the rights and privileges of non-Russian communities composing the Soviet and now the Russian federal state. Nationality (in Russian, *natsional'nost'*), which was part of the Soviet legal vocabulary, currently captures the formally (i.e., by the state) accepted cultural identity of a group or of a citizen. Such is the meaning of the term "nationality" within the context of this essay.

The difference between a "nationality" and a "nation" (people) within the Soviet and Russian contexts lies primarily in the political might of a group. A "nation" (Soviet nation) is a group with a right to govern its affairs in accordance with its cultural and historical specificities. Since the establishment of the Soviet Union, the characterization as "nation" would be assigned to groups who resided in a territory and were elevated to the status of "federal subject" (in Russian, *sub'ekt*).

The hierarchical structure of the Soviet Union remains in the Russian federal state. Non-Russian communities with larger demographics enjoy a greater degree of autonomy, with the republics being at the top of the hierarchy, while groups with smaller numbers fall within the administrative rule of the larger subjects (okrug, oblast, rayon). The okrugs are the only territories whose status as *subjects* originated in the recognition of these territories as historical homelands of communities currently recognized to have Indigenous status. The okrugs are among the most vulnerable entities in the asymmetrical arrangement of the Russian Federation, and are subordinate to a larger “host” unit to which they belong, administratively, as constituents. Republics, on the other hand, are defined by the Russian Constitution as states within a state, as they have the right to grant citizenship and institute their own language as the official language of the territory.

Today, the number of “nationalities” composing the Russian state is different from the number of “subjects” of the federation: the total number of “nationalities” registered in the last (2010) census was 193, while the number of “subjects” was 83. Only a little over one third of the “subjects” are recognized as such because of the nationality of the group living in the territory of the “subject,” namely 22 republics and four autonomous okrugs. The meaning of the terms “subject” and “nationality” within the context of this essay derives from this note.

I. Legal and Institutional Framework Concerning Indigenous Rights

This essay investigates the origins of structural violence affecting Indigenous communities of contemporary Russia. It argues that the treatment of Indigenous rights in contemporary Russia remains, at the core, similar to the Soviet approach to the rights of the groups currently recognized to have Indigenous status. It develops this argument by establishing the genealogical lineage between the Soviet idea of indigeneity, which originated in early nationality policies, and the current treatment of Indigenous communities as dependent on state aid and political guidance. It illustrates how contemporary Russian laws grant communities with Indigenous status benefits and political

privileges unavailable to other nationalities. At the same time, it emphasizes that Indigenous individuals cannot realize their fundamental right to self-determination. Wide geographical distribution and small demographics of Indigenous communities further contribute to the structural inequality they experience. The lacking means of realization of Indigenous rights in Russia is a feature of the overall system of governance, where the means of administration of the state were not designed to accommodate the political rights of cultural minorities.

a) Indigeneity in the Russian Context

Russian laws recognize only an extremely small fraction of the state's multi-ethnic population as deserving of the status of Indigenous Peoples. The legal term that signifies this status is *korenniye malochislennyye narody* (herein KMN) or "native small-numbered Peoples." The term emphasizes the ruling that only groups consisting of 50,000 persons or less are eligible for state aid and privileges guaranteed to groups with Indigenous status. This limitation primarily serves to prevent other ethnic groups from benefitting from the government-given privileges and political rights associated with the status.³ In addition to this quantitative criterion, geographical limitations are applied to determine a group's eligibility for the designated status. Only communities whose historical homeland is registered in the regions of the Russian North, Siberia, and Far East are entitled to the full benefits associated with Indigenous status.⁴ As a result, Indigenous communities constitute a very small portion of the state population. In 2010, the Indigenous communities accounted for about 250,000 persons, comprising less than 1% of close to 143 million of the total population of the state at

3. Brian Donahoe, Joachim Otto Habeck, Agnieszka Halemba, and István Sántha, "Size and Place in the Construction of Indigeneity in the Russian Federation," *Current Anthropology* 49, no. 6 (2008): 994.
4. The Russian legislature defines the geographical bounds by listing the territories belonging to the North in the legal instruments protecting Indigenous rights, as is particularly visible in the Law of the Russian Federation "On State Guarantees and Compensations for Persons Working and Residing in the Regions of the Far North and Territories Equivalent to the Far North" (*0 Gosudarstvennykh Garantiyakh i Kompensatsiyakh Dlya Tekh Rabotayuzsikh i Prozhivayuzsikh v Raionakh Krainego Severa i Priravnennykh k Nim Mestnostyam*), No. 4520-1, 19.02.1993.

the moment of the latest census data collection.⁵ The groups, eligible for the full benefits associated with the status, constitute 40 distinct communities. An additional seven groups are recognized as Indigenous (i.e., they are classified as KMN), yet lack some key rights, since they are located in regions other than the North, Siberia, and the Far East.⁶

The Russian criterion of indigeneity and the very term *korennie* originated during the early Soviet era. The current number of 40 distinct Peoples stemmed from the original listing of 26 Peoples, termed *malie narodi Severa* and commonly translated as “small Peoples of the North,”⁷ which was a term created during the late 1920s when the Soviet Union was established.⁸ The category “small Peoples of the North” became the instrument to calculate the demographics of the Northern communities, beginning with the first Special Polar Census of 1926–27, which registered all reindeer herders and hunters living in the North. From 1926 to 1993, the number of these communities accounted for the original 26 groups; after 1993, it was extended to include 40 current communities under the new status of the “native small-numbered people” with new political privileges.

5. See Table 1 of this work.
6. All communities are listed in the Act No. 255 of 2000 “On the Common List of Numerically Small Indigenous Peoples of Russia.” The seven groups with the status of KMN that are registered on this list but live primarily in other areas are the Abazin (North Caucasus), the Nağaybäk (Chelyabinsk oblast), the Besserman (Udmurtia), the Vod’, the Komi-Izjorts (primarily Leningrad oblast), the Seto (Pskov oblast), and the Shapsugs (Krasnodarskiy kray). See Table 1 for the listing of these Peoples and a historical account of their demographics, from 1926 until 2010.
7. Scholars tend to use the term “small Peoples of the North,” hence the use of the established term in this work. At the same time, a more precise translation of *malie* would be “minor”; the term in part was designed to capture an inferior (in comparison to demographically larger groups) positioning of Indigenous communities within an overall Soviet hierarchy of nations.
8. This number changed with each census: for 1939 it was 62 (with 101 categories unpublished in census data); for 1959 it was 109; for 1970 it was 122; for 1979 it was 125; for 1989 (last Soviet census) it was 128. See S. Sokolovskiy, “Indigeneity Construction in the Russian Census 2002.” *Sibirica* 6, no.1 (2007): Addendum; and also Table 1 of this work. The 2002 census accounted for 182 categories (142 groups and 40 sub-groups); while the 2010 census had 193 (145 groups and 48 sub-groups), or nested within groups recognized as separate, see Federal State Statistical Service, “Metodologicheskie Poyasnenia,” [Russian: Методологические Пояснения] (2010), http://www.gks.ru/free_doc/new_site/perepis2010/croc/Documents/Vol4/metod4.pdf

The numerical limitation of 50,000 or less people also originated with the small demographics of the first 26 groups. During Soviet times, the demographics served as what was then perceived to be evidence of these groups' eventual extinction. While this perception of Indigenous demographics justified the need for state aid to these communities, it also institutionalized the "small number" characteristic of indigeneity into these groups' ascribed identity. Hence, there came into being the descriptor of "*malie*" (in different contexts translated as "minor" or "small") in the original "small Peoples of the North," and "small-numbered" in the current designation, signifying indigeneity. Sergei Sokolovskiy observes that the numerical criterion was adapted in part for practical purposes: it helped contemporary policy makers to justify their decisions on assigning the status to some communities while denying it to others.⁹

Finally, the descriptor *korennie* originated in early Soviet nationality policies, particularly those classified as *korenisatsiia* (from the Russian noun *koren'* or "root"). The engineers of the Soviet Union envisioned the state as a federal system of governance based upon a principle of self-determination of all nations. The nationality policies addressed the question of ensuring the rights of non-Russian groups to self-govern the lands considered and, often in the past, existing as their historical homes. *Korenisatsiia* provided political opportunities for non-Russian leaders to participate in the state administration of their communities, thus establishing the foundation for the development of an Indigenous elite in the Soviet political system.¹⁰ A significant part of these policies also targeted social living. Ethnic languages and cultural practices were promoted for the non-Russian groups that joined the Union. In the Soviet republics, the native language of a group became the official language of the territory. The state sponsored the development of native-language education and presses; these linguistic policies helped to

9. Sokolovskiy, *supra* note 8, at 76–77.

10. See part II of this work for a discussion of the set of policies targeting the development of political rights. For a detailed examination of *korenisatsiia*, see T. Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923–1939* (Ithaca: Cornell University Press, 2001). A cultural element of these policies was abolished during the late 1930s; yet some projects were resumed during the later Soviet years.

create written languages for oral-culture communities, including some Northern groups. The “small Peoples of the North” considered to be at an economic disadvantage also received state aid in support of bringing “socialist development” to ease their integration into the Union.¹¹

The contemporary Russian legal conception of indigeneity thus originated in Soviet assumptions about the Northern communities as vulnerable populations and inferior nationalities in comparison with demographically larger groups constituting the Soviet Union. Despite the changes in the regime of governance, this notion persisted, informing the contemporary approach to Indigenous issues in Russia, as the following sections demonstrate. Russian authorities continue to deny Indigenous Peoples the right to self-determine their political and economic affairs, forcing these groups to depend on state aid and guidance in their social and political affairs.

b) Overview of the History of Indigenous Rights Legislation¹²

The current laws supporting the rights of Indigenous communities in Russia are a product of complex and ongoing events. The history of these developments is complex given the amount of changes, some unexpected and some ongoing, which continue to affect implementation of the main principles protecting Indigenous rights in Russia. This history began in the late 1980s- early 1990s as a part of the larger

11. S. Sokolovskiy, “Russian Legal Concepts and the Demography of Indigenous Peoples,” in *Indigenous Peoples and Demography: The Complex Relation between Identity and Statistics*, eds. P. Axelsson and P. Sköld, (New York: Berghahn, 2011), 242.
12. This part briefly examines this question in response to the overall focus of this work. An extensive literature on the subject matter exists: see A. Stammeler-Gossmann, “Who is Indigenous? Construction of 'Indigeness' in Russian Legislation.” *International Community Law Review* 11, no. 1 (2009): 69–102; I. Stoyanova, *Theorizing the Origins and Advancement of Indigenous Activism: The Case of the Russian North*, Dissertation Thesis (2009): 156–205. For the analysis of the Russian scholars, see V. Kryazhkov, “Development of Russian Legislation on Northern Indigenous Peoples.” *Arctic Review* 4, no. 2 (2013): 140–159; and Y. Yakel, “Obschaya Kharakteristika Deistvuyshego Zakonodatel'sta. Problemi Praktiki Primenenia,” [Russian: Общая Характеристика Действующего Законодательства. Проблемы Практики Применения in *Sever i Severiane* [Russian: Север и Северяне] eds. N. Novikova and D. Funk, (2012), 8–21.

project of constructing the institutions of democratic governance. In the area of nationality policies, that moment may be characterized by the notorious phrase of the first Russian President, Boris Yelt'sin (1991–1999), who, in 1992, offered to the leaders of the subjects of the transitioning Russian state to “take as much sovereignty as they could swallow.”¹³ President Vladimir Putin, who succeeded Yelt'sin in 2000, reversed the federal approach to the nationality policies. In many ways reactionary, Putin's focus remains on stabilizing and strengthening the power of central authorities. As a result, the post-Soviet development of Indigenous legislature can be characterized as exhibiting “extreme” oscillation between decentralization and centralization depending on the degree of political power of the central government.¹⁴

1990s-Early 2000s

Regulations in the area of Indigenous rights fall within three general categories: the federal acts defining the political rights and privileges of Indigenous communities; regional acts corresponding to federal regulations in the same area, given that Indigenous issues are administered by the joint federal-regional powers; and laws dealing with the management of and access to natural resources that exist on federal and regional levels. The federal acts regulating Indigenous affairs are based on two Articles of the Constitution: Article 69 recognizes the international legal principles and norms of protecting Indigenous rights; and Article 72(1.1) places the responsibility for protecting the traditional lifestyles of Indigenous communities and their traditional environments on state institutions. In addition, and in respect to international law in general, Article 15(4) provides for the recognition and application of international norms, treaties, and agreements as a component of the state legal system.¹⁵ The major

13. S. Erlanger, “Tatar Area in Russia Votes on Sovereignty Today,” *New York Times*, March 21, 1992, <http://www.nytimes.com/1992/03/21/world/tatar-area-in-russia-votes-on-sovereignty-today.html>.
14. B. Krug and A. Libman, “Commitment to Local Autonomy in Non-Democracies: Russia and China Compared” *Constitutional Political Economy* 26, no. 2 (2015): 228.
15. Prior to the enactment of the Constitution in 1993, the 1991 tentative decree assigned KMN exclusive rights for the use of natural resources located in the territories of

federal acts defining Indigenous rights include three framework laws. The first federal law N 82-FZ, passed on April 30, 1999, is termed “On the Guarantees of the Rights of Small-Numbered Indigenous Peoples of Russian Federation” (in Russian, *O Garantiih Prav Korennikh Malochislennikh Narodov Rossiyskoy Federatsii*). It defines the main rights of Indigenous communities. Two other framework laws, passed in subsequent years, including: the federal law N 104-FZ “On the General Principles of Organization of Small-Numbered Indigenous Peoples of North, Siberia and Far East of Russian Federation” passed on July 20, 2000 (in Russian, *Ob Obshchikh Printsipakh Organizatsii Obshchin Korennikh Malochislennikh Narodov Severa, Sibiri i Dalnego Vostoka Rossiyskoy Federatsii*); and the federal law N 49-FZ “On the Territories of Traditional Nature Use of Small-Numbered Indigenous Peoples of the North, Siberia and Far East of Russian Federation” passed on May 7, 2001 (in Russian, *O Territoriakh Traditsionnogo Prirodopol’zovania Korennikh Malochislennikh Narodov Severa, Sibiri i Dalnego Vostoka Rossiyskoy Federatsii*).¹⁶ These two laws define land use for communities with Indigenous status: the former legalizes kinship-based economic cooperatives, or *obshchinas*,¹⁷ as legal entities with privileges in managing designated

their home communities. In 1992, a parliamentary committee was formed to develop federal legislation that would address the rights of KMN, whose work concluded in 1999 with the passing of the federal law N 82-FZ. See G. Fondahl, O. Lazebnik, and G. Poelzer, “Aboriginal Territorial Rights and the Sovereignty of the Sakha Republic,” *Post-Soviet Geography and Economics* 41, no. 6 (2000): 404.

16. The Russian term *territorii traditsionnogo prirodopol’zovania* is translated in this work as “territories of traditional nature use.” Scholars also translate this term as “territories of traditional/historical inhabitancy” or “original homelands.” These territories extend over the Arctic and sub-Arctic territories, embracing the lands from the Kola Peninsula in the West to the Bering Strait in the East. In the South, these lands stretch to the Amur River and Sakhalin Island. They mark the territories considered traditional areas of settlement of Indigenous groups; the boundaries are defined in the legislature. However, these territories do not necessarily comply with the existing areas of residence of Indigenous communities.
17. The term *obshchina* (from the Russian “commune”) captures forms of historical organization of traditional economies of Indigenous Peoples. These economies relied on the principle of kinship as the key norm for managing property and land. Today, ventures registered as an *obshchina* are formed around family and/or kin ties and focused on traditional forms of subsistence. The members of an *obshchina* do not pay taxes, since their ventures are not registered as commercial entities. The changes to the laws, however, placed some communities in the position where they

lands; the latter reserves lands for traditional subsistence activities of Indigenous communities administered by their members.¹⁸ In addition, a number of federal codes protect the rights of KMN to use natural resources for subsistence, including: “On Fauna” of 1995 (in Russian, *O Faune*), “On Fishing and the Preservation of Aquatic Biological Resources” of 2004 (in Russian, *O Ribolovstve i Sokhranenii Vodnikh Biologicheskikh Resursov*), and “On Hunting and the Preservation of Hunting Resources and on the Introduction of Revisions into Several Legal Acts of the Russian Federation” of 2009 (in Russian, *Ob Okhote i o Sokhranenii Okhotnichikh Resursov i o Vnesenii Izmeneniy v Otdelnie Zakonodatelnie Akti*). With the changes introduced by Vladimir Putin’s government, all main federal laws were amended: articles and whole clauses were removed from the original laws, and so were the codes in particular areas of law. These changes limited and in some cases annulled the rights of Indigenous Peoples.

2000s-Today

The changes to Indigenous rights legislation happened as a part of more profound modifications to the mechanisms of governing federal-regional politics. Since the moment of Vladimir Putin’s ascendancy to power, the administration of political rights of nationalities have been increasingly defined within the parameters of state security. While initially, the move was a response to the waves of nationalism during the 1990s,¹⁹ with time the federal decision to consolidate

should rent the lands they use for their traditional subsistence practices registered as *obshchina* since 2009. For more on this, see Yakel, *supra* note 12, at 10.

18. In some regions, the members of the economic enterprises who register their venture as an *obshchina* may receive regional subsidies. Likewise, economic ventures located on the lands designated as the “territories of traditional nature use” may receive support from the regional government to maintain their traditional practices. These practices primarily consist of agricultural activities, fishing and/or hunting, and reindeer herding. Please see the part III of this work for a discussion of the degree to which these measures support the economic wellbeing of communities.
19. A history of struggles between the federal government and nationalist leaders during the early years of transitioning Russia contributed to the political course taken by the current Russian president. The events of the 1990s revealed the fragility of the central government to the pressures of regional ethnic leaders in the moments of transition. These struggles also demonstrated that the ethnic leaders would place

political authority transformed into what appears today as the federal government's desire to "drive ethnicity out of politics," as one scholar described it.²⁰ Moreover, the structural arrangements of the Russian federal state were initially supportive of centralization. Graham Smith, for example, in his 1996 examination of the governing system of the new Russian state, saw it as a "highly centralized federation."²¹ Smith was particularly concerned with the problem of lacking social commitment to accommodate diverse and at times conflicting interests of the different nationalities composing the Russian state. Smith envisioned a turn to autocracy, which would be supported not only by structural arrangements of state governance, but also by the very attitude of the political leaders toward managing relations between different cultural communities.

The question of security over resource revenues, an especially prominent issue after the 1998 financial crisis, was also of prime significance to the federal decision to centralize political power.²² In fact, evidence suggests that in the area of Indigenous issues, the government's interest in profiting from the use of natural resources located on the lands of Indigenous groups had informed the core changes in the policies governing Indigenous rights. The fundamental role of hydrocarbons

their own interests before those of the state, and, if possible, would seek secession (as was particularly evident in the case of Chechnya). The internal competition for power at the moment of Vladimir Putin's ascendance might have shaped the president's perception of threat to both the territorial integrity of the state and his security as a leader, as suggested by one scholar. See R. Sakwa, *Putin Redux: Power and Contradiction in Contemporary Russia*, (New York: Routledge, 2014), 16.

20. A. Osipov, "National Cultural Autonomy in Russia: A Case of Symbolic Law," *Review of Central and East European Law* 35, no. 1 (2010): 46.
21. G. Smith, "Russia, Ethnoregionalism and the Politics of Federation," *Ethnic and Racial Studies* 19, no. 2 (1996): 392.
22. Federal government officials secured control over economic production, particularly in the areas of oil and gas. They issued provisions that helped to control the levies on exports of oil and gas, and non-ferrous metals. See: H. Oversloot, "The Homogeneity of Russia, or the Remains of an Empire (Federalism and Regionalism)," in *Managing Ethnic Diversity in Russia*, eds. O. Protsyk and B. Harzl (London: Routledge, 2013), 93; M. Olsen, "The Future of National Oil Companies in Russia and How They May Improve Their Global Competitiveness," *Houston Journal of International Law* 35 (2013): 620–621, 645. This move helped the federal authorities to exert control over the operation of major national oil companies and thus secure their independence from the regions that are rich in resources.

in the Russian economy explains why the federal government strives to control these profits.²³ In 2015, for example, revenues from oil and natural gas accounted for more than 40% of federal budget revenues.²⁴ At the same time, the government's interest in profiting from industrial development in Indigenous territories has exposed Indigenous communities to the dangers associated with industrial developments. The changes to the Forest, Land, and Water codes, which specify the principles for using forests and water resources, placed Indigenous groups in a position where they have to rent the territories allocated for their traditional subsistence and cultural practices (i.e., those designated as "territories of traditional nature use," herein TTNU),²⁵ and at times compete with companies who also have a right to license the land where Indigenous Peoples reside. These provisions are valid even on the lands designated for the communities' traditional forms of subsistence. For example, in Khanty-Mansi Autonomous Okrug—homeland to Indigenous Khant and Mansi—industrial developments are taking place on almost half of the territories designed as TTNU, with hundreds of extraction licenses issued to dozens of companies.²⁶

23. Some of the developments in this direction were visible in the original laws. For example, the federal law "On Subsoil" (1992) is designed to protect the interests of both Indigenous communities and the commercial parties involved. Given that the law does not guarantee priority of Indigenous communities to extract resources located on the territories they inhabit, the law primarily protects the interests of industries. The federal law "On Production Sharing Agreements" (1995) further specifies that the use of lands with a status of "a territory of traditional nature use" could only be possible with the permission of the authorities of a region.
24. U.S. Energy Information Administration, *Country Analysis Brief: Russia*, (2016), https://www.eia.gov/beta/international/analysis_includes/countries_long/Russia/russia.pdf. Further, Russian researchers project that the situation will not change in the next 25 years, with gas becoming a commodity accounting for the "most substantial" increase in consumption. See The Energy Research Institute of the Russian Academy of Sciences. *Global and Russian Energy Outlook up to 2040*, (2013), <http://ac.gov.ru/files/publication/a/1156.pdf>. These projections rest upon the estimations of resource potential in the Russian Arctic, which is comparable to that of the United States. See National Petroleum Council, *Arctic Potential: Realizing the Promise of U.S. Arctic Oil and Gas Resources*, (2015): 12, Fig. ES-4.
25. *Ibid.*, 10–9; J. Rohr, "Indigenous Peoples in the Russian Federation," *IWGIA Report 18* (2014): 13.
26. In 2006, for example, 673 licenses were given to 61 companies. See L. Alferova, "Legal Provisions for Safeguarding the Rights of Indigenous Minorities of the North in the Khanty-Mansiisk Autonomous Region (Yugra), in Relation to

Further, the current laws also free companies from the responsibility to secure the wellbeing of communities whose lifestyles and subsistence practices may be disturbed by the proposed and/or ongoing industrial projects that may cause environmental degradation.²⁷ Initially, two measures were created to ensure environmental safety of Indigenous communities—one involving ethnological and the other addressing ecological kinds of expertise. The ethnological expertise, created as an instrument to implement the provisions of the federal law N 82-FZ, guaranteed equal representation of interests by involving Indigenous Peoples in the scientific assessment of the potential consequences of economic development to their home communities. This kind of expertise, as the Russian legal scholar Yulia Yakel stresses, is practiced for the most part voluntarily and is not considered a requirement.²⁸ The development of ecological expertise originated in 1995 as a means of implementing the federal law “On Ecological Expertise.” The measure lost its power in 2006; the law no longer stipulates that expert involvement is necessary in possible prevention and/or assessment of the socio-economic changes emergent from industrial projects.²⁹ In the cases of environmental damage resulting from the use of territories registered as TTNU, responsible parties must pay compensation to the communities living on these territories.³⁰ However, the compensation often cannot cover the damages done to the land, which communities may no longer use for subsistence practices after the company leaves. Given a history of industrial companies’ environmental rights violations against Indigenous communities,³¹ scholars express concern over the

Protection of Their Ancestral Lands, Traditional Ways of Life, and Livelihood Activities,” *Sibirica* 5, no. 2 (2006): 157.

27. Yakel, *supra* note 12, at 18.

28. *Ibid.*, 10.

29. See N. Novikova, “Vzaimodeystvie Korennikh Malochislennikh Narodov i Promishlennikh Kompaniy,” [Russian: Взаимодействие Коренных Малочисленных Народов и Промышленных Компаний] in *Sever i Severiane* [Russian: Север и Северяне] eds. N. Novikova and D. Funk, (2012), 23.

30. Alferova, *supra* note 26, at 157.

31. For an overview on this history, consult J. Agyeman and Y. Ogueva-Himmelberger, *Environmental Justice and Sustainability in the Former Soviet Union* (Cambridge, United States of America: The MIT Press, 2009). Elena Dubinina gives a suggestive case study of the violations of environmental rights of Indigenous communities living in the Nenets Autonomous Okrug. See E. Dubinina,

future of Indigenous groups, particularly those located in the Arctic, the core territory targeted for current and future industrial developments by the Russian government.³² This area is also home to about one third of the entire Russian Indigenous population, or close to 82,500 people.³³

The recent changes to federal means of administration of Indigenous issues further impeded possibilities of implementing Indigenous rights by elimination of the federal agencies dealing directly with the issues of Indigenous Peoples and budget cuts. In 2000, the *Goskomsever* (State Committee for the North of Russia) was abolished. In 2011, the North and Indigenous Peoples Issues Committee of the Council of the Russian Federation also ceased to exist.³⁴ Until 2014, Indigenous issues remained under the management of the Ministry of Regional Development, which was also abolished that year. Since 2015, the Federal Agency for Nationalities Affairs (in Russian, *Agentstvo po Delam Natsional'nostey*), created that year, oversees Indigenous issues as a part of the Agency's work on the nationalities issues.³⁵ The Agency is an executive body that administers and enforces existing laws and is directly subordinate to the president. Igor Barinov, previously the Federal Security Services colonel, heads the Agency. Some Russian scholars believe that Barinov was chosen for this position partly in response to the core purpose of contemporary nationality policies to eliminate influences of "ethnic" leaders on the

Impact of the Oil and Gas Industry on Human Security: Relation Between the National and the Human: Case Study: the Nenets Autonomous Okrug, Russia, Master's thesis in Peace and Conflict Transformation, Faculty of Social Sciences, University of Tromsø, (2008).

32. The Arctic, along with regions of the Far North and Eastern Siberia, accounts for about 90% of gas and oil, 85% of lead and platinum, 80% of carbon and molybdenum, 71% of nickel, 69% of copper, 44% of silver and 40% of gold of all Russian reserves. See E. Nikitina, "Guarantees of the Rights of Indigenous Peoples to Save Their Traditional Activities in the Russian Federation," in *Challenges for Governance Structures in Urban and Regional Development*, E. Hepperle, et al. eds. (Zurich: European Academy of Land Use and Development, 2015), 331.
33. V. Tishkov, N. Novikova, and E. Pivneva, "Indigenous Peoples of the Russian Arctic," *Herald of the Russian Academy of Sciences* 85, no. 3 (2015): 278.
34. Kryazhkov, *supra* note 12, at 148–9.
35. V. Putin, *Ukaz Presidenta o Federal'nom Agentstve po Delam Natsional'nostey*, [Russian: Указ Президента о Федеральном Агентстве по Делах Национальностей] N 168 (March 15, 2015), <http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=177296#0>

state governance.³⁶ A brief analysis of the proposed distribution of the Agency's budget suggests that Indigenous issues are not a priority of its work. Out of about 40 billion rubles the Agency requested to finance its programs for 2017–2025, less than 7% of the budget, or about 2.7 billion rubles, have been allocated for Indigenous issues. By comparison, the Agency plans to spend 4.2 billion rubles, or 10.5% of the total budget, for measures on the “prevention of extremism” (Russian: *profilaktika ekstremizma*), and 11.2 billion rubles, or 28% of the total budget, for the development of a state-social partnership (in Russian, *gosudarstvenno-obschetvennoe partnerstvo*).³⁷ The Agency's relative disregard of the needs of Indigenous communities corresponds to the larger position of the federal government on Indigenous issues, given that the amount of funding allocated for this area has been declining since 2009. Then the amount allocated for the management of Indigenous issues was 600 million rubles or about 20 million dollars. The current sum, in comparison, is about 337.5 million rubles annually, or a little over 5.6 million dollars, which is a little less than the amount allocated in 2016 of 390 million rubles, or about 6.4 million dollars.³⁸ Given that since 2008, the federal government directly subsidizes the regions with Indigenous populations instead of using the targeted program approach utilized previously (which is no longer active due in part to corruption),³⁹ the Indigenous residents

36. Some Russian scholars define the core of these policies as a strategy of “permanent intervention at the actor level [federal appointments to the power positions], with zero tolerance for ethnic violence; prosecution of ‘unauthorized’ nationalist movements, organizations, and leaders; and a ban on ethnic political parties.” See A. Shcherbak and K. Sych, “Trends in Russian Nationalities Policy,” *Problems of Post-Communism*, 63 (2016): 15.
37. N. Gorodetskaya, “Natsional’noy Politike Nazvali Druguyu Tsenu,” [Russian: Национальной Политике Назвали Другую Цену] in *Kommersant*, (2016), <http://kommersant.ru/doc/3075511>.
38. A/HRC/15/37/Add.5; and A. Mezjenko, “Sokhranenie Traditsionnogo Uklada Zhizni Korennikh Malochislennikh Narodov Severa, Sibiri i Dalnego Vostoka Rossiyskoy Federatsii, Prozhivayushchikh v Rossiyskoy Arktike,” [Russian: Сохранение Традиционного Уклада Жизни Коренных Малочисленных Народов Севера, Сибири и Дальнего Востока Российской Федерации, Проживающих в Российской Арктике] presented at the Conference on the Economic Development of the Arctic, Saint-Petersburg, Russian Federation, (June 18, 2016), <http://arctic-conference.com/wp-content/uploads/2016/07/Mezjenko.pdf>.
39. The Chairman of the Federation Council at the Federal Assembly of Russia, Vyacheslav Shtyrov, for example, reports that the three federal funding programs

of the subjects that directly depend on federal funding to support Indigenous communities—such as the Tuva and Komi republics—will likely continue to experience severe poverty. In part, the cuts express a critical attitude of federal authorities to the programs supporting Indigenous traditional activities, since these programs bring no profit.⁴⁰

The changes to the federal laws and means of administration of Indigenous affairs influenced the governments of the Russian subjects to amend their legal provisions, thus limiting the rights of Indigenous groups guaranteed to these communities by the legislation of the subjects. One of the measures that affected Indigenous communities most was the termination in 2004 of the right of federal subjects to create representation quotas for Indigenous communities in the subjects' governments. The system of quotas, which originated in the Soviet era, supports political opportunities of non-Russian nationalities living in the Russian Soviet Socialist Republic. In the 1990s, it ensured Indigenous representation in the regional governments in a number of post-Soviet subjects: Khanty-Mansi Autonomous Okrug (herein KMAO), the Sakha Republic, Nenets Autonomous Okrug, Yamalo-Nenets Autonomous Okrug, the Republic of Buryatia, the Altai Republic, and also in Dagestan.⁴¹ The governments of these

targeting Indigenous issues since 1991 have been implemented inconsistently in part due to corruption. See Vyacheslav Shtyrov, "Gosudarstvennaya Politika v Oblasti Obespecheniya Ustoychivogo Razvitiya Korennikh Malochislennikh Narodov Severa, Sibiri i Dal'nego Vostoka Rossiyskoy Federatsii," [Russian: Государственная Политика в Области Обеспечения Устойчивого Развития Коренных Малочисленных Народов Севера, Сибири и Дальнего Востока Российской Федерации.] in *Sovremennoe Sostoyanie i Puti Razvitiya Korennikh Malochislennikh Narodov Severa, Sibiri i Dal'nego Vostoka Rossiyskoy Federatsii*. [Russian: Современное Состояние и Пути Развития Коренных Малочисленных Народов Севера, Сибири и Дальнего Востока Российской Федерации], Vyacheslav Shtyrov ed. (2012), 17–8.

40. A. Sharovalov, "Straightening Out the Backward Legal Regulation of 'Backward' Peoples' Claims to Land in the Russian North: The Concept of Indigenous Neomodernism," *Georgetown International Environmental Law Review* 17, no. 3 (2005): 435.
41. A.A. Ivanchenko et al., "Natsional'nie Kvoti -Modifikatsiya Izbiratel'noy Sistemi s Tsel'iu Zashiti Prav Korennikh Malochislennikh Narodov," [Russian: Национальные Квоты – Модификация Избирательной Системы с Целью Защиты Прав Коренных Малочисленных Народов] in *Proportsionalnaya Sistema v Rossii: Istoria, Sovremennoe Sostyanie, Perspektivi* [Russian: Пропорциональная Избирательная Система в России: История, Современное Состояние, Перспективы], part 1.4 (2005), <http://www.vibory.ru/Publikat/PES/ch-1-4.htm>.

subjects used a system of single-member electoral districts to ensure representation of Indigenous politicians in the regional legislative assemblies. For example, in KMAO, six out of 23 deputies in 1996 were Indigenous; five out of 25 deputies in 2001 were selected by this principle to the KMAO government. In Yamalo-Nenets Autonomous Okrug, three out of 21 deputies were Indigenous in both 1996 and 2001, and three out of 22 were Indigenous in 2005. In Nenets Autonomous Okrug, five out of 15 deputies were Indigenous in 1994, 1996, and 2001.⁴² Likewise, in Sakha, the single-member electoral districts originally designated 12 out of 70 seats in the legislative assembly of the republic to the Indigenous Evenks.⁴³ The new norms of regulating the subjects' parliaments led to the electoral districts becoming larger. To form single-member districts in the areas designated as traditional homelands of the KMN became, according to one Russian scholar, impossible.⁴⁴ In the Nenets Autonomous Okrug the quota system was annulled in 2005 by the decisions of the Supreme Court of the Russian Federation, which found the provision invalid.⁴⁵ Likewise, in Yamalo-Nenets Autonomous Okrug, the changes happened in 2009, and in KMAO this happened very recently in 2015. In other subjects, the governments also no longer guarantee quota-based representation to Indigenous politicians in their institutions of governances.⁴⁶

42. *Ibid.*

43. N. Filippova, "Predstavitel'stvo Natsionalnikh Men'shinstv v Sisteme Publichnogo Predstavitel'stva," [Russian: Представительство Национальных Меньшинств в Системе Публичного Представительства], *Konstitutsionnoe i Munitsipalnoe Pravo* 9 (2015): 25.

44. *Ibid.*, 25–26.

45. A Malyu, "O Roli Organov Mestnogo Samoupravl'eniya v Realizatsii Prav Malochislennikh Narodov Rossii," [Russian: О Роли Органов Местного Самоуправления в Реализации Прав Малочисленных Народов России], in *University Proceedings. Volga Regions. Social Sciences* 2, no. 38 (2016): 13; N. Filippova, "Natsia i Natsional'nie Men'shinstva v Parlamentakh: Ot XX k XXI Veku," [Russian: Нация и Национальные Меньшинства в Парламентах: От XX к XXI Веку], *Scientific Yearly Periodical of The Institute of Philosophy and Law of The Russian Academy of Sciences, Ural Branch* 14, no.2 (2014): 151.

46. See respectively Filippova, *supra* note 43, at 24; Gosudarstvennaya Duma Yamalo-Nenetskogo Avtonomnogo Okruga, *O Vnesenii Izmeneniya v Zakon Yamalo-Nenetskogo Avtonomnogo Okruga*, [Russian: О Внесении Изменения в Закон Ямало-Ненецкого Автономного Округа "О Выборах Депутатов Государственной Думы Ямало-Ненецкого Автономного Округа"]

The final factors which affect political and legal rights of Indigenous Peoples stem from measures targeting the limitation of political autonomy of the Russian subjects, particularly from the creation of the regime of law enforcement and the policy on mergers. The regime of law enforcement, constructed to secure federal powers on the regional levels, focused primarily on placing federal control over the appointments of prosecutors, judges, and, to a lesser degree, police officials.⁴⁷ As Moscow-appointed administrators took control over a number of the subjects of the Russian Federation, the regionally elected leaders were removed from their positions in the governments of the subjects as well as from the upper house of the Parliament. Today, the majority of the highest-ranking officials in the subjects are, as a rule,

(Утратил Силу с 06.07.2009 на Основании Закона Ямало-Ненецкого Автономного Округа от) 19.06.2009 N 51-3АО], (2009), <http://docs.cntd.ru/document/800112559>; and N. Kurganov, “Yugorskaya Duma Otmenila Kvoti dl’ia Predstavitel’eyu Korennikh Narodov,” [Russian: Югорская Дума Отменила Квоты для Представителей Коренных Народов] *UralPolitRu* (2015), <http://uralpolit.ru/news/hmao/09-12-2015/70210>.

47. The move was a response to the preceding post-Soviet measures of regulating federal-regional political relations. Thus, with the dissolution of the Soviet Union, governing powers were passed to the chairmen of the regional executive committees (*ispolkomi*), functioning as parts of the Councils of People’s Deputies who were elected in 1990. In 1991, the new position of “head of administration” was created, which became the governor position in all regions except for republics, whose leaders called themselves presidents. In 1992, President Boris Yel’tsin appointed governors in all regions except for seven republics, who had elected their presidents. By the late 1990s, President Yel’tsin had to yield to the pressures of the regional leaders and allow direct elections for the first time in most regions of Russia. This occurred between the fall of 1996 and the spring of 1997. The 1999 federal law established rules for electing regional governors, and eliminated the right of the president to remove or appoint governors. President Vladimir Putin cancelled this ruling in 2004. The current system of appointing governors, first to be nominated by the President, was then instituted. In addition, the president appointed special representatives to oversee governance of each of the seven Federal okrugs of the state; wherein okrugs are mere units of administration created in 2000 in support of strengthening the powers of federal authorities. For a detailed discussion and analysis of the professional backgrounds of the elected and appointed governors for this period (1992–2010), see N. Buckley, et al., “The Political Economy of Russian Gubernatorial Election and Appointment,” *Europe Asia Studies*, 66 no.8 (2014): 1218–1220. For an analysis of centralization measures, consult Oversloot, *supra* note 22, at 93–103. For the discussion of the implications of centralization on the regional and local governance, see B. Krug, and A. Libman, “Commitment to Local Autonomy in Non-Democracies: Russia and China Compared,” *Constitutional Political Economy* 26, no. 2 (2015): 221–245.

born outside of the area they serve; the appointed governors, likewise, tend to come from the federal bureaucracy.⁴⁸ Given the professional background and the personal aspirations of these officials, they tend to use the instruments of governance to serve the interests of federal government while advancing their own careers. The interests of the people, whose lives they administer, are thus not their first priority; often federal appointments create barriers for non-Russian and local leaders to implement the existing provisions that support minority rights. At times, the implementation of these rights, especially in regions rich with oil, jeopardizes the government's interest in profiting from industrial development in Indigenous territories. These changes led to the increasingly pervasive abuse of Indigenous rights by regional and local administrations.

The policy on mergers (in Russian, *uplotnenie*) further stripped Indigenous communities of political opportunities. The representation of subjects in the Russian federal structure remains predominantly territorial. While a little over one third of the 83 subject territories of Russia are defined by ethnic criteria—the 22 republics and now four autonomous okrugs⁴⁹—only in okrugs are groups with Indigenous status recognized as those residing on their homeland territories with a formal right to govern these territories. Until 2007, the number of okrugs was seven; that year, three autonomous okrugs originally created as homelands for Indigenous groups, were abolished: the Koryak, the Taymyr (Dolgano-Nenets), and the Evenk okrugs were merged into the Russian-dominated Krasnoyarsk and Kamchatka Territories.⁵⁰ Despite that, this right has, in essence, not been actualized given the structural difficulties and the current means of administrating the state. Reducing the number of okrugs from seven to four⁵¹ lessened the already limited

48. What is noteworthy here is that the share of non-Russian nationalities among the governors remains at a high 80%. See Buckley et al., *supra* note 47, at 1214, 1229. This 80% signifies a trait of continuation of the Soviet practice of appointing leaders of the non-Russian Peoples from the nationalities whose interests they were to represent. At the same time, the nationality alone is not a sufficient condition to guarantee that a leader would support the interests of the Peoples of the region.

49. This number does not include the contested territories in Ukraine.

50. Rohr, *supra* note 25, at 26.

51. These are Khanty-Mansi Autonomous Okrug, Yamalo-Nenets Autonomous Okrug (both okrugs are constituent parts of Tumen' Oblast), Nenets Autonomous Okrug

political choices of Indigenous politicians. The possibility of further mergers in the near future is real.⁵²

c) Structural Factors Contributing to Inequality

The effects of structural violence on Indigenous communities were made more severe by the structural factors that have historically contributed to the political and social inequality of Indigenous groups, with the wide geographical distribution of Indigenous communities being the primary factor. The widely-dispersed patterns of living, prominent among many Indigenous communities today, historically prevented Indigenous persons from relying on instruments of state administration to solve problems in their communities. Despite the original vision of the Soviet leaders to create a state based upon the principle of self-determination of all nations, Soviet Indigenous communities were forced to adapt to the Soviet system of governance. The territorial-administrative division of the Russian Soviet Socialist Republic did not correspond to the geographical locations of diverse and politically autonomous Indigenous groups. The forcible Soviet resettlement projects further contributed to a situation in which members of one people became demographical minorities living in different administrative units of Soviet Russia, governed by the members of the associated political party.

Today, members of Indigenous communities are located in 27 of 83 subject territories of the federation. They do not constitute a majority in any of the regions of the Russian Federation, including the autonomous okrugs: Indigenous populations comprise less than 4% of the total population of the northern regions.⁵³ Only in Koryak Okrug, whose

(a part of Arkhangelsk Oblast) and Chukotka Autonomous Okrug. Chukotka Autonomous Okrug (created in 1930 as a homeland to the Chukchi, native to Chukotka) was a constituent part of Magadan Oblast since 1953. It gained independence from the Oblast in 1992 and since then remains only one of four okrugs of the Russian Federation with no subordinate host region.

52. See Oversloot, *supra* note 22, at 98–110; and Derrick, M. “The Merging of Russian’s Regions as Applied Nationality Policy: A Suggested Rationale,” *Caucasian Review of International Affairs* 3, no. 3 (2009): 317.

53. Tishkov, Novikova, and Pivneva, *supra* note 33, at 279. This number remains relatively steady for the 26 original Indigenous communities: Kozlov and Lisitsyn report that in

autonomous status was recently abolished, and in Chukotka Autonomous Okrug, does the population of KMN exceed 25% of the total, with the share of KMN being 40.3% and 30.7% respectively.⁵⁴ These data, however, signify that these regions are overall sparsely populated. Even on the lands designated for traditional subsistence practices, Indigenous populations are frequently a demographic minority. For example, in Khanty-Mansi Autonomous Okrug, Indigenous communities constitute only 11% of the total population residing on lands with TTNU status.⁵⁵ Further, Indigenous persons sometimes find themselves as residents of homelands designated to a group to which they do not belong. For example, some of the Even, the Dolgan, the Chuckchi, and the Yukagir historically resided in the lands of what is now the Sakha Republic. With the institution of the Soviet system in Sakha (Soviet Yakutia), they found themselves under the administration of the ethnic Sakha people and Russian authorities, which remains the case today.

These widely dispersed patterns of living resulted in Indigenous communities being under the control of administrations that are not of their own choosing, as a rule. While this was the case during the Soviet era, the Soviet means of governance ensured some uniformity in the ways in which Indigenous persons were treated with no regard to the place of their residence as long as they were Soviet citizens. Further, with the dissolution of the Soviet Union, the new subjects of the transitioning Russian state found themselves free to construct their own laws and tools of governance for most of the 1990s. As a result, different subjects constructed their approach to protecting Indigenous rights according to the degree to which this new body of laws supported the interests of those who found themselves at the helm of the new subject's government. Formally, all subjects of the

1989, the share of Indigenous persons in the northern regions was 4.4%, resulting in part from a continuous migration to the North since the 1930s. See A. Kozlov and D. Lisitsyn. "Arctic Russia," in *Health Transitions in Arctic Populations*, T.K. Young and P. Bjerregaard, P. eds. (Toronto: University of Toronto Press, 2008), 86.

54. A. Petrov, "Lost Generations? Indigenous Population of the Russian North in the Post-Soviet Era," *Canadian Studies in Population* 35, no. 2 (2008): 277.

55. E. Pivneva, "Khanty-Mansiyskiy Avtonomniy Okrug – Yugra," [Russian: Ханты-Мансийский Автономный Округ – ЮГРА] in *Sever i Severiane* [Russian: Север и Северяне] N. Novikova N. and D. Funk eds. (2012), 85.

Russian Federation had to comply with federal regulations. However, the interpretation of these regulations at the regional level depended, among other factors, on the priorities of the regional government. As a result, the situation of Indigenous groups often depends on the ways in which regional authorities treat the question of Indigenous rights. To illustrate, in Tuva (home to the Tuvinian-Tozhin communities), and the Komi (home to the Khant, the Mansi, and the Nenets), no mechanisms designed specifically in support of Indigenous rights are available.⁵⁶ In Sakha, on the other hand, a number of measures were created, including the designation of seats for Indigenous persons in the State assembly. Given how small and widely dispersed Indigenous communities are, it is very difficult for Indigenous leaders to institute changes to the ways in which their lives are administered at the regional and federal levels today, as the next part of this work demonstrates.

To conclude, the current approach of the Russian government to Indigenous issues reflects the values and interests of the authorities currently in positions of power. Despite the changes in the regime of governance, the present modes of federal services to Russian Indigenous communities remain similar to those offered to these communities during the Soviet era. The treatment of Indigenous issues stemming from the Soviet approach to the rights of the groups currently recognized to have Indigenous status, does not focus on the creation of politically and culturally autonomous communities. Instead, Indigenous groups remain dependent on federal aid and services and are subject to a range of rights violations. To change this situation, the Russian government must support the United Nations Declaration on the Rights of Indigenous Peoples. It must create measures that would formally and systematically address political, economic, cultural and social interests of Indigenous communities on all levels, and would enable Indigenous leaders to make decisions about the future of the communities who elect them. Indigenous issues must be addressed as an integral part of Russian nationality policies, and as an integral part

56. To make this estimation, the author consulted the texts of the Constitutions of these republics available at the website of the consortium Kodeks at <http://docs.cntd.ru/document/906705011>. The author also used official webpages of the governments of these republics to examine administrative structures of these republics' governments.

of the opportunity to construct a system of governance based upon values of multiculturalism.

II. Means of Resistance to Structural Violence: Indigenous Politics

This essay examines the political upheavals among Indigenous communities during the post-Soviet period. It argues that despite a somewhat prevalent scholarly perception of these struggles as elements of a movement, these upheavals never developed into an organized statewide set of actions in support of Indigenous rights. Nor did the leaders of these upheavals pursue goals that would allow one to characterize their mobilizations as components of a unified *Indigenous* struggle, given that the core element of indigeneity signifies a right to self-determined political existence of a group. These upheavals, by their consequences, were abortive struggles primarily focused on amending a local situation, economic conditions and/or political opportunities of particular communities. At the same time, these struggles supported the development of Indigenous professional politics, which remains the main form of Indigenous advocacy today. This essay reviews cases of rural protests, Indigenous mobilizations focused on recognition of a community to Indigenous status, and struggles for greater political opportunities for Indigenous leaders. It uses a socio-historical perspective to analyze these political upheavals and to demonstrate that the abortive character of these upheavals a) resulted from the specific historic circumstances within which these upheavals took place; and b) reinforced contemporary forms of violence against Indigenous communities.

a) Indigenous Political Mobilizations in Post-Soviet Russia: Cases

Political upheavals took place in numerous Indigenous communities during the 1980s and 1990s, in parallel with other political mobilizations of ethnic groups living in Russia. A number of factors generated these upheavals. First, they originated in the overall political climate of the

Soviet Union during the late 1980s. This was the time of liberalization reforms, initiated by the last General Secretary of the Communist Party of the Soviet Union, Michael Gorbachev. The decisions of the 1989 September Plenum session of the Central Committee of the Communist Party in particular stressed the development of programs to ensure equal cultural and political rights to all nations and nationalities.⁵⁷ The economic instability of this period also contributed to the political climate in the country, as did changes in Soviet foreign policies. These factors instigated criticism, primarily in the popular press, of the cultural and ecological rights abuses occurring against Indigenous Peoples, which in turn found a response across many communities in the form of political unrest.⁵⁸

The political climate of the late 1980s also liberated the voices of Indigenous leaders who, during Soviet times, might have been charged with nationalism and imprisoned for their advocacy.⁵⁹ These leaders sometimes found themselves in the position of being the alternative to the party officials, representing the interests of their people at the levels of local, regional and, in a few cases, federal governance. This position allowed them to participate in the development of Indigenous rights legislation during the time of transition, influencing the transformation of Indigenous mobilizations into professional advocacy. While instances of political events among Indigenous communities are not well studied, a few documented cases provide some understanding of the character and the outcomes of these protests. Three different kinds of mobilizations, classified by the goals of these

57. A. Chemchieva, *Altaiskie Subetnosi v Poiskakh Identichnosti*. [Russian: Алтайские Субэтнотности в Поисках Идентичности] (2012), 15.
58. For example, *Severnnye Prostoni*, an all-state journal published annually since 1985, became one of the main sources to which Indigenous persons would write to share their grievances. In 1994, another all-state journal, *Zhivaya Arktika*, was established; in 1999, it became the main journal of RAIPON.
59. For example, most of the Shors intellectuals were charged with nationalists' crimes and their work was destroyed. Other forms of discrimination included forced assimilation, hate crimes, and the ecological war against these groups in the form of industrial developments of their lands, which led to the destruction of their traditional lifestyles and falling numbers of their reindeer. See N. Vakhtin, "Native Peoples of the Russian Far North, in *Polar Peoples: Self-determination and Development*," in *Polar Peoples: Self-Determination and Development*, Minority Rights Group ed. (1994), 67, 52.

mobilizations, are chosen for this study: rural protests, targeting needs and grievances of particular village communities; struggles focused on gaining Indigenous (i.e., that of *korennie malochislennye narodi*) status for communities not included in the original list of the 26 small-numbered peoples of the North; and political activities intended to expand political and legal rights of Russian Indigenous Peoples.

i) Rural protests

A number of Indigenous protests took place in rural areas during the 1980s and 1990s. A few cases are particularly demonstrative of the abortive character of these struggles: a protest of the rural Koryak against the liquidation of their village, Paren', in Kamchatka in 1986; the Nanai villagers' campaign against building tourist establishments on the land of their village, Sikachi-Alyan, Khabarovskii Kray, in 1989; and an appeal of the Itelmen from the Kovran village, in Kamchatka, to the United Nations to help restore electricity in the village in 1993.

In the case of the Koryak villagers, local officials found the village costly to sustain because of its location, accessible only by helicopter, and proposed the villagers relocate to a larger settlement. The villagers refused. They contacted local press and, having publicized their grievances, won their case and were left to decide their future for themselves.⁶⁰ However, the village continued to deteriorate; the place remains in squalid conditions to this day.⁶¹ The protest, while generating a response to a particular problem, did not initiate substantial changes in the lives of villagers.

The second 1989 case saw the Nanai villagers of Sikachi-Alyan lobby the regional administration in opposition to the building of private vacation homes and tourist establishments on the territory of their village

60. *Ibid.*, 70–71.

61. In the 2000s, the situation of the village became catastrophic: the village, which at that time consisted of little over 60 people, had not received any food supplies for some time; electricity was available for only a few hours a day; the village had scarce means of communication; and the village had no doctors. The appeal to the Indigenous rights organization RAIPON and to the regional press and television helped the villagers get food supplies and medical assistance. See T. Efremento, "Agonia Parenya," [Russian: Агония Пареня] on *Lenta.ru*. (2010), <https://lenta.ru/articles/2010/07/02/paren/>. The village still maintains its existence.

and the surrounding grounds. They demanded the return of lands taken from the village in the 1960s.⁶² The villagers organized a Soviet-style committee, *selsoviet* (village council), to govern their affairs and refused to follow decisions of local officials. Since then, the council remains the main decision-making body at the village. Yet, no larger changes to the lives of villagers have taken place since 1989 apart from the work on the protection of a heritage site located close to the village. This site, which has petroglyphs dated between 12,000–9000 BC, is now included in the tentative list of UNESCO World Heritage Sites.⁶³ Today, the head of the village would like to establish a tourist center in the village to support the village economy and to care for the site.⁶⁴

In the 1993 case, the Itelmen of Kovran village of the then-Koryak Autonomous Okrug appealed to the United Nations asking for help in sustaining their lives, as they had been left with almost no electrical power and severe food shortages. Local and regional administrations disregarded their problems, and were difficult to contact because of poor means of communication. The local teachers tried to alleviate their situation by appealing to the High Commissioner for Human Rights in Geneva. Supported by foreign scholars working in the village, they composed a letter in which they described their difficulties. In a few months, local authorities restored the electrical power in the village, which suggests that their pleas were heard.⁶⁵ Today, the village is known primarily for its cultural events revitalized in part by activists and cultural leaders.⁶⁶ Similarly to the other two cases, the struggle was brief, did not spread outside of the immediate site of protest, and targeted only local problems. Thus, all three protests helped their respective situations as short-term interventions. They supported the development

62. Vakhtin, *supra* note 59, at 70.

63. UNESCO, “Petroglyphs of Sikachi-Alyan,” (2003), <http://whc.unesco.org/en/tentativelists/1787/>.

64. Khabarovskiy Kray Segodnia, “Petroglifi Nuzjno Vključit’ v Spisok Naslediya UNESCO,” [Russian: Петроглифы Нужно Включить в Список Наследия ЮНЕСКО] (2016), <http://todaykhv.ru/news/culture/1678/>.

65. D. Koester, “Global Movements and Local Historical Events: Itelmens of Kamchatka Appeal to the United Nations,” *American Ethnologist* 32, no. 4 (2005): 655.

66. T. Degai, “Indigenous Languages: Preservation and Revitalization: Articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples,” (2016), http://www.un.org/esa/socdev/unpfii/documents/2016/egm/Paper_Degai2.pdf.

of institutions of self-governance (such as village councils) and helped to spread awareness about the difficulties Indigenous communities faced. At the same time, they did not constitute elements of a larger organized action, were short-lived and did not focus on instituting changes to their position in the state political system.

ii) **Struggle for Recognition: Indigenous Mobilizations in the Altai Republic and Karelia**

A more organized form of mobilization took place in urban areas. The leaders of these upheavals were professional politicians, intellectuals and scholars who worked at different levels and engaged communities in building institutions of Indigenous governance as parts of the state system. A number of these protests were struggles for the attainment of Indigenous status for the communities not included in the original list of 26 peoples in 1993.⁶⁷ Among these were mobilizations of five Turkic communities residing in the Altai Republic and in the neighboring Altai Kray and Kemerovo Oblast', namely the Telengit, the Teleut, the Kumandin, the Chelkan, and the Shor; and a struggle of a Finno-Ugric community, the Veps, residing in the Republic of Karelia and in Leningradskaya Oblast'.

The struggle of the Turkic communities demonstrates how political privileges associated with status become obstacles to a larger organized political movement; it also shows that the attainment of status influences social conflicts and produces confusion in the ways people perceive their group identity. The specifics of the struggles of these communities are defined by the history of their relationship with the Altai people, a larger people historically considered an ethnos to which four of these communities (all but the Shor) belonged as sub-groups. During its initial stages, the struggle was combined in

67. The year of 1993 marks the time of the adoption of the Russian Constitution, which confirmed the Indigenous status and rights of the original 26 "small peoples of the North." Article 69 of the Constitution "guarantee[s] these communities the rights of the Indigenous peoples (i.e., *korennye malochislennye narodi*) in accord with generally accepted international principles, the norms of the international law and the international treaties adapted by the Russian Federation." See Russian Federation, *Constitution of Russian Federation*, (1993), <http://www.constitution.ru/>

solidarity with the members of a larger Altai community; during later stages, it led to disunity, which intensified with these groups gaining the status of *korennie malochislennie narodi* in 2000. These events began with the late 1980s regional protests against the construction of the Katun' hydroelectric power plant, which endangered ecological conditions and cultural practices of many communities living in the Altai Republic. The protests were successful: not only did they help to stop the construction, but they also unified members of different Altai groups, even those who were historically estranged.⁶⁸ This early 1990s sense of unity among different communities across the Republic was also marked by the revival of traditional family structures as a part of an overall cultural revitalization of the Altai peoples. Among the communities historically residing in Altai, traditional extended family structures maintained their social role during the Soviet period, but only unofficially. During the transition period, these structures regained their significance in regulating relations among different communities (i.e., extended families, or *seoks* in Altai). Representatives of different *seoks* began meeting at unified Soviet style conferences (in Russian, *s'ezdi*) to solve the problems of sustaining the economy, ecology and culture of their communities.⁶⁹ The *seoks*' leaders increasingly began turning to political means to defend the wellbeing of their lands, primarily by demanding that the local authorities respect the rights of communities to manage sacred sites and mountains. Some of these *seoks* initiated the creation of organizations to facilitate political mobilization for the Altai people.⁷⁰ The recognition of the extended family as an institution of social organization among different Altai communities found its recognition in the republican legislature; and thus, is evidence of some success of *seoks*'-based mobilizations in Altai.

68. Chemchieva, *supra* note 57, at 12.

69. One of the primary goals of the *seoks*' programs was revitalization of the ceremonies of respect for the forests, mountains or fauna considered sacred keepers of the family. See N. Tadina, "Ekologiya i Kul'turnyy Landschaft Altaya v Kontekste Mezjetnicheskoy Kommunikatsii," [Russian: Экология и Культурный Ландшафт Алтая в Контексте Межэтнической Коммуникации.] in *The Izvestia of the Altai State University* 3, no. 4 (2009): 211–2.

70. E. Samushkina, *Rodovoe Dvizhenie v Altae i Khakassii: Formirovanie Obrazov Proshlogo Regionov*, [Russian: Родовое Движение в Алтае и Хакасии: Формирование Образов Прошлого Регионов.] *Tartaria Magna* 2 (2012): 156–7.

In parallel to these activities, Indigenous leaders of particular communities, most prominently of the Teleut, the Tubalar, and the Chelkan, initiated campaigns in support of the needs of their specific communities, which had been historically marginalized economically and culturally within the larger Altai community. Since the 1990s, their leaders have demanded larger political representation for their communities, similar to the *seoks*'-based activism, as a part of a larger unified movement. These intentions defined the strategies the leaders used, the primary one being the formation of organizations and the creation of strategic alliances.⁷¹ The first republic-wide organization, Ene-Til, was created in Gorno-Altaysk in 1989 to include representatives of all Altai communities along with scholars, intellectuals and journalists.⁷² What unified the leaders at that moment was the goal of gaining autonomy for their territory, then existing as an oblast' subordinated to the larger Altai Kray. When the region was officially recognized as a republic in 1992, the sense of solidarity dissipated as the leaders of different communities focused on advancing the political and economic positions of their particular communities against other groups residing in the region, primarily the Altai people. Thus, in 1992, the Northern groups—the Tubalar, the Chelkan and the Kumandin—formed the Association of the Northern Ethnos of the Altai as a way to strengthen their political presence in the region. This organization became the first legally registered entity in the region. While the changes in its goals and composition influenced some changes in its activities, it remained a body representing interests of more than one peoples.⁷³ The leaders of some communities also united with representatives of their people living outside of the Altai

71. Other examples include the Association of the Chelkan and the Association of the Tubalar formed in the 1990s. The members of these organizations also belonged to Ene-Til. The leaders lobbied local authorities for recognition of their communities in the status of a disappearing ethnic group; demanded means of protecting the lands and their communities used for cultural practices and traditional forms of subsistence; and requested financial support. One proposal demanded that industrial companies, working on community lands, support the communities by paying 5% of their revenues to the local Indigenous Peoples. See Chemchieva, *supra* note 57, at 23.

72. Chemchieva, *supra* note 57, at 15–6.

73. *Ibid.*, 34, 43, 47.

Republic. For example, the Teleut of the Altai collaborated with members of Ene-Bayat, a Teleut organization of the Kemerovskaya Oblast'. Similarly, the Altai-based members of the Kumandin and Shor communities worked in solidarity with political activists representing interests of their people living outside of the Altai.⁷⁴ The leaders appealed to international standards, particularly the ILO Convention 169, demanding recognition of the political and cultural rights of their communities. They even attempted to approach federal authorities: for example, in 1992, they wrote a letter to President Boris Yelt'sin.⁷⁵ However, the key demands were cultural and language revival, economic and political opportunities for their communities, and better education for Indigenous children.⁷⁶ In 1999, the republic government recognized the Tubalar and the Chelkan in the status of *korennie malochislennye narodi*, which in turn influenced recognition of these communities in this status at the federal level in 2000.⁷⁷ The Shor, the Kumandin and the Teleut also gained the status in 2000, the moment that marked the conclusion to their initial political project.

The attainment of this status resulted in little substantive change to the situations of Altai Indigenous communities. Scholars report a loss of political aspirations among Indigenous activists, and a pervasive lack of trust among Indigenous men and women toward the authorities administering Indigenous issues and the instruments designed to support Indigenous wellbeing, as well as toward organizations that came to represent Indigenous interests in the post-Soviet Altai.⁷⁸ Gaining the status also intensified disunity among the population of Altai. Many individuals of Altai nationality feel disfranchised, since they frequently face conditions similar to those of Indigenous men and women, yet are unable to enjoy the benefits associated with the Indigenous status.⁷⁹ Further, formal separation of the communities with the status of *korennie malochislennye narodi* from the Altai people affected demographics of

74. *Ibid.*, 20–1.

75. *Ibid.*, 26–7.

76. *Ibid.*, 82, 94.

77. *Ibid.*, 39–40.

78. *Ibid.*, 123. Indigenous organizations remain a part of the Altai political landscape today, primarily focusing on the ecological rights of Indigenous groups.

79. *Ibid.*, 189–193.

the Altai, which in turn may have political implications endangering the status of Altai as a republic. This factor further increased a sense of hostility among some Altai persons toward their Indigenous neighbors.⁸⁰ Indigenous persons, in turn, experience a pronounced sense of dual identity. While they remain members of the polity of the Altai Republic, they feel alienated from the larger Altai community since they remain unable to govern their own communities autonomously from the Altai authorities. Thus, attaining status for the Altai communities resulted in an increase in the social vulnerability of these peoples.

The Veps, in contrast with the Altai communities, formally existed as a separate people since the creation of the Soviet Union, and even had their own national territory from 1927 until 1956. Since 1956, the Veps remained under the jurisdiction of the Republic of Karelia with two other main peoples living in the republic: the Karelian and the Indigenous Saami.⁸¹ The Veps gained the status of *korennie malochislennye narodi* (KMN) in 2000, and the status of KMN living in the areas of the North, Siberia and the Far East in 2006. While the Veps, similar to the Altai activists, formed organizations as the key means to lobby for their status, their recognition as KMN was primarily the result of the work of one establishment: the Society of Vepsian Culture (*Obschestvo Vepsskoy Kul'turi*), which engaged international instruments supporting Indigenous rights to buttress its political campaign. The Society was formed in 1989 with the primary goal of maintaining and reviving Veps culture and language. In 1994, a founder of the Society and its prominent leader, a Veps scholar named Zinaida Strogalschikova, became a deputy to the first convocation of the Karelia Legislative Assembly (*Zakonodatel'noe Sobranie*), which formulated the instruments of self-governance of the post-Soviet Karelia.⁸² In 2002, she represented Russian Indigenous communities as a member of the United Nations Permanent Forum on

80. *Ibid.*, 179–182.

81. A. Varfolomeeva, *Evolution of the Concept “Indigenous People” in the Soviet Union and the Russian Federation: the Case Study of Vepses*, Master’s Thesis (Budapest, Hungary: Central European University, 2012), 56–8.

82. *Zakonodatel'noe Sobranie*, “*Zakonodatel'noe Sobranie Respubliki Karelia Pjati Sozyvov*,” [Russian: Законодательное Собрание Республики Карелия Пяти Созывов] (2014), http://www.karelia-zs.ru/o_zakonodatelnom_sobranii/istoricheskaya_spravka/20_let_zakonodatelnomu_sobraniyu_respubliki_kareliya/zakonodatelnoe_sobranie_respubliki_kareliya_pyati_sozyvov/.

Indigenous Issues.⁸³ The prominent position of Strogalschikova and her knowledge of international principles supporting Indigenous rights led her to engage the international community in support of the Veps' case as a way to attain status for her people. In the early 1990s, she lobbied the government of Karelia for the right of her organization to represent the Veps at the Working Group of Indigenous Peoples of the Barents Euro-Arctic Council (BEAC). In 1997, Strogalschikova represented the Veps at the Working Group, where her participation in the work of the BEAC signified that the BEAC members recognized the Veps as Indigenous peoples. Strogalschikova observes that this recognition was an important factor influencing the Karelia and federal authorities to recognize the Veps as *korennie malochislennye narodi*. The members of the Society continued to collaborate with the BEAC, and applied for international grants in the 1990s. Since 2005, the Society has also been supported by funds provided by the authorities of the republic and the Saami Parliament of Norway.⁸⁴

The degree to which attaining this status changed the economic, social and political situation of the Veps communities remains a subject of further research. Current findings provide a rather bleak picture of the economic situation facing these communities (see part III of this chapter for details). At the same time, this case suggests that collaboration between the Veps and international Indigenous rights bodies might have strengthened the political positioning of the Veps activists at the republican and even federal governing bodies. This collaboration may gain prominence in the future, given the significance of the Arctic in the global economy, and the relatively prominent position of Indigenous politicians in the governance of the Arctic.⁸⁵

83. *Ibid.*, 58–59.

84. Z. Strogalschikova, *Korennie Narodi Barents-Regiona: Saami Rossii, Norvegii, Shvetsii, Finliiyandii, Nentsi i Vepsi Proveli 9–10 Fevralia v g. Kirkenese Svoy II S'ezd.*, [Russian: Коренные Народы Баренц-Региона: Саами России, Норвегии, Швеции, Финляндии, Ненцы и Вепсы Провели 9–10 Февраля в г. Киркенесе Свой II Съезд] (2012), www.petrozavodsk-mo.ru/html/upload/kornarBarents.rtf.

85. The history of Indigenous activism at the Arctic Council is particularly promising. The Council, created in 1996, is a body supporting cooperation of the Arctic states: the United States of America, Canada, the Russian Federation and the five Nordic states, regarding the development of the Arctic. See Arctic Council, *Ottawa Declaration: Declaration on the Establishment of the Arctic Council*, (1996). The

As these cases demonstrate, political mobilizations among communities whose leaders focused on gaining the status of *korennie malochislennie narodi* for their people were more organized and sustained in comparison with rural protests. While in some cases these struggles might have resulted in creating greater economic and social opportunities for the members of these communities, their outcomes did not substantively change the political positions of Indigenous leaders at the levels of regional and federal governance. Nor did they compose elements of struggle at the all-state level, while—as the case of the Altai communities suggests—the instances of mobilizations among Indigenous politicians living in different territorial administrative units took place for as long as their participants were unified by a similar set of interests and goals, but were short-lived and focused on the aims of immediate significance to the participants.

iii) Okrug-Level Struggles: The Case of KMAO

The struggles at the level of okrugs remain by far the most prominent and sustained form of Indigenous mobilizations. In the okrugs, activists looked for opportunities to join the governments of the subjects where they lived; created professional organizations to represent Indigenous interests to the local and federal governments; and worked with international human rights activists and scholars. Such form of struggle was particularly prominent among leaders of the communities of the original 26 peoples. A case of activism of the Khant and the Mansi from Khanty-Mansi Autonomous Okrug (herein KMAO) is particularly demonstrative here, while it is also exceptional. The KMAO government was the first to pass regulations supporting Indigenous rights to lands in 1992, surpassing similar developments at the federal level. The government was also among the most active in resisting federal limitations of Indigenous rights in the early 2000s. The KMAO Assembly of Representatives of Indigenous Peoples,

role of Indigenous politicians at this forum evolved from the status of observers to permanent participants. It guarantees them the right to veto a specific proposal should they reject it. See T. Koivurova and L. Heinamäki, “The Participation of Indigenous Peoples in International Norm-Making in the Arctic,” *Polar Record* 42, no. 2 (2006).

created in 1996 as a part of the KMAO Duma (Parliament), remains the body responsible for drafting legislation in support of Indigenous rights. In comparison to similar entities created by politicians in the other okrugs, the KMAO Assembly enjoys a greater degree of political power: it convenes separately from the Duma and the Chairman of the Assembly, elected by the members of the Assembly, simultaneously serves as one of the Vice-Chairmen of the Duma.⁸⁶ The KMAO politicians also instituted a quota system allocating initially six seats out of 23 total seats at the Duma to deputies representing the interests of Indigenous communities. While similar provisions also functioned in other okrugs, most prominently in Nenets Autonomous Okrug (herein NAO) and Yamalo-Nenets Autonomous Okrug (YNAO), only in the KMAO had the provision lasted until 2015. In other okrugs, it was annulled in 2008 (NAO) and in 2009 (YNAO). Finally, the government has also been supporting Indigenous communities primarily from the okrug budget, with little support from federal subsidies.⁸⁷

The two crucial factors that shaped political activities of KMAO activists are the history of Indigenous activism in the okrug, and the location of oil industries in KMAO. Since KMAO was created in 1930 as a homeland territory for the Indigenous Khant and Mansi, Indigenous resistance in the okrug was, while sporadic and for the most part unsuccessful, ongoing.⁸⁸ The oil development that began in

86. P. Panov, "Instituti i Praktiki Spetsial'nogo Predstavitel'stva Narodov Severa v Regional'nikh Parlamentakh," [Russian: Институты и Практики Специального Представительства Народов Севера в Региональных Парламентах] *Power* 10 (2013): 56.

87. For example, from 2011 to 2014, the KMAO government provided about 138 million rubles in grants whereas the federal share was only 1.3 million rubles. See Government of Khanty-Mansi Okrug, "Itogi Realisatsii 1 Etapa Kontseptsii Ustoichivogo Razvitiya Korennikh Malochislennikh Narodov Severa KMAO – Ugri," [Russian: Итоги Реализации 1 Этапа Концепции Устойчивого Развития Коренных Малочисленных Народов Севера ХМАО-Югры] (2015) http://www.kmns.admhmao.ru/upload/iblock/621/itogi_kontsepsiya_ur_kmns_1_etap_svod.pdf.

88. The Kazim war (1931–1934) is the most well known and most well organized struggle led by joint forces, primarily the Khant and the Nenets. For the chronology of these struggles and analysis, see respectively: S. Piskunov, *Kazimskie Vosstaniya 1931–1934 gg.*, [Russian: Казымские Восстания 1931 - 1934 гг.] (2004), <http://www.hrono.ru/sobyty/1931sssr.html> and A. Leete, "The Role of Young people in Resistance Against the Soviet Rule Among the Northern Peoples in the 1930s–1940s," *Folklore: Electronic Journal of Folklore* 41 (2009). Other groups

the 1960s left many communities landless, leading Indigenous rights struggles to take the form of ecological resistance. Intellectuals and scholars supported the Indigenous cause, protesting against ecological degradation in the region. During the late 1980s, the protests against industrial developments in the area were numerous. Some took the form of blocking railroads, pipelines or roads projects near or leading to the sites of industrial development. Others, in urban areas, targeted local administrations. Among the most well known were “chum” protests, where activists used a *chum*, a tent of animal skins representing a traditional Indigenous house, to symbolically bring Indigenous voices into these protests. A famous 1990 protest took place in the Varyogansk area. The activists used a *chum* to block the rail and road construction leading to Yamal, a key area of the energy complexes. Organized by Yuri Vella, a Nenets writer, and supported by known Indigenous politicians including Evdokiya Gaer, it received statewide news coverage, bringing attention to the consequences of ecological degradation for Indigenous communities. A similar protest took place in 1993 in the Nizjnevartovsk area, where oil developments led to severe ecological damage to the Russkinskie community lands. Activists blocked the traffic with a *chum*, placed on the bridge over the Tromuygan River. The protest was supported by the oil company drivers, and helped to bring about compensation to Indigenous and non-Indigenous inhabitants of the affected community. An urban site *chum* picket took place in 1993 in the KMAO capital of Khanti-Mansiysk, organized by members of the organization *Spasenie Ugri* (Association for the Salvation of the Ugra). The activists placed a *chum* in front of the KMAO Duma, demanding recognition of their rights to lands and political representation in the KMAO government.⁸⁹ While these protests were helpful in raising awareness of Indigenous problems through the media, as a rule, they brought little substantive change to communities.

also resisted during the early periods of the Soviet regime; for example, a number of uprisings among the Yamal Nenets, *mandaladas*, took place in the 1930s. See, for example, A. Golovnev, and G. Osherenko. *Siberian Survival: The Nenets and Their Story* (Ithaca, New York: Cornell University Press, 1999), 82–88.

89. M. Balzer, *The Tenacity of Ethnicity: A Siberian Saga in Global Perspective*, (Princeton, New Jersey: Princeton University Press, 1999), 150.

During the next stage, Indigenous activists turned to the development of legal instruments as the main strategy to ensure their rights. Some of these endeavors originated at the community level and were later supported by Indigenous deputies in the KMAO government. The history of creating the instruments on the protection of Indigenous rights to land, which—by their scope and proposed means of protection—were unprecedented at the time, provides a relevant example here.⁹⁰ This work began with the Council of Elders of Ugut village (in the southern part of KMAO). The Council was formed in 1989 to resist industrial developments on a nearby site. Its members, having little success with approaching regional and federal officials, drafted an instrument on a “green zone” that would help protect community lands by legal means. The Council members approached officials of the Tyumen Oblast, then a governing body of KMAO, with no success. The activists turned to the Khant delegates at KMAO Okrug Council of People's Deputies next. The delegates helped develop their proposal into two laws and saw them adapted in 1992.⁹¹ The reasons why the KMAO government adapted these instruments demands further research. The move might have been to ensure support of Indigenous voters during a moment of transition and political unrest. It may also have been meant to demonstrate to their host region, Tyumen Oblast, KMAO's determination and ability to self-govern, given that the KMAO leaders were struggling to gain autonomy from the Oblast'. In 1994, these laws would be nullified but, by then, KMAO had gained its autonomy from Tyumen. Despite this disappointing beginning, in 1996, the KMAO government created the Assembly of Representatives of Indigenous Peoples. This Assembly was, as a part of the Duma, initially composed of

90. These instruments were the “Polozheniye o Statuse Rodovykh Ugodiiv Khanty-Mansiyskom Avtonomnom Okruge” [Regulation Concerning the Status of Kinship Communities in KMAO], and “O Mekhanisme Vnedreniya Polozheniya o Statuse Rodovykh Ugodii v Khanty-Mansiyskom Avtonomnom Okruge” [Concerning the Mechanism for Applying the Regulation Concerning the Status of Kinship Communities in KMAO].

91. A. Wiget, and O. Balalaeva, “National Communities, Native Land Tenure, and Self-Determination Among the Eastern Khanty,” *Polar Geography* 21, no. 1 (1997): 19, 21.

five deputies, elected by single-mandate electoral districts.⁹² The Assembly adopted a number of regulations to advance Indigenous rights to lands, resources, and culture.⁹³ In response to the changes at the federal level instituted by President Putin's administration, the Assembly developed 40 acts supporting Indigenous rights to land from 2001 to 2006. Today, however, Indigenous participation in the okrug government is primarily a matter of consultation.

Given that overall, KMAO governing officials were reluctant to advance Indigenous causes,⁹⁴ which factors might have influenced these changes? One may surmise that the move was a united response by both the Assembly members and members of the okrug government to withstand measures of centralizing federal rule, particularly regarding distribution of revenues from oil and gas developments. In fact, the KMAO government had aligned with the industrialists.⁹⁵ These alliances might have been beneficial since they allowed governing officials to become intermediaries between industries and Indigenous communities, and thus benefit to some degree from the industrial work on Indigenous lands. This supposition is also supported by scholarly reports on the changes in the position of industrial companies in the area. In the 1990s, these companies expressed little interest in

92. The provision did not stipulate that deputies elected in this district must be Indigenous. In fact, in 2001, two deputies were Indigenous, and one was Russian. At the same time, the right to choose deputies was given to organizations and, since 2000, to the KMAO Congress of Indigenous Peoples of the North to ensure that elected deputies would indeed represent interests of communities. See Panov, *supra* note 86, at 56. The KMAO Congress of Indigenous Peoples of the North, a gathering that by form and function resembled Soviet type party conferences, became primarily a gathering where candidates to this position would be elected. See V. Kryazhkov, "The Example of the Khanty-Mansi Autonomous Okrug," in *An Indigenous Parliament? Realities and Perspectives in Russia and the Circumpolar North* no. 116, K. Wessendorf ed. (2005): 68–73. From 2001 to 2011, the number would drop to three deputies.

93. For a list of these laws and detailed discussion of the work of the Assembly, consult Ekspertnoe Mnenie, "Politicheskaya Istoriya Korennikh Malochislennikh Narodov Severa Popolnyayetsya Novimi Stranitsami," [Russian: Политическая История Коренных Малочисленных Народов Севера Пополняется Новыми Страницами] (2016), <http://expert.or86.ru/articles/view/12>

94. *Ibid.*

95. G. Wilson, "Abandoning the Nest: Regional Mergers and their Impact on the Russian North," *Polar Geography*, 27 no. 3 (2003): 248.

negotiating compensation with Indigenous communities.⁹⁶ In the 2000s, many companies set up foundations to support Indigenous communities and created departments to negotiate cooperative agreements with organizations that represented Indigenous rights in KMAO.⁹⁷ Attending to Indigenous rights at different moments of the post-Soviet history of KMAO, thus, might have been a strategy for the KMAO governing officials to secure the legitimacy of their own interests. When the interests of the governing officials no longer aligned with Indigenous causes, their interest in supporting them diminished, as the recent history of the Assembly suggests.⁹⁸

In addition to working at the level of the government, KMAO advocates, similar to the Altai and Veps activists, created public organizations as a means of representing Indigenous interests. The leading and the oldest organization in the region is still *Spasenie Ugri*, formed in 1989 by seven women.⁹⁹ Members of these organizations worked in conjunction with Indigenous politicians at the level of the government, and also joined the government.¹⁰⁰ They have lobbied the okrug authorities on three key issues: ecological concerns and wellbeing of Indigenous communities; relationships between communities and industrial companies; and political representation of Indigenous Peoples in the administrative structures of the okrug.¹⁰¹ *Spasenie Ugri*, which grew to become an umbrella entity for the okrug with a number of branches functioning in different parts of the okrug, is among the key organizations working with the KMAO

96. Wiget and Balalaeva, *supra* note 91, at 24–25.

97. Alferova, *supra* note 26, at 155.

98. Most of the Assembly's legislative proposals to the Duma have been rejected. See Duma Khanti-Mansiyskogo Avtonomnogo Okruga – Ugri, *Perechen' Zakonodatel'nykh Initsiativ*, [Russian: Перечень Законодательных Инициатив] (n/d), <http://www.dumahmao.ru/assemblyoftherepresentativesofthenorth/initiatives/>

99. Balzer, *supra* note 89, at 149.

100. Tatiana Gogoleva, the president of the organization from 1989 to 1997, joined the KMAO government in 1990. Current president of the organization Aleksandr Nov'ukhov is also a member of the KMAO government. See Duma Khanti-Mansiyskogo Avtonomnogo Okruga – Ugri, *Sostav Assamblei*, [Russian: Состав Ассамблеи] (n/d), <http://www.dumahmao.ru/assemblyoftherepresentativesofthenorth/sostavAssamb/>.

101. G. Wilson, "'Matryoshka Federalism' and the Case of the Khanty Mansiysk Autonomous Okrug," *Post-Soviet Affairs* 17, no. 2 (2001): 175.

government.¹⁰² The work of professional Indigenous politicians with access to federal and international institutions dealing with Indigenous issues was likewise a supporting factor.¹⁰³

The history of Indigenous activism in KMAO suggests that the ability of Indigenous politicians to make strategic alliances with government officials and maneuver interests of government officers and industrial companies, has been vital in supporting the success of some of their campaigns. Knowledge of international Indigenous rights norms was also significant, given that in the 1990s and early 2000s, Indigenous rights legislature was drafted in Russia,¹⁰⁴ and much collaboration occurred between activists and scholars from outside of the okrug. While similar activities have taken place in other subjects of Russia,¹⁰⁵ it would be difficult to characterize these

102. Spasenie Ugri, *Deyatel'nost' Obshchestvennoy Organizatsii Spasenie Ugri*, [Russian: Деятельность Общественной Организации Спасение Югры] (2015), http://spasenie_ugry.ucitizen.ru/financial/

103. For example, Yereyey Aipin, a well-known Khant politician from KMAO, was working at the federal level in the 1990s on regulations protecting Indigenous rights prior to joining the KMAO Assembly in 2001. Aipin might have influenced developments at the okrug level by appealing not only to federal officials, but also to international partners.

104. Evidence suggests that Indigenous activists worked with international scholars and human rights advocates.

For example, in 2000, KMAO activists approached Andrew Wiget and Ol'ga Balalaeva, who were scholars working in the region, asking for help in drafting a law to protect folklore that would comply with international standards. The move resulted in the creation of the KMAO Law No. 37–03, “On the Folklore of the Native Minority Peoples of the North Living on the Territory of Khanty-Mansi Autonomous Okrug,” which went into effect on June 18, 2003. See B. Donahoe, “The Law as a Source of Environmental Injustice in the Russian Federation,” in *Environmental Justice and Sustainability in the Former Soviet Union*, J. Agyeman, and Y. Ogneva-Himmelberger eds. (Cambridge, United States of America: MIT Press, 2009), 37.

105. In the Chukotka Autonomous Okrug, the new government also fought successfully to secede from their host region, the Magadan Oblast, as a way to manage their affairs with a greater degree of autonomy. Indigenous politicians in this okrug had to lobby non-Indigenous post-Soviet administrative officials who were “hostile” to the Indigenous cause. See P. Gray, “Chukotka's Indigenous Intellectuals and Subversion of Indigenous Activism in the 1990s,” *Études/Inuit/Studies* 31, no. 1/2 (2007): 152. Today, professional politicians affiliated with RAIPON seem to lead activism in Chukotka. Similarly to *Spasenie Ugri*, the organization coordinates traditional economic activities of Indigenous communities in Chukotka and the work of smaller Indigenous organizations in the okrug. See Assotsiatsia Korennikh

mobilizations as elements of a unified all-state action. As the KMAO case suggests, the particularities of the groups' location within the administrative system of the transitioning Russian state significantly shaped the political wants and interests of Indigenous politicians. Many politicians aimed to gain access to political and economic resources; their wants precluded their mobilizations from gaining the character of an organized action which would spread outside of the *okrug's* boundaries, despite the fact that collaboration among politicians from different administrative units of Russia did take place. These factors also help explain the transformation of Indigenous mobilizations of the 1990s into professional activism in Russia, which remains the main form of Indigenous advocacy today.

b) Development of Professional Activism

The moment of transition of the Russian state also marks the rise of Indigenous professional activism. Two main forms of professional advocacy developed in post-Soviet Russia: professional politics, characterized by the top-down activism approach, where mobilization took place at different levels of the government; and advocacy by means of creating non-governmental organizations (NGOs), which existed through funds other than membership fees, becoming a form of vocation for their leaders.

The professional work of activists on the levels of the federal and regional governments became possible due to already existing Soviet

Malochislennikh Narodov Severa, *Assotsiatsii Korennikh Malochislennikh Narodov Chukotki Iсполnilos' 25 Let*, [Russian: Ассоциации Коренных Малочисленных Народов Чукотки Исполнилось 25 Лет] (2015), http://www.raipon.info/info/news/934/?sphrase_id=747188. The case of Indigenous rights in Sakha is also informative. It demonstrates how Indigenous politicians, located in the subjects of other nationalities—especially within the republics—worked with the regional (non-Indigenous) governments to ensure that new leaders would consider protection of Indigenous rights while developing new laws and means of governance. In Sakha, as might have been in KMAO, the leaders of the republic addressed Indigenous legislation as a way to demonstrate to the federal government their ability to self-govern, and thus ensure a degree of autonomy from Moscow. See Fondahl, Lazebnik, and Poelzer, *supra* note 15. Furthermore, see the work of Andrey Krivoshapkin, a politician who worked at the federal level during the Soviet and post-Soviet periods, who might have influenced the relative success of the Indigenous campaign in Sakha.

institutions supporting ethnic minority politics. The Soviet minority officials—often appointed by the party, and necessarily being members of the party—functioned as key components in controlling the political life of their communities, and as keepers of peace in the state during the Soviet era. Ironically, many of these officials became leaders of nationalist movements during the transition; the fact that they had exclusive access to political resources explains their prominence during the early period of self-determination campaigns.¹⁰⁶ A number of Indigenous politicians who would participate in drafting Indigenous legislation came from the Soviet system of state administration, including officials working at the federal level of government.¹⁰⁷ These leaders extended Soviet instruments of political organizing to support their activities in the environments of the new state. For example, not accidentally, the event marking the beginning of professional advocacy in Russia was an all-state Indigenous conference in Moscow (March 1990) organized by Indigenous intellectuals in conjunction with the Soviet government. While it was attended by high-level federal officials, including Michael Gorbachev, the key decision of the conference was the establishment of an Indigenous-led organization that would regulate the development of Indigenous issues. Thus was formed the Association of Small Peoples of the North (*Assotsiatsiia Malochislennykh Narodov Severa*), which would later become the Russian Association of Indigenous Peoples of the North (RAIPON). First presided over by Vladimir Sangi, a Nivh writer, RAIPON would grow to become the leading organization defending Indigenous rights in Russia.¹⁰⁸ This same year, Sangi and Evdodokia Gaer, an established

106. P. Roeder, "Soviet Federalism and Ethnic Mobilization," *World Politics* 43, no. 2 (1991).

107. Ereimei Aipin, *Ne Pogasnet Ochag*, [Russian: Не Погаснет Очаг] (2016), <http://nasevere-life.ru/kachestvo-zhizni/135-eremej-ajpin-ne-pogasnet-ochag>

108. Another key outcome of this conference was the creation of *Goskomsever* (the State Committee for the North of Russia), which coordinated Indigenous issues on the federal level until 2000, when it was annulled. The next significant event was a May 1991 *s'ezd* of deputies representing Indigenous communities, with more than 100 deputies attending. Among key outcomes of this conference was the creation of the Assembly of the Deputies of the Small-Numbered Peoples of the North (*Deputatskaya Assambleya Malochislennykh Narodov Severa*). Envisioned as a parliament for Indigenous politicians, with Ereimei Aipin chosen as its first chairman, this body primarily dissimilated international norms regarding

Soviet politician of Nanai nationality, represented Russia at the UN Working Group on Indigenous Issues in Geneva for the first time.¹⁰⁹

These Indigenous politicians relied on their Soviet-style training and experience to conduct their campaigns and to work with government officials to create Indigenous rights laws, and/or institute change to existing provisions. For example, the means of political organizing that Indigenous professional politicians chose were strikingly similar to those supporting the functioning of Soviet political institutions. The main form of the high-level Indigenous political conference became *s'ezd*, which by its function and meaning was an evolved form of a Soviet party conference. Similarly to the Soviet *s'ezd*, the Indigenous *s'ezd* became the highest decision-making body, where delegates, officially elected to represent their communities, made decisions and elected representatives to political structures and/or organizations. With RAIPON growing into a leading body that would coordinate legal and political developments of Indigenous rights in Russia, all-state Indigenous *s'ezds* would be organized under RAIPON auspices once every four years. The latest conference, VIII *s'ezd*, took place in March 2017 in Yamal. In parallel with these all-state events, there emerged congresses and conferences organized at the level of the subjects of the Russian federation, and/or by major Indigenous rights organizations, functioning similarly to the all-state Indigenous *s'ezd*. These events brought together representatives of diverse communities, often belonging to one ethno-linguistic group, as well as Indigenous politicians, scholars, and administrative officials.¹¹⁰ Another form of

human and Indigenous rights and published regional legislature and documents of organizations of Indigenous peoples until 1995, when it was closed. See Z. Strogalschikova, "Korennye Malochislennye Narodi Rossii v Politike Gosudarstva: Formirovanie Zakonodatel'stva i ego Realizatsiya v Postsovetskiy Period," [Russian: Коренные Малочисленные Народы России в Политике Государства: Формирование Законодательства и его Реализация в Постсоветский Период] *Finno-Ugric World*, 1 (2008): 50.

109. Strogalschikova, *supra* note 108, at 50.

110. Thus, members of Finno-Ugric communities (regardless of their status) organized into an Association of Finno-Ugric Peoples of Russia. Since the 1990s, they have convened by means of both *s'ezdi* and congresses, with congresses since 1994 taking on an international character given that members of some Finno-Ugric communities come from outside of Russia (Saami and Hungarians). See V. Tishkov, *Pravovoy Status Finno-Ugorskikh Yazikov I Etnokulturnie Poterbnosti*

gathering has been congresses, which, while also functioning as a means for Indigenous scholars and politicians to convene, operated and continue to operate as forums that sometimes have an international scope.

In many ways, Indigenous politicians' choice of political tools and ability to employ institutions of state governance for their needs manifests their adaptation to realities of a new state, which in turn was adapted from the Soviet system of governance to prevent the fragmentation of Russia during the time of transition.¹¹¹ The prominence of professional Indigenous politicians in fostering change also signifies that forms of traditional leadership within communities have lost their significance as instruments of community governance, which in part resulted from the seventy years of Soviet rule.¹¹²

What emerged was a relatively new form of politics within post-Soviet Russia: NGO-based activism, where the functioning of the NGO depended on transnational and domestic resources. Not all Indigenous organizations that emerged in the 1990s were strictly means for their leaders to advance the interests of their communities while also advancing their professional careers. A large number of organizations that evolved from Soviet public organizations functioned on a volunteer basis, and as a means to support social ties among community members. What is significant for this study is that a number of NGO

Rossiyskoy Shkoli, [Russian: Правовой Статус Финно-Угорских Языков и Этнокультурные Потребности Российской Школы] (2011), 70–5; 92–4.

111. Smith, *supra* note 21, at 391.

112. The Soviet system of centralized governance and the territorial-administrative division of the new state did not correspond and, at times, contradicted local Indigenous systems and means of governance. See Vakhtin, *supra* note 59, at 24–27. It introduced new ways of managing community issues and stripped many traditional leaders (especially the shamans) of their powers. While in many communities, particularly remote ones, traditional structures of governance were partly retained, traditional leadership increasingly could not manage economic development, forced resettlement of their people (especially in the 1950–1960s), and migration of other persons to their historical homelands. For example, in the 1960s, more than 40 Shor settlements were abandoned as a response to the forced resettlement projects by the federal government of the Russian Republic. The Shor's economic enterprises were recognized as unprofitable and were closed with many people losing their jobs; the state-supported housing projects in rural areas were also stopped, leading the Shor to move to urban areas to survive. See Vakhtin, *supra* note 59, at 53. With the Soviet system developing, many Indigenous communities fell into dependency on local and regional administrations.

leaders simultaneously participated in the state political institutions. In Khanty-Mansi Autonomous Okrug and Yamalo-Nenets Autonomous Okrugs, for example, NGOs became the key legal entities to propose Indigenous candidates for the regional government.¹¹³ Thus, these organizations became instruments to voice Indigenous concerns within a larger polity of the Russian state, yet outside of the official institutions of state governance (i.e., by providing Indigenous politicians with an alternative means to conduct their campaigns, at times engaging with international partners). Activities of these organizations differed depending on the expertise of the leaders: some focused on culture and language revival (which seems to be a particularly prominent area among NGOs of Finno-Ugric communities); many—as is particularly visible in the case of Altai organizations—lobbied against environmental degradation; and many helped rural dwellers appeal to local and regional administrators regarding injustices committed against them.¹¹⁴ Some organizations, like LIENIP, used the means of legal education to help communities resist the abuse of rights on regional and local levels by creating educational events and materials which explained laws to the local communities and assisted in appealing their cases to the regional and federal administrations. Some activists, most visibly members of RAIPON, also represented the Russian Indigenous cause at international fora on Indigenous rights, primarily at the United Nations. What ensured the success of these organizations, as research on this subject matter suggests, is the ability of their leaders to determine how to gain funding and allies; and, especially during the past decade, their skills, power and willingness to respond to the changes in the political climate of the state, given the adoption of measures that severely restricted the activities of non-state actors since 2011.¹¹⁵ Today, the major NGOs in Russia are funded

113. Ivanchenko, Kinev, and Lubarev, *supra* note 41.

114. Rohr, *supra* note 25, at 24.

115. Among several provisions adopted on the federal level in this area, the most drastic measures include the 2011–2012 revisions to the Federal Act “On Non-Profit Organizations” which now requires NGOs accepting grants from international institutions to register as “foreign agents” if they are involved in political activities. Since then, the government has been conducting campaigns of checks and audits, leading many NGOs to stop functioning or to limit their activities. See Rohr, *supra* note 25, at 34–35.

by regional governments and/or industrial companies (especially if an organization functions as a liaison between industries, government and communities as, for example, with *Spasenie Ugri*; and/or they function in partnership with research and cultural establishments as, for example, does the Society of Veps Culture).

Despite a rather promising beginning of professional activism in Russia, since the mid-1990s, Indigenous politicians began losing their political privileges at the federal and regional levels. The number of Indigenous representatives working with federal and regional authorities went down. In the Duma of 1994–1996, there were only three deputy representatives of KMN; from 1996–2000, there were two; from 2000–2004, there was one; and in 2008, there were no representatives working as deputies on the federal level.¹¹⁶ The number of Indigenous deputies was also decreasing at the regional levels as was, for example, visible at the level of autonomous okrugs where the quota systems ensuring Indigenous political participation were abolished. Gradually, the role of Indigenous politicians in Russian politics transformed into that of consultants to authorities with little power to influence law making or to make decisions regarding their communities. Today, the involvement of Indigenous politicians in the management of Indigenous issues is conducted primarily by means of advisory bodies, or councils on both federal and regional levels. The two Advisory Councils on the Issues of Small Indigenous Peoples of the North, Siberia, and the Far East of the Russian Federation were established in the Siberian federal okrug of Russia (2002), and recently in the Northwestern Federal Okrug (2013).¹¹⁷ These Councils are consultative bodies that coordinate the work of regional Indigenous organizations and their relationships with regional and federal authorities. The work of each council is overseen by a *polpred*, or presidential envoy, who is nominated by the president to administer the work of an okrug. The other members of the council include presidents of regional Indigenous organizations, scholars, members of the executive branches of the government, and federal inspectors to

116. Strogalschikova, *supra* note 108, at 50–1.

117. This date is estimated, given that the Council convenes twice a year, with the third meeting taking place in May, 2014.

the region. The Council of the Siberian okrug, for example, consists of 37 members, with 16 leaders from regional Indigenous organizations among whom two hold positions as deputies. Of the rest of the members, nine are scholars, and the others are representatives of government authorities. The Council of the Northwestern okrug consists of 23 members with 11 leaders of regional organizations, many of whom are also scholars and professionals in the area of Indigenous cultures, with the rest being members of the government.¹¹⁸ The current President of RAIPON, Grigorii Ledkov, is a federal deputy and a member of both Councils, yet was appointed by the president (versus being elected by Indigenous politicians). While the Siberian Council provides expert advice to the authorities, many recommendations, particularly those related to the political opportunities of Indigenous communities, remain unaddressed by regional authorities.¹¹⁹ Similar expert bodies have also been created at the level of the subjects. In KMAO, for example, a recently created body to handle Indigenous affairs—the Council of the Representatives of Indigenous People of KMAO at the Government—supports Indigenous political participation by inviting members of Indigenous organizations to discuss means of regulating Indigenous communities with municipal administrations and higher-level government officials. The Council is headed by a Vice-Chair of the KMAO, a governor responsible for internal affairs with no legislative powers.¹²⁰ Similar bodies were also created in the Altai Republic in 2014, and in Sakha in 2012. The power of creating laws—a power that KMAO Indigenous politicians used to have—has now been replaced by Indigenous politicians’ roles as experts, advisors

118. See, respectively, Ekspertno-Konsultativnii Soviet po Delam Korennikh Malochislennikh Narodov Severa, Sibiri i Dal'nego Vostoka, *Sostav*, [Russian: Состав] (n/d), <http://sfo.gov.ru/polpred/orgs/sovets/sovets7/sostav/>; and Konsul'tativnii Soviet Severo-Zapadnogo Federal'nogo Okruga po Voprosam Korennikh Narodov, *Sostav Konsultativnogo Soveta*, [Russian: Состав Консультативного Совета] (2015) http://szfo.gov.ru/sovets/sovets_narod/.

119. Chemchieva, *supra* note 57, at 151.

120. Government of Khanty-Mansi Okrug, “Postanovlenie o Soviete Predstaviteley Korennikh Malochislennikh Narodov Severa Khanty-Mansiyskogo Okruga – Ugri pri Pravitel'stve,” [Russian: Постановление о Совете Представителей Коренных Малочисленных Народов Севера Ханты-Мансийского Округа – Югры при Правительстве] (2016), http://kmns.admhmao.ru/upload/iblock/1e0/149_p.pdf

or liaisons between communities, administrators and, in some parts, industrial companies.

Thus, post-Soviet Indigenous professional advocacy evolved from Soviet political institutions. Given the difficulties Indigenous professional activists faced, the most they were able to gain—especially during the early stages of activism—was compensation to overcome political and cultural marginalization within the state system. This took the form, primarily, of political opportunities for Indigenous leadership mostly at the local and regional (i.e., subject) levels. Frequent dependency of Indigenous leaders on the interests of the authorities and/or donors, as well as competition for funds, contributed to the lack of solidarity among Indigenous politicians. Furthermore, their work was often separated from political upheavals at the level of communities: local struggles did not generate events of professional politics, although the work of Indigenous activists at the federal level might have shaped mobilizations at the local levels and brought some changes to the communities.

At the same time, this form of advocacy cannot be considered an instrument that supported the continuation of Soviet-style treatment of Indigenous communities. Today, the function of advocates is reduced to that of consultants and experts at best. Evidence suggests that professional Indigenous advocacy in Russia was, from the very beginning, shaped by the key goals of the international Indigenous movement—the affirmation of Indigenous sovereignty. First, the work of these politicians signifies something more than amending local and regional conditions, given their contribution to the development of laws and policies in the federal and international arenas. These politicians went beyond the immediate needs of their home communities and lobbied for a change of the state treatment of groups with Indigenous status. Furthermore, a number of unprecedented developments took place at the regional, federal, and international levels, where Indigenous advocates, who became professional politicians, participated in revolutionizing the area of Indigenous rights as the KMAO example demonstrates in particular. This work, supported by collaboration with Indigenous rights advocates from other countries, has helped shape a new understanding of indigeneity within the Russian context, despite

all of its structural limitations. This is supported by the development of a new form of consciousness among Indigenous activists, who forged a new collective identity as a means to defend their position and to define their claims and vision of rights using the international human rights tools and system. International support for the Indigenous cause, particularly from Scandinavia, Canada, and the United Nations, as well as collaboration with scholars and rights advocates, supported the work of Indigenous politicians and helped maintain advocacy actions. Thus, professional Indigenous politics led to the transformation of the concept of “indigeneity” as both a legal idea and a part of the political identity of the activists, from an idea signifying a dependency status toward a notion of a free people with a right to their self-determined existence.

c) Analysis: Abortive Indigenous Movement

A number of scholars refer to the events of post-Soviet Indigenous advocacy as a movement.¹²¹ These scholars imply that these mobilizations took the form of an organized all-state sustained action, which involved a significant number of participants united on a volunteer basis by common aims, and which in turn shaped their group identity and created a sense of solidarity among the participants. While the Indigenous struggles in the post-Soviet Russian state could be characterized by the similarities of the aspirations of Indigenous leaders, by the instruments they used and the political and legal marginalization of Indigenous groups, a careful analysis of specific historical circumstances of each struggling community would demonstrate that these struggles never developed into an organized all-state sustained form of mobilization. On the contrary, a number of factors influenced disunity among the struggles’ participants and, as some evidence suggests, even created competition among participants with opposing interests, given the scarcity of resources they were able to obtain. Despite complementing efforts of politicians defending Indigenous positions on the international and, to a degree, federal

121. See Rohr, *supra* note 25; Stoyanova, *supra* note 12; T. Köhler and K. Wessendorf. *Towards a New Millennium: Ten Years of the Indigenous Movement in Russia*, IWGIA Document 107, (Copenhagen, Denmark: IWGIA, 2002).

levels in post-Soviet Russia, Indigenous struggles remained non-sustained local forms of resistance that were destined to fail.

The primary factors that contributed to the abortive character of the Indigenous movement in post-Soviet Russia were structural, stemming from the wide geographical distribution of Indigenous communities. Wide patterns of living historically prevented Indigenous persons from gaining access to power by means of election, given that they were (and remain) a demographic minority. This factor also contributed to Indigenous underrepresentation in the power structures of their regions. During the transition, they had to negotiate their interests with the interests of other leaders and/or rely on these other leaders in the representation of their interests; this therefore contributed to the scarcity of resources these activists could use. This factor gains further significance given a correlation between the position of the Indigenous territories (as federal subjects) in the hierarchical structure of the post-Soviet administrative system and the amount of political resources Indigenous activists could use.¹²² In most situations, they found themselves either as residents of the subjects existing in this status with no connection to the nationality of the subject's residents, or as residents on the territories designated as homelands to other nationalities, and this significantly limited their political opportunities. Even in the okrugs rich with natural resources, as is particularly evident in the case of Khanty-Mansi Autonomous Okrug, they were underrepresented in the okrug governing structures. Thus, these activists had to join federal and/or regional governments, which led to their dependency on the interests of the regional and/or federal authorities. As the KMAO case particularly suggests, the

122. This claim rests upon the findings of studies on ethnic mobilizations in post-Soviet Russia, whose authors demonstrate that the status of a territory in the hierarchy of the Soviet territorial-administrative system determined how much resources activists and politicians would have to mobilize during the 1990s. Scholars who study ethnic movements during the late 1980s-1990s emphasize a correlation between the status of the region within the overall Soviet system of administration and the intensity of resistance during the time of transition. The higher the position of a region within the federal system, the more intense and focused became the movement to secede, in part because the new leaders could access political resources in support of their struggles. See D. Gorenburg, *Minority Ethnic Mobilization in the Russian Federation*, (Cambridge, United Kingdom: Cambridge University Press, 2003); and Roeder, *supra* note 106.

success of political campaigns of Indigenous leaders in the subjects of the transitioning Russian state depended significantly on the degree to which the Indigenous cause corresponded to the interests of the new political leaders, and the success of the cooperation between Indigenous and non-Indigenous politicians.

The lack of adequate communication and transportation also contributed to the difficulties in cohesively organizing. The legal illiteracy common among Indigenous communities contributed to the abortive character of Indigenous protests: the majority of Indigenous persons living in Russia remained unaware of the state and regional norms to which they could appeal (and of the international treatment of Indigenous Peoples). The poverty that many groups experienced during the time of transition and the insufficient means of transportation and communication during the late 1980s and early 1990s were additional factors that prevented these leaders from effectively organizing.

These factors were reinforced by the socio-historical circumstances of Indigenous groups. Indigenous communities, even within the boundaries of one peoples, tended to be decentralized; the communities confined their affairs, including the ownership of land, to the kinship structures, where leadership powers were vested with leaders of extended families. These specifics of Indigenous existence contributed to the difficulties of political organizing among these groups since the moment of the first dissent in the early times of the Soviet Union. The members of communities classified as one peoples and/or as Indigenous individuals did not perceive themselves as belonging to one community (and/or one polity), and thus could not *act* as one during the time of political change (while the instances of Indigenous leaders combining resistance forces did take place).

d) Conclusion

To conclude, the system of governance of the Russian state recreated forms of structural violence against Indigenous persons inherent in the Soviet ways of treating these communities, and contributed to both the abortive character of Indigenous upheavals at the regional levels in the 1990s, and to the downfall of professional Indigenous activism

in the 2000s. One of the key features that made Indigenous groups vulnerable to the pressures of structural violence in Russia stemmed from the wide geographical distribution of their communities. This lack of correspondence between the geographical location of Indigenous groups and the patterns of territorial administration of the state historically prevented Indigenous persons from using the state's administrative apparatus in support of their political interests. Further, this factor prevented Indigenous struggles from becoming an organized movement and contributed to the internal competition among Indigenous activists, which weakened their potential to support the rights of their communities. Local Indigenous activists were not united by their commonality of interests such as private ownership of land and resources that they would be willing to come forth to defend (despite that they appealed to the norms of self-government). Neither did they have membership in one political organization so as to form or even envision a unified statewide effort as a means of gaining access to political power. In many ways, they acted similarly to the leaders of larger ethnic upheavals whose struggles, likewise, despite diversity of their duration, strength and outcomes, were fragmented events. At the same time, Indigenous politics remain the main force that led to the transformation of indigeneity from a property signifying the dependency status of these groups to a notion of free people with a right to self-determined existence. Supported by the waves and discourses on nationalism within post-Soviet Russia as well as international developments in support of Indigenous rights, Indigenous activism in Russia signifies a step forward despite the current rights abuses against Indigenous communities.

III. Consequences of Structural Violence

The final discussion examines the effects of structural violence. It uses evidence from studies of Indigenous demographics, and provides socio-economic indicators to demonstrate how the infringement on the political rights of Indigenous communities affects the Indigenous lifespan by shaping difficulties of economic survival for these communities.

Indigenous demographics

a) Data Inconsistencies

Traditionally, demographic characteristics of a group remain the basis for assessment of quality of life experiences of the population examined, despite controversies surrounding this hypothesis.¹²³ Growth is interpreted as evidence of life conditions that are favorable for the wellbeing of a group; whereas a decline signifies that a group experiences difficulties that negatively influence birth rate and the mortality of its members. When applied to the analysis of the population trends of the Russian Indigenous communities, this approach, however, yields paradoxical results. A census-based examination of Indigenous demographics suggests a recent slight growth experienced by these groups: the number of persons who self-identified as Indigenous increased by about 3%: from 252,261 in 2002 to 257,895 in 2010 (Table 1). The growth also seems to be continuous, at least for the original 26 groups: the number of individuals registered as members of these 26 communities increased by 13.3% since the last Soviet census of 1989: from 184,448 in 1989 to 208,980 in 2002 (Table 1). Given that the overall Russian population has been decreasing by 1.5% from 1989 to 2002, and by 1.7% from 2002 to 2010, these findings suggest a seemingly optimistic forecast for Indigenous groups (Table 1). This forecast though, contradicts the projections of the population trends that would account for the actual conditions Indigenous individuals face given their underrepresentation in the political and economic structures of the state. Why?

Further research into the subject matter reveals that factors other than increasing birth rates and decreasing mortality have influenced the state official statistics on Indigenous populations. One of the key factors is the inconsistency of census data: census data contradict statistics on Indigenous populations collected by Russian scholars, and findings from the studies of Indigenous demographics. Zoia Sokolova and Valeriy Stepanov report that Indigenous populations were steadily

123. F. Andrews, "Population Issues and Social Indicators of Well-being," *Population and Environment* 6, no. 4 (1983): 210–230.

declining throughout the 1990s.¹²⁴ The demographical studies of births and deaths also suggest that the number of Indigenous individuals has been decreasing since the late 1980s.¹²⁵ The Russian census is not designed to be an instrument of illustrating population trends; it merely summarizes citizens' responses to the census questionnaires. Given that Article 26(1) of the Russian Constitution recognizes the right of a person to choose his or her nationality, Russian citizens are free to decide to which community they believe they belong. The reasons why people choose a particular group during the census data collection vary, which leads to the census reports being only a partially accurate source of data on Indigenous populations and the overall ethnic composition of Russia. Nevertheless, the census continues to function as the main source of information for federal agencies and, often, for scholars.

The discrepancies of the methods of census data collection, and post-Soviet changes in the mechanisms of registration of a person's nationality, remain the leading factors influencing the inaccuracy of the census-based projections of Indigenous populations trends. Specifically, the census-based population growth among many Indigenous groups is influenced by changes in the ways that people self-identify.¹²⁶ Andrew Kozlov, for example, reports that during the post-Soviet period, a predominant number of children from inter-ethnic

124. Z. Sokolova, and V. Stepanov, "Kategorija "Korennie Malochislennye Narodi Severa" i Problema Statisticheskogo Ucheta," [Russian: Категория «коренные малочисленные народы Севера» и проблема статистического учета] in *Etnicheskie Kategorii i Statistika*. [Russian: Этнические Категории и Статистика] Elena Filippova ed., (2008), 76.
125. D. Bogoyavlenskij, "Russia's Indigenous Peoples of the North: A Demographic Portrait at the Beginning of the Twenty-First Century." *Sibirica*, 9, no. 3 (2010): 91–114; and D. Bogoyavlenskij, "Poslednie Dannie o Chislennosti Narodov Severa," [Russian: Последние Данные о Численности Народов Севера.] *Demoskop Weekly* (2012): 531–532. <http://www.csipn.ru/glavnaya/actual/1204-poslednie-dannye-o-chislennosti-narodov-severa#.VszAZPkrLIU>
126. D. Bogoyavlenskij, "Vimirayt li Narodi Severa?" [Russian: Вымирают ли Народы Севера?] *Sociological Studies* 8 (2005): 60–1; A. Kozlov, "Izmenenie Genofonda Severnikh Populjatsiy: "Zakat Etnosov" ili Formirovanie Novoi Adaptivnoi Gruppy?" [Russian: Изменение Генофонда Северных Популяций: Закат Этносов или Формирование Новой Адаптивной Группы] *Vestnik of Archaeology, Anthropology and Ethnography* 3, no. 26 (2014): 100; and Sokolova and Stepanov, *supra* note 124, at 77.

families of the Saami and the Nenets—from 80% to 90%—chose the identity of an Indigenous parent over a non-Indigenous one.¹²⁷ Given how historically different the Saami and the Nenets are, this similarity suggests that the trend could be common among other Indigenous communities.¹²⁸ The changes in self-identification might have influenced the post-Soviet population increase of the Khant living in the Khanty-Mansi Autonomous Okrug.¹²⁹ Elena Pivneva, for example, reports that in some parts of the okrug, the share of persons who might have changed their identity may be as high as 17% to 28%.¹³⁰ From 1989 to 2002, the population of the Khant living in the okrug increased by 40%: from 22,521 to 28,678. From 2002 to 2010, it increased again by 9%, reaching 30,943 in 2010.¹³¹ Natural factors cannot account for this unusual population growth. Likewise, a relatively steady increase in the number of the Dolgan in the Sakha Republic since the late 1980s might be due to identity change.¹³² These processes might have affected the demographics of a number of other Indigenous communities, scholars suggest, given how visible the decline appears among Nganasan, Chuvan, Aleut and Shor between the 1989 and 2002 censuses; and how significant the growth is (20%–30% increase) among the Mansi, the Ket, the Yukagir, the Itelmen, the Selkup, the Evenk and the Tofalar during the same period.¹³³

127. Kozlov, *supra* note 126, at 100.

128. The Saami demonstrate the highest share among all Indigenous Peoples living in Russia of mixed marriages, reaching 90%–95% in 2010. They tend to reside primarily in the Murmansk region of the Kola Peninsula, and have a high percentage of urban dwellers: more than 40%. The Nenets, on the other hand, are spread out across nine different administrative units. Some reside in urban areas (the average for urban dwellers across all the Nenets is 21%) while others are nomads involved in reindeer herding. The Nenets tend to marry among themselves, with inter-ethnic marriages fluctuating between 10%–11%, which is again an average for all the different Nenets communities. All data are from Federal State Statistical Service, “Vseroiskaya Perepis Naselenia. Tom 4. Natsional’nyi Sostav,” [Russian: Всероссийская Перепись Населения. Том 4. Национальный Состав] (2010), http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm

129. Bogoyavlenskiy, *supra* note 126, at 58–9.

130. Pivneva, *supra* note 55, at 86.

131. See respectively, Sokolova and Stepanov, *supra* note 124, at 78; and Pivneva, *supra* note 55, at 84. Also consult Table 1 of this work.

132. Bogoyavlenskiy, *supra* note 126.

133. Sokolova and Stepanov, *supra* note 124, at 77–78.

The changes to the categories defining indigeneity further influenced the inaccuracy of the census records of Indigenous demographics. These changes are related to the recent “carving” of separate peoples (i.e., those with the status of KMN) out of larger nationalities to which these peoples used to belong as sub-groups during the Soviet era: by the year 2000, the number of communities with Indigenous status was expanded from the original 26 groups to the current 40 groups. In some cases, a sub-group was created out of a larger group with an Indigenous status. For example, the Enets and the Taz, prior to gaining Indigenous status in 2000, were registered as sub-groups of the Indigenous Nenets and the Udege respectively. Similarly, the Kerek and the Alutor, who gained their status in 2000, were until then considered to be sub-groups of the Indigenous Koryak. This method of creating new communities affected demographics of the original groups that exhibited negative changes. While the separation of the Enets from the Nenets did result in changes in the Nenets demographics, the number of Udege went down as the Taz were registered as a separate group, from 2,001 in 1989 to 1,657 in 2002; and the number of the Koryak decreased from 9,242 in 1989 to 8,743 in 2002. Likewise, the demographics of the Indigenous Oroch decreased with the recognition of the Orok, historically registered as a sub-group of the Oroch, as an Indigenous group in 2000.¹³⁴ Similar processes affected the demographics of the Altai, which decreased more than 10% from 69,400 in 1989 to 62,100 in 2002 with the recognition of the Altai sub-groups as having Indigenous status.¹³⁵ Given that for the most recently added groups, comprehensive statistics are available only for the Shor and the Veps, it is difficult to grasp the actual processes within Indigenous communities by examining census data alone.

134. *Ibid.*, 77. Table 1.

135. See respectively D. Bogoyavlenskiy, *Perepis' 2010: Etnicheskii Srez*, [Russian: Перепись 2010: Этнический Срез] (2010), http://www.perspektivy.info/history/perepis_2010_etnicheskij_srez_2013-04-28.htm, and Chemchieva, *supra* note 57, at 178. The five Altai communities who gained the status of KMN in 2000, were until that moment considered sub-groups of the larger Altai nationality: the Tubalar, the Chelkan, and the Kumandin were registered as the northern Altai sub-groups, while the Telengt and the Teleut were considered the southern Altai sub-groups (see Part II of this chapter for more).

To conclude, the data on Indigenous populations are fraught with inconsistencies. In addition, the deterioration of the Soviet statewide system of documentation of socio-economic indicators and Indigenous demographics further influenced this situation. Today, the regional administration is responsible for gathering these statistics, but in some regions the administrators are reluctant to collect this data and/or have stopped doing so.¹³⁶ This situation is particularly grave for the Indigenous persons living in urban areas, since the administrators tend to focus only on the areas registered as TTNU while gathering their data, and these areas are primarily the rural territories.¹³⁷ Consequently, the analysis of Indigenous demographics must be approached with great care, particularly when constructing a comparative study.

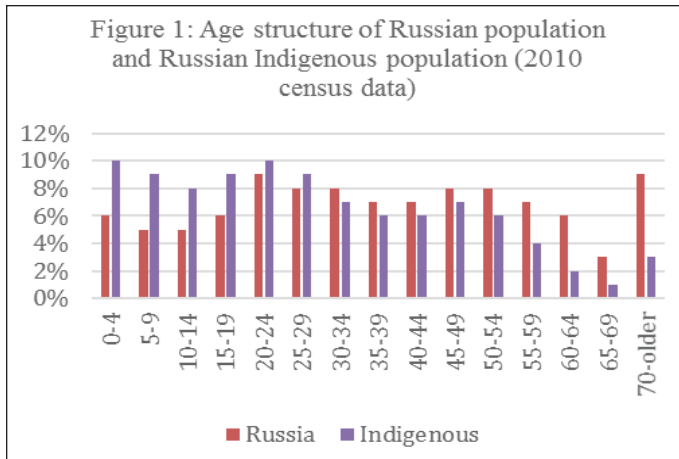
b) Analysis of the Demographic Processes

Studies of the demographic processes among separate Indigenous groups provide a more reliable picture of the population trends among Indigenous communities. In his examination of the natural factors influencing Indigenous demographics between 2002 and 2010, Dimitrii Bogoyavlenskiy reports a continuous decline. Among the peoples with a history of assimilation, the Veps, the Shor, the Saami, the Chuvan and the Aleut, the decline is particularly pronounced. Only seven peoples—the Nenets, the Dolgans, the Evenk, the Even, the Khant, the Mansi and the Yukagir—demonstrate relatively steady positive population dynamics, he reports. However, just among the Nenets living in Yamal and Taymir and involved in reindeer herding, the population growth can be explained by natural factors. Among other people, Bogoyavlenskiy concludes, changes in demographics must be attributed to factors other than those influencing natural growth.¹³⁸ A closer look at the demographics supports Bogoyavlenskiy's projections.

136. N. Novikova and D. Funk, *Sever i Severiane* [Russian: Север и Северяне] (2012), 5.

137. Sokolova and Stepanov, *supra* note 124, at 75.

138. Bogoyavlenskiy, *supra* note 126.



As Figure 1 demonstrates, the individuals of Indigenous origin tend to be much younger than the overall population of Russia: 46% of all individuals registered as members of Indigenous communities in 2010 are younger than 25 years old, whereas for all Russia this number is 29%. The estimated median Indigenous age range is between 21 and 29, with the average being 28 despite variations within the Indigenous populations, while the average age of the population of Russia is 38.¹³⁹ The fact that Indigenous communities tend to be younger than the overall Russian population is explainable by a relatively high birthrate among Indigenous women, which has historically been the case.¹⁴⁰ In 2010, the average number of children per 1,000 Indigenous women was 1,914 or 30% higher than that for the overall Russian population, which amounted to 1,469 children, as calculated using the data from the 2010 census. At the same time, the lifespan of an Indigenous person is much shorter than that of an average Russian: only 10% of Indigenous individuals are older than 55 years old, whereas for all of Russia this number is 25% (Figure 1).

Mortality rates among the youngest (0–15 years) and oldest (60 years and older) Indigenous groups tend to be higher than the average

139. These numbers are calculated using the data from the Federal State Statistical Service. See Federal State Statistical Service, *supra* note 128.

140. D. Bogoyavlenskii, “Russia’s Indigenous Peoples of the North: A Demographic Portrait at the Beginning of the Twenty-First Century.” *Sibirica* 9, no. 3 (2010): 101–103.

for all Russia.¹⁴¹ Thus, Indigenous persons face a much shorter life span than that projected as an average for a Russian citizen. These estimations are consistent with a recent IWGIA study, whose author reports that only 37.8% of Indigenous men and 62.2% of Indigenous women in Russia reach the age of 60.¹⁴² Given that these trends have remained consistent since the late 1980s, one could safely project that Indigenous populations in the Russian state have been steadily decreasing.

c) Socio-economic conditions

Among the main factors that contribute to the high mortality rates among Indigenous populations are poverty and poor health services. The diversity of the economic conditions of the regions of the Russian Federation makes it practically impossible to assess the socio-economic situations facing Indigenous groups in different parts of the state within the scope of one essay. Thus, a few characteristic estimations are proposed instead to illustrate the situation. Poverty is a common problem for most Indigenous communities, yet it tends to be particularly prominent for rural inhabitants who constitute about two thirds of the total Indigenous population.¹⁴³ The rural Indigenous residents must be engaged in the economic practices that would resemble their traditional means of subsistence: agriculture, hunting, and forestry, as these practices appear in the census. These occupations are among the lowest paid, generating about three times less money than an average income in Russia. Given that an average income for 2010 was also rather modest—10,668 rubles or about \$365—a rural Indigenous worker would remain at the bottom of the economic ladder. Yet extreme poverty results from a lack of jobs, which in turn directly contributes to the short lifespan among Indigenous groups.¹⁴⁴ Unemployment remains a key problem across all Indigenous communities, where among some groups (for example, the Veps) the level

141. Rohr, *supra* note 25, at 33.

142. *Ibid.*, 32.

143. These calculations are based on the data from the 2010 Russian census data, with the following estimations: 174,338 of Indigenous persons are rural dwellers while 87,134 live in urban areas, or 67% and 33% respectively. See Federal State Statistical Service, *supra* note 128.

144. Kozlov and Lisitsyn, *supra* note 53, at 88–89.

of unemployment reaches over 50% of the entire working population, or among those 15–72 years old.¹⁴⁵ One of the key factors contributing to unemployment is the history of limited education opportunities for many communities, especially those located in rural areas.¹⁴⁶

The other main sources of income, apart from subsistence farming, are pensions and federal subsidies. The amount of a pension differs from one region to another in correspondence with the overall federal estimation of living expenses in the Russian regions. In 2016, in Karelia, for example, the monthly pension was 14,670 rubles (or about \$195); in Komi it was 9,250 rubles (or about \$123); in Chukotka it was 23,100 rubles (or about \$308), with an average amount of pension in Russia being 12,400 rubles per month (or about \$165).¹⁴⁷ Living in the North, though, is characterized by a higher cost of living, which contributes to historically pronounced poverty among the majority of Indigenous communities. For example, in 2016, the average prices of food in the North were much higher when compared with the pensions: a loaf of bread may cost between 30 cents and a dollar; a liter of milk is about 80 cents; meat prices may be between \$2.50 and \$5 per kilogram, and fish could be about \$7 per kilogram.¹⁴⁸ Fruits and vegetables are costly, as well as cheeses and grains, particularly if they are imported. Prices of alcohol and tea, highly consumed among Northerners, are also relatively high. In addition to the cost of food, one must pay for communal services, which are rising in cost, and at times must also pay for rent and health services. Thus, the majority of Indigenous persons in the North face extreme poverty.

Poor health services, especially in remote areas, further influence high mortality rates among Indigenous communities since this factor contributes to high rates of illnesses. Johannes Rohr, in his 2014 report for example, estimates the percentages of death from infectious diseases among Indigenous communities is three times the national

145. Federal State Statistical Service, *supra* note 128.

146. Stoyanova, *supra* note 12, at 171.

147. These numbers are calculated in accordance with the data obtained from Pensionniy Ekspert, a Russian independent information project on the pension system. The rate of conversion used was the one valid as of May 2016.

148. Tsenomer, *Tseni na Produkty v Rossii*, [Russian: Цены на Продукты в России] (2016), <http://tsenomer.ru/russia/>

average, causing 60 deaths per 100,000 individuals.¹⁴⁹ Heart diseases, hypertension and cancer are also common across Indigenous groups.¹⁵⁰ Death from unnatural causes, including suicide, is also an acute problem, particularly among men. While in Russia, on average, about 15% of all deaths are from unnatural causes (injuries, suicide, homicide), among Indigenous persons this number tends to be higher. For example, in 2013, the rates of suicide in Nenets Autonomous Okrug, Chukotka Autonomous Okrug, and the Archangelsk Rayon were 1.5–2.5 times higher than the Russian average.¹⁵¹ Andrew Kozlov and Dmitry Lisitsyn report that in 2008 in some regions it was three or even four times the national average; Komi Republic and Koryak Autonomous Okrug, according to these researchers, were the areas with the highest rates of reported suicide for that year.¹⁵² Russian scholars estimate that overall, Indigenous individuals inhabit regions with a relatively unhealthy suicidal climate despite the decrease in the numbers of suicide in Russia. A number of suicides occur while people are intoxicated; Kozlov and Lisitsyn estimate the number to fluctuate from 24% to 55%. They suggest that in many Northern communities, alcoholism is a serious problem, and is particularly grave for the Chukchi.¹⁵³ Today Chukotka is the leading Russian region by rate of alcoholism, with 7.3% of the total population affected by the disease.¹⁵⁴ Given that death from unnatural causes tends to affect more men than women, there is a pronounced gender imbalance, particularly in the populations over 30. According to the 2010 census, among all Indigenous communities but the Aleut, the number of women

149. Rohr, *supra* note 25, at 33.

150. UNDESA, “State of the World’s Indigenous Peoples, Volume II,” (2015), 169.

151. E. Lubov, Y. Sumarokov, and E. Konoplenko, “Jhiznestoi’kost’ i Faktori Riska Suitsidalnogo Povedenia Korennikh Malochislennikh Narodov Severa Rossii,” [Russian Жизнестойкость и Факторы Риска Суицидального Поведения Коренных Малочисленных Народов Севера России] *Suitsidologia* 6, no.3 (2015): 25.

152. Kozlov and Lisitsyn, *supra* note 53, at 96.

153. *Ibid.*, 96–89.

154. V. Chashchin, et al., “Sotsial’no-Ekonomicheskie i Povedencheskie Faktori Riska Narushenii Zdorovia Sredi Korennogo Naselenia Kra’ynego Severa,” [Russian: Социально-Экономические и Поведенческие Факторы Риска Нарушений Здоровья Среди Коренного Населения Крайнего Севера.] *Human Ecology* 6 (2016): 5.

exceeded that of men. This situation seems to be the worst among the Even and the Saami: for every 1,000 Even men there were 1,416 Even women in 2010, while for every 1,000 Saami men there were 1,300 Saami women.¹⁵⁵

Some regional governments responded to the difficulties experienced by Indigenous communities, and provided subsidies to these communities in addition to the state-sponsored benefits. For example, the government of the Khanty-Mansi Autonomous Okrug subsidizes traditional forms of subsistence; supports cultural and educational developments of Indigenous communities; and provides help with housing and social services.¹⁵⁶ The level of grants and subsidies is not significant, given that KMAO is the largest region of oil development in Russia: for example, an Indigenous family receives 2,000 rubles when their child is born, or about \$267.¹⁵⁷ At the same time, this support is due in part to the history of Indigenous politics in this region. In the Sakha Republic, the government helps Indigenous families by subsidizing reindeer herding, hunting, and fishing. The nomad families receive grants to support a reindeer herding lifestyle, to buy equipment and movable housing. These families also pay less tax. High school graduates also receive paid training if they join a reindeer herding team. Similarly, the government of the Yamalo-Nenets Autonomous Okrug, home to 60% of the country's nomadic population, provides support to Indigenous communities (primarily the Nenets) to maintain their nomadic lifestyles and traditional subsistence practices. Young men can choose to switch their military service to do alternative work in the territories registered as TTNU.¹⁵⁸ The degree to which regional benefits, particularly in the form of grants, support economic survival of Indigenous communities in the long run, demands further

155. Federal State Statistical Service, *supra* note 128.

156. KMNS, *Gosudarstvennaya Podderjka. Perechen' Mer*, [Russian: Государственная Поддержка. Перечень Мер.] (2017), <http://www.kmns.admhmao.ru/gosudarstvennaya-podderzhka/>

157. Neftugansk, *Meri Sotsial'noy Podderjki*, [Russian: Меры Социальной Поддержки] (2017), <http://www.admugansk.ru/read/2102>

158. E. Martinova, "Yamalo-Nenets Avtonomnii Okrug," [Russian: Ямало-Ненецкий Автономный Округ] in *Sever i Severiane* [Russian: Север и Северяне], Natalia Novikova and Dmitriy Funk eds., (2012): 65; and Tishkov, Novikova, and Pivneva, *supra* note 33, at 279.

investigation. Some scholars suggest that promotion of the traditional forms of subsistence works when the authorities financially support it. For example, these measures encouraged reindeer herding in the Khanty-Mansi Autonomous Okrug and were supported by regional grants. One can observe a nine times increase of ventures supporting traditional forms of subsistence in the same okrug, from 42 in 2011 to 378 in 2014.¹⁵⁹ In the Sakha Republic, likewise, the number of *obshchina* has been increasing since 2009; these ventures, thus, also seem to support agricultural practices of Indigenous communities in the republic.¹⁶⁰ In Altai Republic, on the other hand, the traditional forms of subsistence seem to be secondary to the economic survival of Indigenous groups and might be substituted by contemporary economic practices in the near future.¹⁶¹ While in Altai Republic, 40 *obshchinas* were registered in 2012, no conclusive evidence suggests that these ventures help improve the economic situations of those using them. At times, the land registered as a TTNU is employed for other means by local administration and businesses.¹⁶²

Finally, Indigenous women and men often face social discrimination. One of the most commonly reported forms of discrimination is that of the local and regional administrative officials, who deny benefits to Indigenous individuals and/or are reluctant to help Indigenous persons to realize their rights. This problem is complicated in part by the requirement for an Indigenous person to present an identity proof of their Indigenous nationality prior to being considered for benefits. In addition, when applying for support for a family, the applicants must establish their social status as living under the poverty line. This requirement creates difficulties for many Indigenous individuals who are unaware of how to apply for the benefits or complete the registration process, and/or do not have any official documents to establish their nationality. In contrast with Soviet documentation practices, where a

159. As reported by Pivneva, *supra* note 55, at 88; and by the Government of Khanty-Mansi Okrug, *supra* note 87, correspondingly.

160. E. Romanova, A. Evodokia, and V. Ignatieva, “Respublika Sakha (Yakutia),” [“Russian: “Республика Саха (Якутия)”] in *Sever i Severiane* [Russian Север и Северяне], Natalia Novikova, and Dmitriy Funk, eds. (2012): 104.

161. Chemchieva, *supra* note 57, at 135.

162. *Ibid.*, 100, 115–120.

citizen's nationality was recorded in their passport, the contemporary documentation system does not stipulate information on nationality to be recorded on state-issued ID. While the governments of the Sakha Republic, Buryatia and Khanty-Mansi Autonomous Okrug created regional instruments that help to record information on a person's nationality, in many other parts of Russia this problem is not solved. Thus, some individuals cannot realize their rights, and must appeal to court to establish their belonging to an Indigenous community.¹⁶³

To conclude, structural inequality facing most Indigenous people remains the central factor of the premature deaths of many Indigenous men and women living in contemporary Russia. The very fact that most Indigenous persons never achieve their full potential as citizens of the Russian state—meaning, as members of the political and economic systems which have never been of their own choosing—signifies that most of them survive life situations characterized by violence for which it is often difficult to identify a perpetrator. Social agents contribute to perpetuating the unfair treatment of Indigenous individuals by being reluctant to respond to the difficulties many Indigenous men and women face, and/or having little understanding of the connections between Indigenous lifestyles and the wellbeing of Indigenous communities. The fact that Indigenous cultural practices and forms of subsistence are supported only by some regional governments and are often supported unevenly, suggests that many officials find assimilation to be a necessary accommodation that Indigenous individuals must make to survive. This attitude is particularly visible in the federal approach to the issues of Indigenous rights. The federal measures devised to support Indigenous communities resemble more a set of paternalistic strategies to maintain vulnerable populations of the state rather than a means of reforming relations among culturally diverse collectives (i.e., nationalities) of the economically unstable and potentially volatile state. Such an attitude helps to justify persistence of poverty among Indigenous groups; invisibility of Indigenous leaders in positions of power; lack of adequate education and job opportunities for Indigenous youth; and other evidence of connections between the functioning of state institutions and the social and cultural destruction

163. Yakel, *supra* note 12, at 16.

of Indigenous communities. At the same time, supporting the assimilation of Indigenous communities happens at the cost of the security and stability of all Russian citizens, given that accommodation of needs of cultural minorities remains a precondition for maintenance of the internal security of Russia as well as of a legitimate international order.

IV. Concluding Thoughts

Democracy is an “incomplete struggle” using the rule of law, legislative power and the state as the engine for social welfare.¹⁶⁴ One of the main premises of this work is that the functioning of democratic forms of government is rooted in social consciousness, allowing different groups to realize their aims through social and political practices. Democratic forms of governance—which may enable Indigenous peoples to exercise their rights as part of a state system—embody on-going social struggles by which Indigenous women and men are able to participate in state politics. The actual actors of political change might, at times, conduct these struggles without the full realization of their meaning and impact. At the same time, these struggles are nascent forms of Indigenous governance in development, shaping the political consciousness of the groups involved and effecting political change.

This study demonstrates that the contemporary Russian state system remains highly conducive to structural violence against Indigenous communities, who remain at the margins of the system. Most Indigenous persons face harsh life conditions and are discriminated against by authorities who deny or limit their rights. These consequences are not unique to the Indigenous communities in the present Russian state; oftentimes their non-Indigenous neighbors survive poverty and harsh living conditions on a similar scale without being beneficiaries of any special policies. These similarities suggest that within the settings of everyday living, indigeneity (or ethnicity) per se does not play a significant role in the degree to which processes of structural violence affect a person. At the same time, indigeneity—unlike *nationality*—contains a potential political inherent in the legal notion of “Indigenous

164. B. Moore, *Social Origins of Democracy and Dictatorship*, (Boston, Massachusetts: Beacon Press, 1966), 414.

Peoples”; this notion developed at international forums, and it is a tool that Russian Indigenous politicians may deploy to continue their struggle toward self-determined existence.

This study reveals that Indigenous politicians lack the direct means with which to withstand the unfair treatment of federal and often regional governments; yet they may collaborate and use an existing framework to improve conditions and widen political opportunities for Indigenous communities. The experiences of KMAO, in particular, suggest that the joint federal and regional legal powers over Indigenous issues allow regional authorities to exercise a degree of autonomy from the central government in areas rich with natural resources. The collaboration between Indigenous and regional leaders—when common interests unite them—may provide a tool of resistance to the centralization measures instituted by federal government, and thus lessen the current effects of structural violence on Indigenous Peoples. Further research in this area is needed. It may illuminate the actual practices of Indigenous resistance to federal oppression and, by so doing, improve the scholarly understanding of the historical influences of regional politics on the contemporary workings of the federal political and legal systems.

**TABLE 1: Population Count of the Small-Numbered Peoples of the North/
Indigenous Peoples of the North, Siberia and the Far East 1926–2010**

Years of the census	1926	1939	1959	1970	1979	1989	2002	2010
The Common List of Small-Numbered Peoples of the North								
Nenets	17,566	24,053	23,007	28,705	29,894	34,665 (34,190)	41,302	44,640
Evenk	38,746	29,666	24,151	25,149	27,531	30,163 (29,901)	35,527	38,396
Khanty	22,306	19,160	19,410	21,138	20,934	22,521 (22,283)	28,678	30,943
Even	2,044	9,698	9,121	12,029	12,286	17,199 (17,055)	19,071	21,830
Chuckhi	12,332	13,835	11,727	13,597	14,000	15,184 (15,107)	15,767	15,908

Nanai	5,860	8,526	8,026	10,005	10,516	12,023 (11,883)	12,160	12,003
Mansi	5,754	6,315	6,449	7,710	7,563	8,474 (8,266)	11,432	12,269
Koryak	7,439	7,354	6,287	7,487	7,879	9,242 (8,942)	8,743	7,953
Dolgan	650	3,971	3,932	4,877	5,053	6,945 (6,571)	7,261	7,885
Nivkh	4,076	3,902	3,717	4,420	4,397	4,673 (4,631)	5,162	4,652
Selkup	1,630	6,441	3,768	4,282	3,565	3,612 (3,564)	4,249	3,649
Itelmen	4,217	1,706	1,109	1,301	1,370	2,481 (2,429)	3,180	3,193
Ul'cha	723	n/d	2,055	2,448	2,552	3,233 (3,173)	2,913	2,765
Saami	1,720	1,836	1,792	1,884	1,888	1,890 (1,835)	1,991	1,771
Eskimo	1,293	1,309	1,118	1,308	1,510	1,719 (1,704)	1,750	1,738
Udege	1,357	1,743	1,444	1,469	1,551	2,011 (1,902)	1,657	1,496
Ket	1,428	1,243	1,019	1,182	1,122	1,113 (1,084)	1,494	1,219
Yukagir	443	507	442	615	835	1,142 (1,112)	1,509	1,603
Chuvan	705	611	(534)	1	1	1,511 (1,384)	1,087	1,002
Tofalar	415	410	586	620	763	731 (722)	837	762
Nganasan	887	738	748	953	867	1,278 (1,262)	834	862
Oroch	647	n/d	782	1,089	1,198	915 (883)	686	596
Negidal	683	n/d	(350)	537	504	622 (587)	567	513
Aleut	353	335	421	441	546	702 (644)	540	482
Orok	162	n/d	(300)	n/d	(317)	190 (179)	346	295
Enets	(476)	n/d	n/d	0*(sub- group of the Nenets)	(317)	209 (190)	237	227
TOTAL (26 peoples)	133,912	143,359	132,295	153,247	158,959	184,448	208,980	

% from the total of RSFSR	0,13 % of 100.9 million	0,13 % of 108.4 Million	0,11 % of 117.5 million	0,11% of 130.1 million	0,11% of 137.6 million	0,12 % of 147.4 million		
% from the total of the country (Soviet Union)	0,09% of 148.7 million	0,085% of 168.5 million	0,06% of 209 million	0,06% of 241.7 million	0,06% of 262.4 million	0,06 % of 286.7 million		
The Groups Added to the Common List after 1993								
	1926	1939	1959	1970	1979	1989	2002	2010
Shor	12,600	(16,044)	15,300	16,500	16,033	15,745	13,975	12,888
Veps	32,785	29 700	16,374 (15,300)	8,281	8,094	12,142	8,240	5,936
Todja	n/d	n/d	n/d	n/d	n/d	0* (sub-group of the Tuva)	4,442	1,858
Kumandin	6,327	(7,000)	n/d/	n/d	n/d	n/d	3,114	2,892
Soyot						0*(other nationalities)	2,769	3,608
Teleut	(1,000)	n/d	n/d	n/d	n/d	2,594	2,650	2,643
Telengit						n/d	2,398	3,712
Kamchadal	2,997 (3,704)	n/d	n/d	n/d	n/d	n/d	2,293	1,927
Tubalar	n/d	n/d	n/d	(7000)	n/d	n/d	1,596 (1,565)	1,965
Chelkan	(1,000)	0* (calculated as Altai)	n/d	n/d	n/d	(700-800)	855	1,181
Chulym	n/d	n/d	n/d	n/d	n/d	(560)	656	355
Taz						0* (sub-group of the Udege)	276	274
Alutor	n/d	n/d	n/d	n/d	n/d	0* (sub-group of the Koryak)	12	0
Kerek	n/d	n/d	n/d	n/d	n/d	0* (sub-group of the Korayk)	8	4
TOTAL (40 peoples)							252,261	257,895
% from the total of the country (Russian Federation)							0,17% of 145.2 million	0,18% of 142.9 million

Nağaybäk	n/d	n/d	n/d	n/d	n/d	0* (sub-group of Tatar)	9,600	8,148
Abazin	13,825	n/d	19,591	25,448	29,000	n/d	37,942	43,341
Bessermian	n/d	n/d	n/d	n/d	n/d	n/d	3,122	2,201
Seto	n/d	n/d	n/d	n/d	n/d	197	197	214
Izjorts	16,137	n/d	1,062	781	748	449	327	266
Vod'	705	(500)	50	n/d	(66)	62	73	64
Shapsug	n/d	n/d	n/d	n/d	n/d	0* (sub-group of Adigey)	3,231	3,882

The table is compiled using data from: Stoyanova, *supra* note 12; Demoskop Weekly, *Perepisi Naselenia Rossiyskoy Imperii, SSSR, 15 Novih Nezavisimih Gosudarstv*, [Russian: Переписи Населения Российской Империи, СССР, 15 Новых Независимых Государств] (2014), <http://demoscope.ru/weekly/ssp/census.php?cy=6>; Federal State Statistical Service, “Vseroiskaya Perepis Naselenia.Itogi,” [Russian: Всероссийская Перепись Населения. Итоги] (2010), http://www.gks.ru/free_doc/new_site/perepis2010/croc/perepis_itogi1612.htm; T. Golikova, “Sovremennoe Sostoyanie Natsionalnih Yazikov v Respublike Altai,” [Russian: Современное состояние национальных языков в Республике Алтай]. The materials of the II International Conference, 28–29 November 2013, Kazan, http://linguistics-online.narod.ru/index/golikova_t_a_sovremennoe_sostojanie_nacionalnykh_jazykov_v_respublike_altaj/0-794; N. Antufieva, “Korennie Malochislennye Narodi Rossii: Kolichestvo Tuvintsev-Todjintsev Ymenshilos’ Znachitelnee Vsekh,” [Russian: Коренные Малочисленные Народы России: Количество Тувинцев-Тоджинцев Уменьшилось Значительнее Всех] *Center for Asia* 9 (2013), <http://www.centerasia.ru/issue/2013/9/4532-korennie-malochislennye-narodi-rossii.html>; A. Bashkarev, “Natsionalnie Administrativnie dinitsi na Territoriakh Kompaktnogo Projivania Vepsov v 1920–30kh Godakh,” [Russian: Национальные Административные Единицы на Территориях Компактного Проживания Вепсов в 1920–30-х Годах] *Scientific-Technical Bulletin of SPbSPU* 4, no. 136 (2011): 173–177; VK. *Ofitsialnaya Yralskaya Statistika*. [Russian: Официальная Уральская Статистика] (2010), https://vk.com/topic-15161897_22790669; and Assotsiatsia Korennih Malochislennih Narodov Severa, *Dannie Vserossiyskoy Perepisis 2010*. [Russian: Данные Всероссийской Переписи 2010] (2012), <http://www.raipon.info/peoples/data-census-2010/data-census-2010.php#/>

The numbers in brackets are estimations created using data from the sources consulted. Those in 2010 marked with an asterisk are calculated as part of larger peoples.

Peace Mapping and Indigenous Peoples

Neal B. Keating¹

“We don’t need more troubles.

What we need is love.”

–Bob Marley, from the song “War”

Introduction

The prospect of stable peace seems so elusive today, eclipsed as it were by global mobilizations around other goals: economic growth and national security. Within the territories of many Indigenous Peoples, states typically manage these goals via colonizations, displacements, militarizations, genocides or, more recently, neoliberal recognition. One is hard pressed to locate a situation anywhere in the world where Indigenous Peoples and nation-states enjoy anything like a meaningful and lasting peace with each other, in the sense that will be discussed here; as “a set of dynamics that result in the emergence of robust patterns of constructive interactions between groups and a low incidence of destructive interactions.”² Such patterns of mutually positive

1. First presented on May 15, 2016 at the International Seminar *Indigenous Peoples’ Rights and Unreported Struggles: Conflict and Peace*, organized by the Indigenous Peoples’ Rights Program of the Institute for the Study of Human Rights, Columbia University, New York City. Thanks to Peter Coleman, Douglas Fry, and the other members of the Advanced Consortium on Cooperation, Conflict and Complexity (AC4) team for inviting me into the dialogue on sustainable peace science, as well as their facilitation of the UN side event at the 15th session of the UNPFII. Thanks to Bong, Sam and Pao for their participation in the UN side event. Thanks to Elsa Stamatopoulou and the Institute for the Study of Human Rights for organizing the symposium at which the initial version of this article was presented. Columbia University, the University of Alabama at Birmingham, the College at Brockport SUNY, and the Asia Indigenous Peoples Pact all provided support for the UN side event, for which I am very grateful.
2. This is the working operational definition of sustainable peace developed by the AC4. Cf. Mazzaro et al., “Realizing Sustainable Peace: Expert Survey Report, October 2015” (New York: Advanced Consortium on Cooperation, Conflict, and Complexity, Earth Institute, Columbia University, 2015).

reciprocity are exceedingly rare and fleeting in the interactions between Indigenous Peoples and states. The historical pattern has instead been one of highly negative reciprocity between colonizers and the colonized, over and over again. Yet despite the deadening repetition of this massive social fact, the future is not entirely predetermined by the past, and a holistic perspective on human history shows that the primary source of patterned human behavior and thought—culture—is subject to rapid change. While some might object to the value of contemplating sustainable peace as hopeless idealism in a time when market driven *real politik* is in global ascendancy and power is driving culture, the position here is that, if we are to adapt and survive in the Anthropocene phase of earth history, it will require new revitalizations around the enduring core traits that make human social life possible to begin with: cooperation, altruism, respect and empathy with fellow human beings. Whenever a dominant culture proclaims “there is no alternative” to its world idea, it is a signal that now is the time to consider the options.³

Ours is a time of increasing conflicts, in which a global environmental crisis is triggered by a massive social reorganization of life around industrialized self-regulating market systems where private gain became the key principle, secular perhaps but nonetheless grounded in a sacred teleology. This reorganization is a previous culture change that began in England some two centuries ago, rapidly proliferated and is now globalized, naturalized and heavily armed. Following Karl Polanyi’s work, if left unchecked the self-regulating operations of the market system constitute a dangerous utopia that will destroy the world’s biological and cultural diversity, prior to its own self-collapse under the weight of growing inequality, depleted natural resources, and human

3. For examples of state/Indigenous relations, cf. John H. Bodley, *Victims of Progress, Fifth Edition* (Lanham, Maryland: Altamira Press, 2008); Thomas D. Hall and James V. Fenelon, *Indigenous Peoples and Globalization: Resistance and Revitalization* (Boulder, Colorado: Paradigm Publishers, 2009); and Elizabeth A. Povinelli, *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (Durham, North Carolina: Duke University Press, 2002). The dynamical conceptualization of sustainable peace quoted above was developed in 2015 by the Advanced Consortium on Cooperation, Conflict, and Complexity (AC4), at Columbia University, cf. “Mapping the Science of Peace: Stakeholder Workshop, Phase 1,” Advanced Consortium on Conflict, Complexity, and Cooperation, Columbia University (2015).

caused climate change. Largely viewed by states as obstacles to market development, Indigenous nations and territories have experienced this destruction on every continent, save Antarctica. There is not much conceptual room for sustainable peace in this scenario of ‘development.’ An enormous contradiction exists today between the popular idea of market-based development as the only way to eliminate poverty, and a growing literature on such development as a major cause of poverty, conflict, and the destruction of nature. A certain schizophrenia thus pervades the UN Agenda 2030 and its 17 Sustainable Development Goals (SDGs). More than any previous UN global agenda, the SDGs broadly embrace the promotion of peace and human rights and call for globally coordinated climate action, but at the same time emphasize greater economic development and market integration as the way to achieve these. As a result, sustainable peace at the international scale remains a hazy specter at best. For those who remain colonized, it may be a very bad joke. As of this writing, the United Nations, the largest and arguably most persuasive institution for world peace and human rights, appears increasingly at risk for obsolescence in the world. New configurations of authoritarian structural power are proliferating, promising to close out the world’s 70-year experiment with universal human rights. The possibility of general war again looms over us, even as global markets and billionaires flourish.⁴

Yet it appears to many scientists, activists and writers that our species has to adapt to the limits of ‘growth’ in order to survive. Such adaptation requires massive cultural change in order to positively resolve this social and ecological conflict, which includes new modes of attending to the reciprocity between peoples, and between people and the planet, in terms of wealth, resources and access. In this light, suggesting that states and Indigenous Peoples can evolve effective mechanisms of constructive conflict resolution is a relatively modest proposal. In this article, I describe what a 21st century science-based model of sustainable peace looks like, and examine how it could prove

4. For examples of the critical literature on development, cf. *The Anthropology of Development and Globalization*, Marc Edleman and Angelique Haugerud eds. (Malden, Massachusetts: Blackwell Publishing, 2015); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton, New Jersey: Princeton University Press, 1995).

useful to the analysis and solution of conflicts between states and Indigenous Peoples. At the same time, I also recognize how current structures of power pose considerable obstacles to the achievement of sustainable peace with Indigenous Peoples.

I. Towards a Science of Sustainable Peace

In 2015, I had the privilege of participating in an Expert Group workshop on peace mapping, organized by a team of academics in the Advanced Consortium on Conflict, Complexity and Cooperation at the Earth Institute, Columbia University (AC4).⁵ The workshop was part of a larger project initiated by the AC4 team, aimed at the greater application of current scientific methods to the study of sustainable peace, and contributing new knowledge and policy tools to inform decision-making processes with regards to social and environmental impacts. One key premise of the project is that the academic study of peace (or peace studies) has been hampered by a lack of consensus with regards to the definition of the field's key term: peace. The academic field of peace studies is highly interdisciplinary, and part of the lack of definitional consensus is owing to the nature of academic disciplinary divisions. Different disciplines tend to ask different questions, and often do not talk to each other all that well. Prior to the workshop, the project team addressed this issue by conducting a literature search on contemporary peace studies. Based on this, they followed up by contacting authors and carried out an expert online survey of 74 peace experts across 35 disciplines to gather a sample of the latest thinking on what sustainable peace consists of in terms of its meaning, its elements and its dynamics. The content of the survey responses was evaluated qualitatively, using thematic analysis and n-gram language structure analysis and visualization to determine prevalent terms and

5. Cf. AC4-1. The core team of academics for this AC4 initiative in 2015 are: Peter T. Coleman (Columbia University, Social Psychology), Beth Fisher-Yoshida (Columbia University, Communications), Joshua Fisher (Columbia University, Environmental Science), Douglas P. Fry (University of Alabama at Birmingham, Anthropology), Larry Liebovitch (Queens College, Physics), Kristen Rucki (Columbia University, International Education), and Philippe Vandebroek (shiftN, Complexity Science).

linkages between the different responses. I received the expert survey report prior to the workshop.⁶

Based on the results of the survey analysis, the project team identified four crosscutting core aspects of the meaning of peace: 1) that it is a dynamic process; 2) that it prevents negative and destructive outcomes (e.g. war and violence) and promotes positive constructive outcomes (e.g. well-being, justice); 3) involves an “enabling context” in order to exist (e.g. existing cultures of peace); and 4) is relatively durable (e.g. able to withstand changing conditions). In terms of the primary elements of peace, the project team arrived at seven elements, namely 1) justice and human rights; 2) economic and natural resources; 3) law and governance; 4) conflict resolution and management; 5) cooperative and constructive relations; 6) shared values; and 7) visions of peace and war. From these, the team constructed a working definition of sustainable peace around the dynamics associated with promoting constructive interactions and preventing or reducing destructive negative interactions. The general dynamics promoting constructive interactions they identified were: 1) robust cultures of peace; 2) well-being; 3) effective and innovative problem solving; and 4) stable resilient systems. Following UNESCO’s conceptualization, cultures of peace are envisioned as “values, attitudes, modes of behavior, and ways of life that reject violence and prevent conflicts by tackling their root causes to solve problems through dialogues and negotiation among individuals, groups and nations.” More concretely, these may include strong, widely shared visions and values of peace, taboos against violence, and crosscutting ties between groups. Effective problem solving and innovation is applying “better solutions that meet new requirements, unarticulated needs or existing needs.” Stable resilient systems include working institutions of accountability and equitable justice that demonstrate durability in the face of change. The dynamic of ‘enhanced well-being’ is a subjective condition of existence in which health, happiness and prosperity are experienced as flourishing; i.e. eudaimonia. These core dynamics of peace sustainability are interrelated in multiple ways. A robust culture of peace contributes to

6. Mazzaro et al., *supra* note 2.

constructive interactions by enhancing capacities for effective problem solving and innovation, which then lead to more stable and resilient systems, which in turn can lead to higher levels of wellbeing in and across communities. The causal chain loops back around when the conditions of enhanced wellbeing bolster existing cultures of peace.⁷

The resulting full expression of what sustainable peacefulness is conceptualized as is the following: “a set of dynamics that result in a high probability of robust patterns of constructive interactions between stakeholders and communities, and a low probability of destructive interactions. Such dynamics [both] establish and are established by a robust, enabling, and self-perpetuating context for peacefulness.” By introducing probability into the mix, the working concept can be operationalized using quantitative as well as qualitative measures. At the nodal core of this concept is reciprocity between groups, which may vary from positive to negative, depending on the past and present conditions of the primary elements of interaction along with their future expectations.⁸

With this working definition of sustainable peace as dynamic process, the AC4 project team then developed a general model, drawing on systems theory, complexity science and visualization tools to build a series of causal loop diagrams in which the dynamics between the different elements of sustainable peace can be examined in a holistic and nonlinear map view, in terms of promoting or retarding patterns of constructive interactions. The AC4 is not the only group of scholars examining peace using a dynamic systems theory approach, however their model is distinctive. The Institute of Economics and Peace (IEP) also favors using systems theory to analyze and support positive peace, but the IEP approach takes a state-level indicators-based approach and builds on a priori assumptions, such as the value of economic development for peace building, whereas the AC4 model is designed to be tested against local realities and perceptions with regards to intergroup relations.⁹ The ‘nodal variable’ or core conceptual nugget

7. *Ibid.*

8. *Ibid.*

9. “Positive Peace Report: 2016,” Institute of Economics and Peace, <http://economicsandpeace.org/wp-content/uploads/2016/09/Positive-Peace-Report-2016.pdf> and Mazzaro et al., *supra* note 2.

of the AC4 project is that sustained peace or conflict are outcomes of the reciprocal relations between groups, which vary from positive/negative reciprocity, in which stakeholder groups demonstrate more or less satisfaction with their interactions with other stakeholder groups (e.g. think Indigenous Peoples and states). The positive or negative qualities of these relations are substantively grounded in peoples' real-life experiences, memories and expectations of other stakeholder groups. Thus, at the center of the AC4 peace map is a core nodal variable of reciprocity.¹⁰ It looks like this:

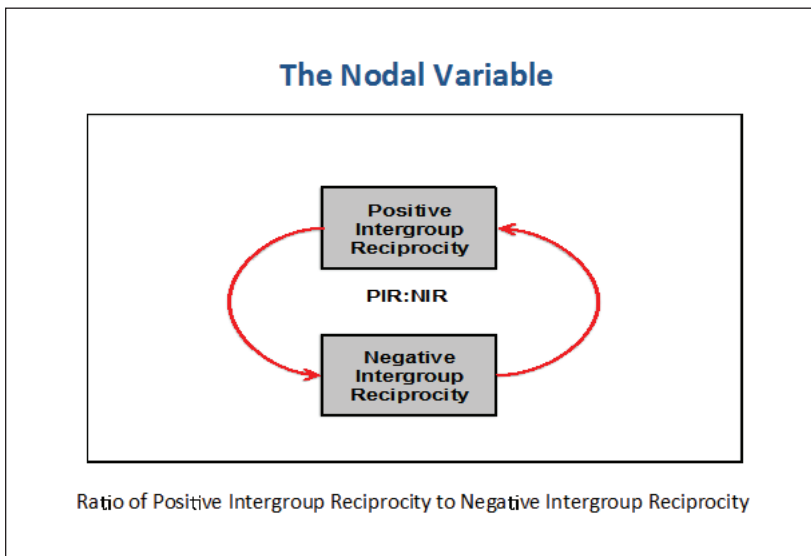


Figure 1: Core nodal variable of sustainable peace

The ratio of positive to negative intergroup reciprocity (pir : nir) is the proposed general measure of sustainable peace in figure 1. The dynamics that drive positive intergroup reciprocity—robust cultures of peace, enhanced well-being of people, effective and innovative problem solving, and stable resilient systems—are then arranged around the core node in the following meta-model, with arrows to indicate their interdependence:

10. Figures 1–6 are reproduced from the peace map causal loop diagrams presented at the AC4 Expert Group workshop in October 2015. I thank Peter Coleman and the AC4 team for their permission to reproduce them here. Cf. "Mapping the Science," *supra* note 3.

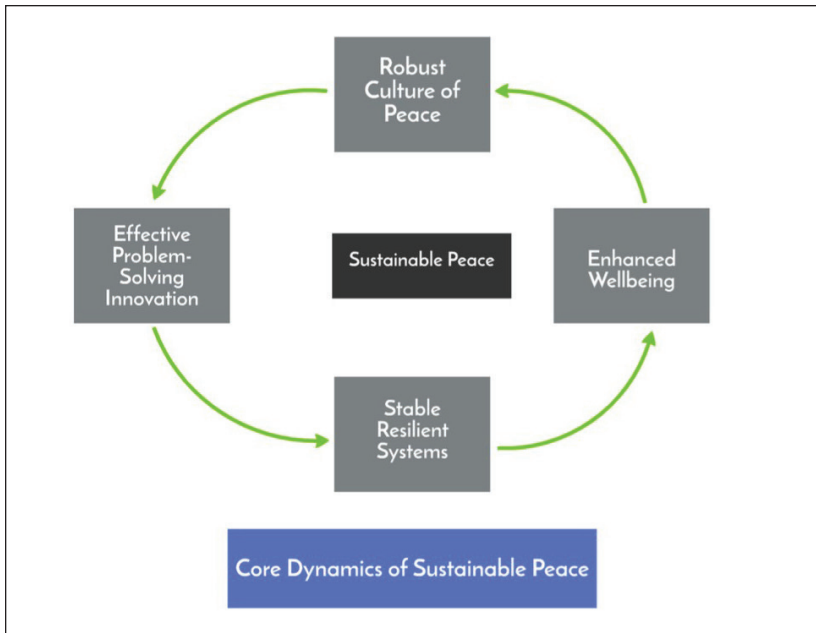


Figure 2: Meta-model of sustainable peace

In the next diagram, the substantive bases of reciprocity (experience and expectations) are situated in-between the core node and the dynamics, again with arrows to indicate their interdependence. Robust cultures of peace can lead to effective problem-solving and innovation, which in turn contributes to stable, resilient systems that enhance the wellbeing of the stakeholders, and that wellbeing then feeds into strengthening the culture of peace, and so on. At this point, the model starts to demonstrate non-linear feedback loop processes.

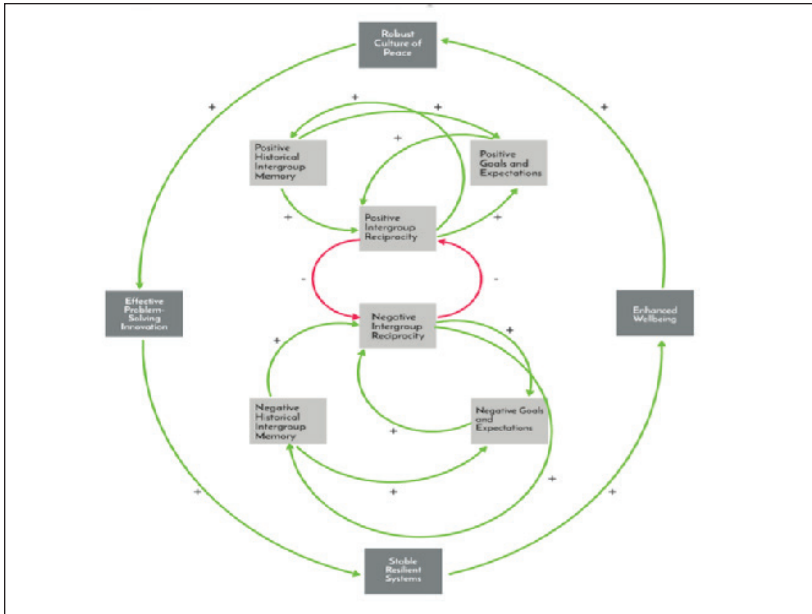


Figure 3: Core engine 1

In the next figure (Figure 4), the model shows the relations between the dynamics and the core node of reciprocity, for example how the presence/absence of any or all four dynamics may drive negative intergroup reciprocity.

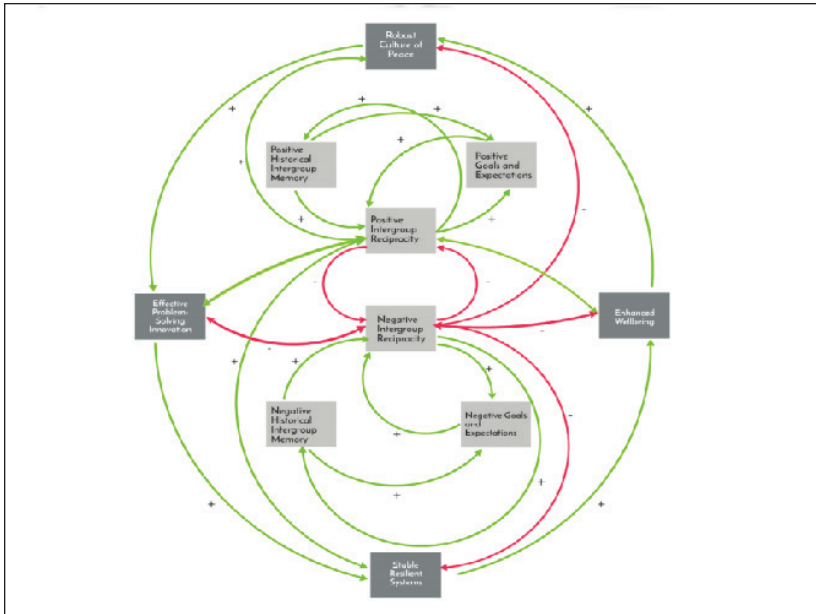


Figure 4: Core engine 2

With this core engine in place, the elements of sustainable peace can be situated around the dynamics, and their nonlinear, multidirectional associations can be further mapped out as they give shape to the dynamics, for example in Figure 5.

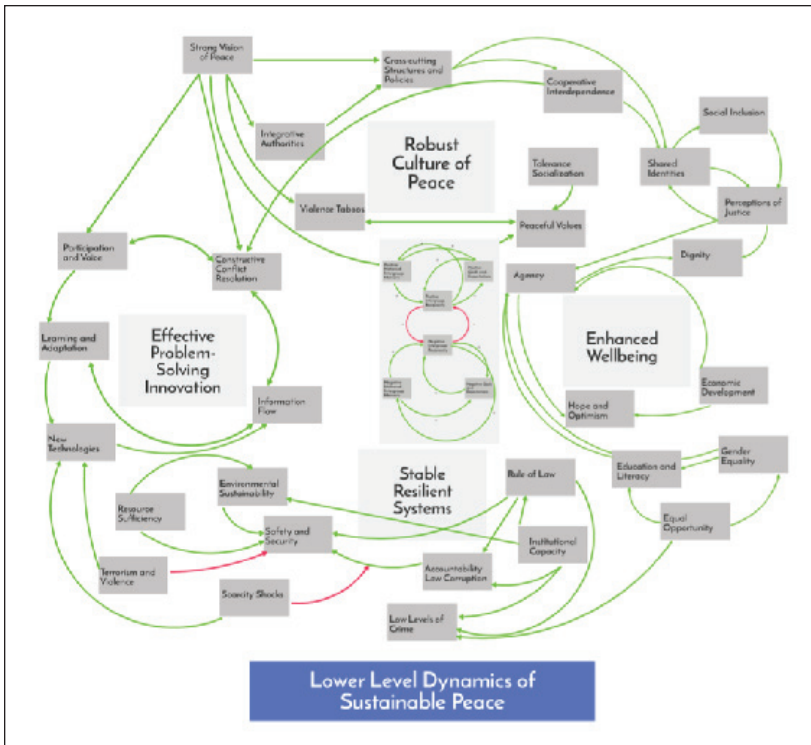


Figure 5: Lower level dynamics of sustainable peace

Finally, the full map of the sustainable peace model shows a highly complex set of interconnections between elements and dynamics but that remains grounded on the core node of intergroup reciprocity. At this point, the visualization begins to look like a bowl of spaghetti, but nonetheless conveys the complexity that is involved with building sustainable peace.

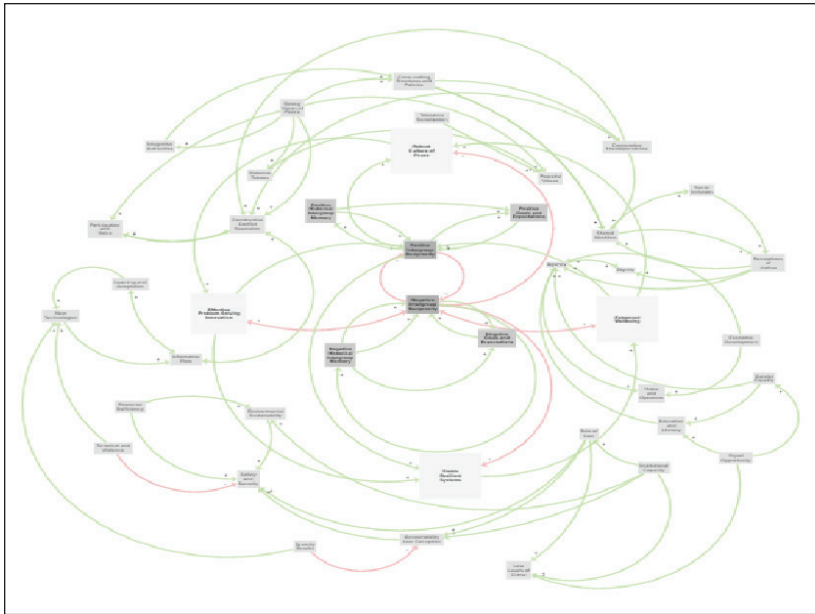


Figure 6: An example of a complete map

The AC4 sustainable peace map is a general model that is subject to modification through empirical testing against the evidence of historical and contemporary reality. To build on this theory, the project team invites research-practitioners to develop their own causal loop diagrams of sustainable peace in the communities or regions in which they work, and then compare and contrast them with the general model. As with any science, the model here is subject to change in light of new data. The end goal is to continue refining the model of sustainable peace, to the point where causal loop diagramming can become a normative approach to decision-making amongst policy-makers and community leaders when considering social and environmental impacts.

II. Testing the Map Against the Territory (I): Comparative and Historical Data Analysis

The next step proposed by the project team is to test the general model or map of sustainable peace against the data of historical and

contemporary intergroup relations. While much of mainstream history is focused on war and conflict (with good reason), there are significant cross-cultural historical data of societies in which durable and resilient peace practices or systems are evident. One of the better known historical examples of Indigenous Peoples and sustainable peace is offered by the theory and practices of peace mobilized by confederated Haudenosaunee/Iroquois peoples, specifically the *Gayanashago:wa*—the Great Law of Peace. *Gayanashago:wa* is the name of a dynamic process of peacemaking through unity that involves promoting the conditions for constructive interactions between groups through consocial and inclusive democratic organization, consensus-building, a strong vision of peace, and ceremonies of condolence and reciprocity. And it involves reducing or preventing negative interactions through dialogue and conflict resolution mechanisms, institutions of justice, strong rule of law and equity of resources. Through its metaphoric and inclusive vision of a tree of peace with roots extending in all four directions, where anyone from anywhere can follow the roots to their source, and there join in the confederacy, and the covenant chain (i.e. that once agreed to join, all groups have responsibility to renew or polish the bonds they now share with other groups, through exchanges of allegiance, resources, ceremonies and words), the articulation of *Gayanashago:wa* generated a social and geographic environment that enabled peacefulness between multiple peoples. While officially, the Haudenosaunee Confederacy began with five, later six nations, many other groups followed the roots of peace to their source and joined in, especially during the 18th century. Oral traditions indicate that over 90 nations joined the Confederacy during the centuries in which it flourished, many of them refugees and survivors of wars and epidemics brought by settler-colonizers.¹¹

11. For comparative and holistic studies of peace and peace systems, cf. *War, Peace and Human Nature*, Douglas P. Fry ed. (Cambridge, United Kingdom: Oxford University Press, 2013); Douglas P. Fry, *Beyond War: The Human Potential for Peace* (Cambridge, United Kingdom: Oxford University Press, 2007). The description of the Haudenosaunee peace system is based on Arthur C. Parker, *Parker on the Iroquois* (Syracuse, New York: Syracuse University Press, 1968); and Neal B. Keating, *Iroquois Art, Power, and History* (Norman, Oklahoma: University of Oklahoma Press, 2012).

Haudenosaunee praxis enabled a multi-nation confederacy that was able to withstand over three centuries of colonial settler invasions. Not only was the Confederacy grounded in a strong vision of active peace, but it also featured effective and innovative problem-solving mechanisms that resulted in a resilient sociopolitical system that provided a sense of relative wellbeing for its members in a time when their world was otherwise turning upside down. In Charles Kupchan's analysis of "turning enemies into friends," he finds significant parallels between the centuries-long peace dynamics of the Haudenosaunee Confederacy, the centuries-long relative peace that came out of the 1648 treaty of Westphalia, and more recently the European Union.¹²

Despite its historicity and the massive American and Canadian seizures of Haudenosaunee territory that followed after the American Revolution, the Confederacy system has maintained cultural continuity into the 21st century, and its vision of peace continues to impact the framework of international human rights today. It is widely acknowledged that the international Indigenous rights movement commenced in the 1920s when Deskaheh, a Haudenosaunee *royaaner* (peace chief), sought entrance for his peoples into the League of Nations as a means of resolving their conflicts with the Canadian state.¹³ During the 1970s, when Indigenous Peoples began engaging directly with the United Nations, Haudenosaunee *royaaners* and faithkeepers played key roles in opening the doors that would eventually result in the General Assembly's adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007. In 1988, the government of the United States acknowledged that a good deal of the peace-enabling elements of the American governance system (such as democracy, checks and balances, and gender equality) is based on the Haudenosaunee system.¹⁴ During the 1990s, another *royaaner*, Chief Jake Swamp, undertook an international mobilization to physically plant trees of peace in conflict zones around the world. In the 21st century, one of

12. Charles A. Kupchan, *How Enemies Become Friends: The Sources of Stable Peace* (Trenton, New Jersey: Princeton University Press, 2012).

13. Ronald Niezen, *Origins of Indigenism: Human Rights and the Politics of Identity* (Berkeley, California: University of California Press, 2003).

14. Some 200 years after the fact, the United States Congress officially acknowledged as much in US H.CON.RES. 331.

the ceremonies of *Gayanashago:wa* (the thanksgiving address, or *Ganohonyohk*) is carried out by the Haudenosaunee *Tadodaho* each year at UN Headquarters in New York City at the start of the meetings of the UN Permanent Forum on Indigenous Issues. The Haudenosaunee words for peace (*sge:no*, *she:kon*) remain a common and informal way to greet people and say hello.¹⁵

While the Haudenosaunee may be the best-known example of an Indigenous peace system, it is by no means the only one. Most of the documented evidence of sustainable peace systems in human societies comes from Indigenous Peoples throughout the world. Prior to WWII, the cross-cultural studies of Polanyi and Mauss concluded that the principle of positive reciprocity in exchanges was likely the governing principle in most human societies prior to colonization and “market integration.” When a broad and holistic approach is taken to the history of peacemaking, the evolutionary, archaeological, primatological, as well as ethnological evidence suggest that the interest in peace is present in human history as much or more than is the interest in war. Following the work of Douglas Fry, if we take the last 50,000 years into account, for about 99% of that history, the interest in intergroup cooperation far outweighs the interest in making war. The tendencies towards intergroup aggression and violence are associated with the rise of states and appear nowhere else so pronounced as they do in our own industrialized and marketized modern nation-state societies. Yet the interest in peace and nonviolent conflict resolution are in strong evidence even in market-based societies, so much so that it goes largely unnoticed.¹⁶

Take for another related example the kinds of cooperation that happen every day in places like the New York City subways during rush hour. Millions of people participate in this daily ritual, and overwhelmingly show kindness and consideration towards the other riders, even when the subway cars are voluntarily packed by humans

15. Based on Keating, *supra* note 11, and Keating unpublished field notes.

16. Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston, Massachusetts: Beacon Press, 1944); Marcel Mauss, *The Gift: The Form and Reason for Exchange in Archaic Societies* (London, United Kingdom: Routledge, 1950); and Fry (2013), *supra* note 11.

like a sardine can.¹⁷ The difficulties in achieving (or even thinking) peace today are based in our particular cultures of modernity, rather than in a posited ancient, universal warlike human nature. That such a nature characterizes the human past is a narrative that modernity tells itself. It remains that if culture is subject to rapid change, there are empirical grounds for proposing that peace is possible, even if the current configurations of culture and power appear to maintain it as a fool's errand. By including Indigenous Peoples in a theory and science of a proposed human universal tendency, the peace mapping project not only contributes to decolonizing methods, but also strengthens a decidedly non-hegemonic observation: it is in our nature to seek peace. Rather than a utopian project, peacemaking is an old, widespread pragmatic characteristic of humans, if not an evolutionary trait, that has well served our species' adaptive needs for survival. Some might even call it common sense.

III. Testing the Map Against the Territory (II): Ground-truthing

In addition to cross-cultural history, the peace-mapping project proposes testing out causal loop modeling of sustainable peace within contemporary conflict zones through a methodology currently referred to as "ground-truthing." This is a form of rapid ethnographic appraisal generated through field-based research in which stakeholder groups in conflict are invited to participate in guided dialogues about the conditions and dynamics of local conflict that include elicitations of stakeholders' narratives and visions of what long-lasting peace would look like. These data are then qualitatively analyzed for their thematic content and elements, and their causal loops of relations mapped out onto a surface. The resulting local peace map can then be compared against the general model, with an applied aim of discovering

17. The NYC MTA estimates daily ridership during Monday-Friday in 2015 at 5.7 million people. *Introduction to Subway Ridership*, Metropolitan Transport Authority of New York City, <http://web.mta.info/nycf/facts/ridership/>

unforeseen connections that can potentially become drivers of peace, as well as a theoretical aim of refining the general model.¹⁸

I use the term ‘ethnographic’ in a critical and reflexive sense when associating it with the ground-truthing methodology (i.e. a critical method of active listening in which the articulations of local groups are foregrounded as primary sources of information, their own voices privileged over those of groups that would speak for them). This is particularly relevant when considering a peace-mapping project with Indigenous Peoples. One of the most widespread tactics of domination used by states against Indigenous Peoples is to silence or invisibilize them. A further potential benefit of ground-truthing practice is that just by coming to conflict-ridden communities and opening space for dialogue on what peace looks like to people, the practice may itself contribute as a peace-enabling mechanism, particularly in places where ongoing conflicts are happening. Through talking about and visually mapping out multiple lines of relations, participants may start to make new causal connections about intergroup relations and learn new strategies for social action. In turn, the concrete information provided by participants can feed into the project database to mathematically test the causal loop model, and modify its design to better explain the data.

One potential weak spot in the ground-truthing method is that, because its design is more rapid than traditional ethnography, it risks inadvertently convening focus groups that may not fully represent the spectrum of aspirations in a given locale. For example, in an early pilot of this methodology in Colombia—where long-running civil war has been the norm for several decades—the researchers relied on the local World Bank Office to arrange for the local people who would participate in the focus groups and workshops. The result was that the participants included representatives of FARC and the Colombian state, but did not include Indigenous Peoples, many of whom have been caught in the crossfire between FARC and the Colombian state, and who would have likely brought important and different aspirations

18. Beth Fisher-Yoshida, et al., “Peace Mapping: Visualization and Dynamic Systems Modeling: An Approach to Generating Sustainable Peace in Dialogue with Indigenous Peoples from Asia,” from the AC4 Side Event at the 15th Session of the United Nations Permanent Forum on Indigenous Issues in New York City (May 17, 2016).

to the visualizations of peace dynamics.¹⁹ Based on my own fieldwork with Indigenous communities in the conflict zones of Cambodia, even a small village of just a few hundred people will be socially fractured by multiple lines of alliance that are political, economic, religious and personal. Identifying these different lines and the individuals that represent them, and getting them to all sit at the same table, is not always an easy task.²⁰ The ground-truthing component in the peace-mapping project is a critical component, without which there is no empirical qualitative data of contemporary peace and conflict dynamics. But a slower approach to carrying it out would greatly strengthen the research design, particularly should peace-mapping be carried out with Indigenous communities, where significant linguistic and sociopolitical differences may require greater appreciation prior to the start of ground-truthing dialogues.

IV. A Side Glance at Peace-Mapping at the UN Permanent Forum on Indigenous Issues

I was invited to the AC4 Expert Group workshop as an anthropologist studying the human rights movements of Indigenous Peoples. As we introduced ourselves, I observed there were no Indigenous People at the giant table we sat around. Throughout the workshop I could not shake the question of how an activity like dynamical peace-mapping could be relevant to contemporary Indigenous Peoples whose situations are long-term conflicts with states that are founded not only in resource competition but also deep-seated intractable racism and discrimination against Indigenous Peoples at the hands of the groups controlling the states? To follow the voices of thousands of Indigenous activists who made spoken and written interventions at the UN Permanent Forum on Indigenous Issues since 2002, the resolution of their conflicts with states involves first and foremost that states recognize their presence

19. Josh Fisher et al., *Contribution of Reconciliation and Victim Memory to Sustainable Peace in Colombia* (New York: Advanced Consortium on Cooperation, Conflict, and Complexity, 2015).

20. For an example of complex fissioning within Bunong communities, cf. Neal B. Keating, "Kites in the Highlands: Articulating Bunong Indigeneity in Cambodia, Vietnam and Abroad." *Asian Ethnicity* 17, no. 4 (2016): 566–579.

as peoples with rights to self-determination, an acknowledgement which states are, for the most part, reluctant to do.²¹ The polite term for this reluctance is ‘lack of political will.’ Within those few states that do recognize Indigenous Peoples in their laws, such recognition is limited, qualified, and often overrode by other state interests, such as economic development and national security.²² The feeble existence of resilient systems and cultures of peace between states and Indigenous Peoples, combined with ineffective problem solving and Indigenous Peoples’ long-term experiences of deprivation, pose considerable problems for applying a model of sustainable peace.

With this question in mind, I offered a suggestion to the AC4 team to present the peace-mapping project at a side event during the 2016 UN Permanent Forum on Indigenous Issues as a means of bringing Indigenous activists into the discussion, especially given the theme of the 2016 UNPFII on “conflict, peace and resolution.”²³ The idea was to bring some of the project team members into the Forum, to present the model of sustainable peace and to stimulate a public dialogue with Indigenous activists, and to elicit participants to share a story of what peace means to them. To facilitate these goals, I invited two Indigenous activists from Asia to collaborate on the side-event, one from Cambodia and one from Bangladesh. They were provided by the AC4 team with project materials in advance and asked to speak to the peace-mapping initiative at the side event.

In the run-up to the UNPFII we ran into trouble. One of the invited activists (I’ll call him ‘Bong’) dropped out at the last minute, on the grounds that he did not understand what the academics were asking of him. This ought to provoke a pause. Bong is someone I have collaborated with over the last several years. While he may not

21. This was readily apparent in the many states’ qualifications of their vote to adopt the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007. Cf. Neal B. Keating, “UN General Assembly Adopts the Declaration on the Rights of Indigenous Peoples,” *Anthropology News* 48, no. 8 (2007): 144, front page photograph, and 22–23.
22. Cf. Discussions in Povinelli, *supra* note 2; and in Audra Simpson, *Mohawk Interruptus: Political Life at the Borders of Settler States* (Durham, North Carolina: Duke University Press, 2014).
23. Cf. E/C.19/2016/L.1/Rev.1.

have received the privileges of higher education, he is a Tampuan intellectual who is involved in a struggle to resolve complex land conflicts with transnational rubber plantation companies in his home territory in Rattanakiri, Cambodia; that include the IFC arm of the World Bank, a Vietnamese corporation and its subsidiaries, a development financier based in the United Kingdom, multiple NGOs, and 17 villages of Tampuan, Bunong, Kreung and other Indigenous Peoples whose lands and forests have been recently taken by the rubber companies. His insights and analyses of these struggles have guided my own comprehension of the human rights situations facing Indigenous Peoples in Cambodia.²⁴

Why then did Bong say he did not understand the nature of this relatively simple side event? Surely if he can grasp the dynamics of complex conflicts like those back home, he can comprehend the model of sustainable peace discussed here. In the hubbub of the Forum, I was unable to follow up with him, instead scrambling to secure a last minute replacement for Bong at the side event. Another colleague from Cambodia who was attending the Forum (I'll call him 'Sam'), graciously agreed to step in. As the inaugural president of an Indigenous youth association in Cambodia, Sam is a Bunong person with many years of experience working on multiple Indigenous issues in Cambodia, and is widely respected for his knowledge and abilities as a human rights activist and community organizer.

The activist from Bangladesh (I'll call him 'Pao'), like Sam, is internationally recognized as a knowledgeable and effective Indigenous leader. Pao is a member of the Jumma peoples, from the Chittagong Hills Tracts. The countries that Pao and Sam come from are riddled with ongoing conflicts between the state and the communities that self-identify as Indigenous Peoples. The governments in both countries have legislated policies that somewhat recognize these communities as Indigenous Peoples. In Bangladesh, these are grounded in the 1997 Chittagong Hills Tracts Peace Accords, although after a recent amendment to the Constitution, the government emphatically

24. Cf. Neal B. Keating and Mong Vichet, "Cambodia," *The Indigenous World 2016*, C. Mikkelsen ed. (Copenhagen, Denmark: International Work Group for Indigenous Affairs, 2016).

claims there are no Indigenous Peoples in the country. In Cambodia, Indigenous policies are based on the 2001 National Land Law. In both countries, the actual implementation of these policies is woefully lacking. The peoples standing with Pao and Sam are experiencing extensive dispossession of their lands and territories, combined with an ambience of state-based violence against their persons and cultures. Clearly, they are stakeholders in the discussion of sustainable peace.

Yet when I sat down separately with Pao and Sam to go over the materials for the side event, a similar exchange transpired each time. When I started the conversation by saying, “Okay, so this is about sustainable peace science,” they each tilted away their face slightly while maintaining eye contact with me, giving me a sideways glance, which I interpreted as an indication of suspicion or doubt. This feeling of suspicion did not go away, and was palpable during the side event in the form of an awkward social vibe of disconnect in the room. It was not simply caused by non-academic Indigenous activists feeling unsure of what the academics were getting at. It was also that the academics were not sure of where the Indigenous activists were coming from. The sideways glances Pao and Sam gave me are thick with multiple meanings. I myself am complicit in this effect, possibly projecting it as much as observing it.

From a critical anthropological view and as much, if not more so, from a critical Indigenous view, the application of science to solving social problems has a largely negative history. The social scientific methods applied towards the problems facing Indigenous peoples in the past have advanced many models of assimilation that are now recognized as genocidal in their application. In the present, mainstream social theory of the contemporary world, including most development theory, still largely fails to take into account the ongoing significance of Indigenous Peoples in the world. On the other hand, reflexive and critical science is becoming more imaginable, and the peace-mapping initiative represents one example of such practice, particularly through its use of ground-truthing.

Beyond the problem of applied science, the pursuit of gain by member states at the UN has a tendency to cancel out or “invisibilize” those collective aspirations that fall outside of their logic. If there is

no clear market share to be had in such expressions, then they are excluded from the process of decision-making. For example, the non-marketized local desires of biodiverse forest peoples do not figure into such decisions. Such exclusions are violent, and over the last three decades in particular have intensified in many Indigenous territories around the world. Based on my field research at the UN since 2007, I am confident that the experience of invisibilization is known to most of the Indigenous activists that find their way to the UNPFII. The side glance of suspicion that Sam and Pao threw my way perhaps comes out of this sustained exclusion of Indigenous Peoples from decision-making regarding development.²⁵

For Sam and Pao (and possibly Bong as well), the idea of a positive and applicable science of peace being proposed to Indigenous Peoples at a place like the UN may also have seemed ironic, or bitter. It is not Bunong, Jumma or Tampuan peoples who are generating conflicts in their countries. Rather, it is UN member states and financed companies generating conflicts in their traditional territories. Both Jumma and Bunong peoples have traditional systems of nonviolent conflict resolution that worked relatively well for them, but that were destroyed by the encroachment of these other actors. It is a bit like the story of the NGO worker sent out to deliver workshops on community gardening and forest conservation, to communities of Indigenous Peoples whose practices of shifting cultivation and forest foraging are now terminated by massive logging concessions of their territories. He meets with resistance in the communities: “Why not go give these workshops to the government and the businessmen destroying the forests? We already know how to garden and take care of the forest.”²⁶ It is the same with peace; it is the states that need to learn this, not the Indigenous Peoples.

25. The Indigenous thesis of invisibilization was made clear to me in 2011 over the course of dialogues with Mayan artists and activists during a gathering in Guatemala City.

26. Cf. Neal B. Keating, “From Rights Advocacy to Party Politics: The Transmotion of the Cambodia Indigenous Peoples Democracy Party,” for a special issue of *HAU: A Journal of Ethnographic Theory*, Neal B. Keating and O. Paredes eds. (forthcoming).

In my observation, the ensuing peace-mapping side event thus became a kind of “contact zone” at the UN, between people with highly unequal social statuses and positions (non-Indigenous academics and Indigenous activists), who on another scale of asymmetry came together in a club where the only members are the governments.²⁷ Despite any suspicions, fears or misunderstandings about peace, the room filled with about twenty-five people and for a little over an hour, participants engaged in a discussion of the possibility of sustainable peace and what that might look like. The two academics that led the side event made their presentation, followed by Sam and Pao, who made brief statements, followed by open discussion and elicitation of short stories of peace from all the attendees. Sam and Pao remained subdued throughout the event. When it ended, the stories were collected and later examined using content analysis and causal loop diagramming. As it was a very contingent and international group that were mostly strangers to each other, there was not a great deal of thematic overlap in their peace stories. Yet there was nevertheless an evident emphasis on land issues in the responses.²⁸

The sorts of tensions alluded to above bring up the other key premise of the sustainable peace initiative. Violence and conflict are pervasive in the world today, to the point that it is difficult to talk about peace with any assurance. This is certainly the case when it comes to land. For Indigenous Peoples, the primary physical manifestation of pervasive conflict is state-sponsored land grabbing, again and again, around the world. The beliefs accompanying this patterned behavior are that war and aggression are inevitable and part of human nature, if not divinely ordained in order for progress to march forward. Certainly, modern states do a good job of making these beliefs convincing.

V. Thinking Peace: An Ethnographic Experiment

What would it take to achieve sustainable peace in the communities and territories of Indigenous Peoples today? I offer here a summary from ongoing research with Bunong people in Cambodia, where there

27. The concept of “contact zone” originates in Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London, United Kingdom: Routledge, 1992).

28. Cf. Fisher-Yoshida et al., *supra* note 18.

is no robust culture of peace between Indigenous Peoples, the state, corporations and new migrants. Instead there is a robust culture of conflict driven by marketized development of land, mainly timber, plantations and dams. This culture has been imposed upon Bunong communities without their consent. In Bunong history, there was a functional culture of peace based on inter-village ceremonies of reciprocity, but it functioned in an environment of expansive forests and autonomous communities. After waves of French colonials, Khmer post-colonials, Viet Minh, Viet Cong, American bombs, Khmer Rouge and now the Khmer Riche, little remains of this culture of peace although Bunong people and culture are still very much here. The neoliberal Cambodian systems of justice and dispute resolution are grounded in asymmetrical patronage networks more than they are in a clear impartial rule of law. By current standards, Cambodia is reckoned to be one of the most corrupt states in Southeast Asia. Over the last two decades, the health and wellbeing of Bunong people has declined while the confiscation of their lands and removal of forests has increased. The traditional cultures of Bunong and other Indigenous highland communities are regularly denigrated by the dominant culture as backwards and primitive, and in need of change.²⁹

Specifically, this thought experiment centers in one particular Bunong place in northeastern Cambodia, an area of about 20,000 hectares where Bunong people have lived for a long time. It is near a giant black stone dune of a mountain named *Yok Nam Yang* (mountain/time of spirits), from under which it is said that the Bunong people first came into this world. Today there are about seven village communities clustered in the vicinity of *Yok Nam Lang*. Despite the conflicts that happened here during the last century and a half, most of this area prior to the 21st century remained forested. A long-standing symbiosis between communities and the forest somehow survived heavy US aerial bombardment followed by Khmer Rouge military occupation. This changed in early 2008, when—without notice—large bulldozers began to appear in the area and started knocking down the forest around *Yok*

29. Cf. Keating, *supra* note 20; Neal B. Keating, “Kuy Alterities: The Struggle to Conceptualize and Claim Indigenous Land Rights in Neoliberal Cambodia,” *Asia Pacific Viewpoint* 54, no. 3 (2013): 309–322.

Nam Lang. When the communities protested, they were informed that the government had rented out their land to a joint-corporate venture to develop a rubber plantation company where their forest used to be, for the next seventy-five years or so. There was no prior consultation with the affected communities, and no plan of compensation.³⁰

It was a classic neoliberal scenario of a corporation and a state making a private decision on the lands, territories and resources of Indigenous Peoples, and acting on it with little indication that the interests of the impacted communities were of any concern. The bulldozers removed over 10,000 hectares of highly biodiverse forest. In place of this biome, the corporation applied chemical inputs and planted a new monocrop forest of rubber trees across the area, as well as limited the communities' access to *Yok Nam Lang*. In the absence of relief provided by the government or the company, a large group of Bunong descended on the plantation headquarters in 2009 and began destroying the bulldozers and pulling up rubber seedlings. The authorities responded by arresting Bunong protestors. The corporation responded by making overtures of compensation and mediation, in the form of a promoted "tripartite committee" consisting of corporate, state and community leaders. This proposed committee would then resolve the conflict through finding "win-win" solutions that would benefit all. However, it appears the corporation exercised dominant control over this committee, and as a result limited the possibilities of resolution; namely that no land would be returned to the communities, and the meager compensation offered by the company to affected community members was on a "take it or leave it" basis. The first tripartite committee fell apart by 2012, and the communities' grievances continued to grow. Infighting within the communities became more and more pronounced. As a renewed Bunong mobilization to end the plantation emerged in 2015, the company established a second tripartite committee, but it carries forward the same problems as the first: the dialogue is largely controlled by the company, with little time or space allocated to community members to express their views. When I visited the communities in 2016, there were deep divides within individual families

30. Discussion of this case is based on fieldwork in Cambodia during May-July 2016. Cf. Keating, *supra* note 26.

and villages between those Bunong who sided with the company, those who wanted the company to leave, and those seeking various kinds of accommodation in between. Neither the state nor the corporation appears to be acting in good faith with regards to the Bunong communities overall, and because of the disunity within the communities, there is no clear leadership coming forward to effectively negotiate with the company or government. The local government officials I spoke with (also Bunong) expressed doubt of the company's intentions, and frustration with the national level of governance that made the deal to begin with. By most Bunong accounts I heard, their quality of life has plummeted since the arrival of the rubber company.

When this situation is examined using the model of sustainable peace, it can be observed that none of the four dynamics of sustainable peace are in evidence here. Most of the seven elements are also absent or negative. At the causal node of the model, negative intergroup reciprocity is far more robust than its corollary. What would it take to transform this conflict into a condition of sustained peacefulness? At a general level, it does not appear that complicated; presuming the ongoing communities of Bunong people seek to maintain their existence, shifting the dynamics of reciprocity could happen in multiple ways. Perhaps the most obvious way to effect this would be for an actual tripartite process of conflict transformation to occur; 'actual' in the sense of spatial and political equality between the parties. That the company took the pains to create the appearance of two previous tripartite committees shows this possibility even if in a chimeric form. But to draw on Haudenosaunee peace theory, a necessary prerequisite to such a process having a positive effect on reciprocity is what might be called cultural and environmental triage, involving the company and the state acknowledging in a meaningful way the development aggression that started in 2008, and the total impacts and losses it caused to the Bunong peoples living near *Yok Nam Lang*. Not a reconciliation, but a conciliation; or to put it in a Haudenosaunee frame, a ceremony of condolence to genuinely wipe away the tears and bring everyone's minds together as one. By addressing the negative impacts together, the process could begin to change peoples' future expectations, create new and innovative problem-solving approaches that could reform

existing systems of justice, loop into enhanced wellbeing and build cross-cutting ties that would in turn feed back into a revitalized culture of peace. But all of this would likely hinge on the return of at least some Bunong control over land-use planning.

Admittedly, the possibility of an actual tripartite process is likely to remain chimeric under current sociopolitical conditions, where both the state and the company have consistently infantilized the Bunong as ignorant misbehaving children who don't know what is good for them. The implicit suggestion here, that such patrimonial mindsets and related behaviors can give way to something more constructive, is likely to strike many readers as so much idealistic dreaming, especially to those familiar with Hun Sen's Cambodia.³¹ But my point in offering it up is not to suggest that I have the answer (I do not), but to suggest that it is possible to intervene in the current patterns of negative reciprocity. Other interventions at other nodes on the peace map might do a much better job of shifting the dynamics towards a more positive reciprocity between Indigenous Peoples and the ambient state-corporate groups. One such alternative approach is currently being tested by the formation of an Indigenous Peoples democracy party that aims to change the structures in which negative reciprocity has been enabled, by stepping directly into the arena of Cambodian politics.

VI. Conclusion

A durable positive peace may be good to think, but in the current climate it is very difficult to think. It almost feels like a criminal act of heresy. Yet if one can bracket off the dominant paradigms of our time, and consider the existing evidence for social conditions of lasting peace between human groups, thinking peace becomes possible. But it is hard work. And thinking it is just the beginning. To generate a positive lasting intersocial behavioral pattern in the world that dynamically loops together the aspects and elements in the proposed peace map modeling is even harder work, especially when it includes those groups who persist under conflictual neocolonial rule.

31. Sebastian Strangio, *Hun Sen's Cambodia*, (New Haven, Connecticut: Yale University Press, 2014).

The two premises on which the AC4 initiative on sustainable peace science proceeds are that there is at present no general consensus of what peace is beyond the absence of war, and that conflict and violence appear to be pervasive in the world. While these contribute to the difficulty in visualizing peace, the application of science-based approaches to peace can overcome these difficulties, and offer new models for policy and decision-making that take peace into account. However at a structural level, the elusiveness of peace may also be due to its inescapable semiotic relationship with its opposite—war. Following Donald Tuzin’s cross-cultural analysis, ‘peace’ is always a specter that looms inside the more visceral practice of war; much war is carried out with intended aims of making peace; and these two terms (war and peace) are imbricated with each other.³²

Peace is difficult to define because it operates semantically more as a regulative concept than as a specific condition. He compared it with other regulative concepts, such as health and truth, both of which (like peace) find their definitional groundings in the negative: health as the absence of illness or disease, and truth as knowledge that has so far passed the test of falsification. As such, peace, health and truth serve to organize, regulate and point towards aspirational or general behavioral goals, and do not just prescribe the kinds of specific concrete actions that are associated with ending war, battling an illness, or testing a hypothesis. They also propose frameworks or directions for general aspirations and behavior, such as “building cross-cutting ties,” “eating well and exercising,” and “improving theory.” This is an important point—that peace is intimately connected to war, but not simply as opposites; peace operates as a conceptual regulator of the material horrors of war. Tuzin’s point is that peace is in war as well as beyond war. In this light, there is little to be gained from searching for a static definitional essence of peace.

The nodal variable core of the AC4 peace-mapping model approximates this regulator relationship between peace and war in terms of a dynamical ratio between positive and negative intergroup

32. D. Tuzin, “The Spectre of Peace in Unlikely Places: Concept and Paradox in the Anthropology of Peace,” *A Natural History of Peace*, T. Gregor, ed. (Nashville, Tennessee: Vanderbilt University Press, 1996): 3–33.

reciprocity, and so finds support from the spectral theory of peace. Furthermore, the design corresponds with Indigenous theories of peace such as the *Gayanashago:wa* that view peace as an active process of ongoing renewal and ‘requickening’ of intergroup relations. The model proposes sustainable peace as a dynamic effect generated not only by the presence or absence of given elements and aspects that may enable peace or trigger conflict, but also produced by the shifting nonlinear relations between these different elements and aspects over time. By incorporating complexity science visualization methods, the multiple feedback loops these relations may generate can be rendered comprehensible.

The idea of a model of sustainable peace that can be tested and refined through comparison with cross-cultural and historical evidence, as well as through field-based ethnographic ground-truthing dialogues with stakeholders, gives this approach an empirical credibility that most other attempts to model peace are lacking, including that of the IEP. While the introduction of peace-mapping to Indigenous activists at the UNPFII was met with ambivalence, this is understandable as a result of historical and contemporary experience more than a repudiation of the model. With so much ongoing conflict, the question of what sustainable peace would look like in your territory is unusual if not startling. For all the conflict near *Yok Nam Lang* and the attempts to resolve it, no one has really asked that question of the impacted Bunong communities. The AC4 initiative is still in the incubation phases of testing and development, but as of now holds promise of producing a coherent and reliable predictor of the dynamics that might result in a more robust specter of peace. The hard problem will be getting those in power to purchase it. Contemporary peacemaking is messy work that often results in unanticipated counter effects.³³ The AC4 model could contribute to improving those outcomes. For Indigenous activists, the model may represent an alternative approach to realizing human rights that goes beyond policies of recognition.

33. For examples of the pitfalls of contemporary peacemaking, cf. Barbara Rose Johnston and Susan Slymovich, *Waging War, Making Peace: Reparations and Human Rights* (Walnut Creek, California: Left Coast Press, 2009).

Appendix One

Summary of observations, lessons learned and recommendations from the International Seminar on *Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*¹

Indigenous Peoples have experienced conflict for centuries and have been making efforts to resolve conflicts, both internal and external, placing value on their traditional as well as other conflict resolution methods and taking concrete initiatives.

I. Causes of Conflict, Impact and Challenges

1. Causes of conflict are traceable to longstanding historical injustices, originating in colonization, the demarcation of states' territories without regard for the customary territories of Indigenous Peoples, and the settlement and dispossession of Indigenous Peoples' lands, territories and resources. Continuing discrimination, structural violence, forced assimilation, and also outright colonization, are all part of Indigenous Peoples' realities in various parts of the world.

2. Disrespect to the self-governance and self-determination of Indigenous Peoples, as well as land disputes, are the most common root causes of conflict. In many instances, there are private interests that use

1. The International Seminar was held at Columbia University on 14 and 15 May 2016. It was organized by Columbia's Institute for the Study of Human Rights (Indigenous Peoples' Rights Program) and co-sponsored by Columbia's Center for the Study of Ethnicity and Race, The Human Rights Institute of Columbia Law School, the Heyman Center for the Humanities, the Columbia University Seminar on Indigenous Studies and the Department of Anthropology. It was also co-sponsored by Gáldu Resource Center for the Rights of Indigenous Peoples (Norway), the International Work Group on Indigenous Affairs (Denmark), the Tebtebba Foundation (The Philippines) and the Universidad Indígena Intercultural de America Latina y el Caribe. The Seminar had 9 panels and 28 speakers, including 2 keynotes (the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Special Rapporteur in the Field of Cultural Rights). Some 120 participants attended the Seminar representing Indigenous Peoples, governments, intergovernmental organizations, non-governmental organizations and academia. This summary was compiled and read out at the end of the conference by the Indigenous Peoples' Rights Program of Columbia's Institute for the Study of Human Rights.

the military and other state agents to land-grab and exploit resources; other times, the military itself exploits Indigenous resources; yet other times, armed groups assert ideological grounds to claim Indigenous land. Private actors use private armed groups to advance their interests.

3. Conservation projects targeting large areas that are traditional, ancestral lands of Indigenous Peoples have been another source of displacement and conflict affecting their livelihoods and survival, but also criminalizing Indigenous peoples carrying out subsistence activities in their own lands.

4. The failure of states to fully implement the UN Declaration on the Rights of Indigenous Peoples—including provisions relating to free, prior and informed consent regarding forced relocation (Article 10), legislative and administrative matters (19), environmental rights and toxic waste (29) and development (32), as well as Article 26 regarding land rights—is a direct cause of conflict. The implementation of the Declaration, including its provisions for just and participatory conflict resolution contained in articles 27, 28, 37 and 40, can provide a basis for conflict prevention and resolution.

5. Conflict affects Indigenous Peoples around the world. While each conflict is different, many grave consequences are shared: forced displacement, sexual violence, forced recruitment of children, extrajudicial executions. These are all forms of trauma and harm that rip apart the social fabric of a community.

6. Conflict affects Indigenous Peoples who are already marginalized; entrenches them in poverty; and leads to high illiteracy rates, poor health and other negative social indicators.

7. Conflict also leaves Indigenous Peoples vulnerable to non-state armed actors.

8. Peace negotiations and agreements continue for the resolution of conflicts. In their efforts to solve situations of conflict, Indigenous Peoples have been faced with numerous challenges.

9. In cases of guerrilla movements, while these might provide protection to Indigenous Peoples against despotic landlords, police, and politicians, Indigenous families often become paramilitary targets based on these relationships. Indigenous members of armed groups who attempt to go back to their communities face challenges, as

they might not be welcomed back or they may become identified by revolutionary members as state agents, and are therefore at risk of being recruited by paramilitary groups.

10. Divisions among Indigenous Peoples, often prompted by the state and corporations, impede their capacity to deal with conflict.

11. Forced recruitment of Indigenous boys and youth continues and many communities are obliged to send their young sons away to avoid such recruitment. In other situations, private security guards of corporations present in territories recruit Indigenous men to protect the resources they wish to extract.

12. The impact of conflict on Indigenous women has been particularly grave, in terms of sexual violence and poverty. The militarization of Indigenous lands and the presence of extractive industries exacerbates such violence.

13. The abuse of anti-terrorism legislation against Indigenous Peoples, especially Indigenous human rights defenders, has been a polarizing factor in various countries as it criminalizes advocates who often find themselves imprisoned and tortured.

14. Other challenges leading to conflict include: the minoritization of Indigenous Peoples in their own lands through settlement; the imposition of so-called development projects, especially mega projects, that undermine their traditional livelihoods and ways of life; the use of religions as a tool of forced assimilation; the denial of citizenship to Indigenous Peoples; the centralization of state administration; the corruption of state officials; the corporatization and the weakening of the state; majoritarianism and inadequate application of democracy leading to the exclusion of Indigenous Peoples; the marginalization of Indigenous women's voices in peace processes; pollution and contaminations of Indigenous Peoples' lands; and the inadequacy of peace-related international mechanisms to support conflict resolution affecting Indigenous Peoples, or the inadequate use of those that do exist.

II. International Legal Standards

15. Both International Human Rights Law (IHRL) and International Humanitarian Law (IHL) apply concurrently in situations of armed conflict. IHL is binding on all parties, based on distinction and proportionality: all sides in a conflict must distinguish between military targets and civilians. The obligation to ensure respect for IHL applies in all circumstances and does not depend on reciprocity.

16. Common Article 3 of the Geneva Conventions, and customary IHL, bind all parties to a conflict to apply humane treatment of persons who do not take part in hostilities, without distinction.

17. States who violate IHL must make full reparation for the injury caused; serious violations of IHL constitute war crimes and entail individual criminal responsibility; states must investigate these and, if appropriate, prosecute perpetrators.

18. ILO Convention No.169 stipulates that Indigenous Peoples shall not be removed from their lands; any relocations will take place with free and informed consent; they will have the right to return to their traditional grounds.

19. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is a major normative framework for preventing and solving conflicts. It contains relevant articles in this area: military activities shall not take place in territories of Indigenous Peoples unless justified by relevant public interest or requested by the Indigenous Peoples concerned (Art. 30 paragraph 1); states shall have effective consultations through appropriate procedures, especially representative institutions, prior to using lands for military activities (Art. 30 paragraph); the Declaration affirms Indigenous peoples shall not be forcibly removed, and no relocation will take place without free, prior and informed consent and agreement on just and fair compensation (Art. 10) ; Indigenous peoples have the right to redress by means that can include restitution and just, fair, equitable compensation for lands and resources (Art. 38).

III. Positive Responses and Recommendations

20. Historic reconciliation processes, peace agreements, and effective access to justice including reparations, all constitute positive tools towards resolution of conflicts affecting Indigenous Peoples.

21. Indigenous Peoples continue to use national and International Law and accountability processes to promote peace and resolve conflict. These efforts should continue and states should strengthen the rule of law and access to justice processes in good faith. The responsibility of holding perpetrators responsible lies with states.

The recent positive court ruling in the Sepur Zarco case in Guatemala is an encouraging example.

22. In some regions, where positive court decisions of national and international courts to ensure Indigenous Peoples' rights and conflict resolution have not been implemented, alternative mechanisms of conflict resolution should be pursued.

23. Cooperation among Indigenous Peoples in promoting peace and learning from each other's experiences in conflict resolution has proven useful. This includes positive experiences of cooperation among Indigenous Peoples divided by borders. In the latter cases, special attention should be paid to the protection of Indigenous cultural heritage as a peace-building measure among Indigenous Peoples and among states.

24. Peace agreements are welcome efforts in resolving conflict. However, these have to be implemented by states following the principle of good faith and demonstrating sincere political will. Moreover, in order for peace agreements to have the desired long-lasting effect for peace, Indigenous Peoples must participate fully in the negotiations through their own representative institutions and with appropriate procedures. The mapping of Indigenous lands by Indigenous Peoples before the conclusion of peace agreements or the adoption of relevant laws, has proven to be a positive practice. It is also important for Indigenous Peoples to pay attention to specific details in peace agreements during negotiations, as they prove to be crucial in the stages of implementation. Indigenous Peoples should not negotiate peace as only focusing on disarmament but also promote positive structural changes in the state.

25. The engagements and peace initiatives and facilitation by third parties, such as states, academia and other civil society actors in conflicts involving Indigenous Peoples, can be a positive contribution to peace and should continue.

26. The media have an important role to play in cultivating a culture of peace and respect for human dignity and diversity. Media should cover Indigenous Peoples' realities in conflict, avoid stereotypes and demonstrate respect for Indigenous Peoples' dignity and diversity in this process.

27. The cooperation of Indigenous Peoples with various actors internationally, such as the UN, various states and civil society, is a facilitating factor in conflict resolution and peace-building.

28. Regional and global intergovernmental organizations have a number of mechanisms that can be and are used by Indigenous Peoples. When these are made accessible to Indigenous Peoples, they have produced positive results in some cases.

29. Intergovernmental organizations can also work with Indigenous Peoples through civil society initiatives, including via academia. Indigenous Peoples can provide public profile to their issues through such cooperation.

30. States must strengthen national institutions so that they represent all sectors of the population, including Indigenous Peoples. Political empowerment is also achieved through the recognition of cultural diversity. Such inclusive institutions foster peace.

31. National institutions for Indigenous Peoples should explore synergies with national human rights institutions in order to enhance their effectiveness through such cooperation.

32. During the ongoing consultations of the President of the General Assembly on enhanced participation of Indigenous Peoples in UN fora (following the Outcome Document of the World Conference on Indigenous Peoples), it is recommended that Indigenous institutions emanating from peace agreements are included in such fora.

33. The UN Department of Peacekeeping Operations (DPKO) should develop specific guidelines for Indigenous Peoples due to the particular vulnerability of their situation.

34. It is imperative for states and all other actors concerned to pursue the demilitarization of Indigenous territories.

35. There is a need to systematize Indigenous Peoples' conflict resolution and peace-building practices, including the role of Indigenous women. Indigenous women in many countries have developed dynamic initiatives for peace and conflict resolution at the local and national level; more visibility, documentation and exchange of their experiences will contribute to peace-building.

36. Indigenous Peoples have been able to impact the understanding of the UN human rights system to include new concepts and expand applicability of existing human rights concepts. For example, Indigenous women have been able to achieve recognition at the level of the UNPFII of environmental violence as a human rights violation experienced particularly by Indigenous women and girls. As a result of Indigenous grass roots peoples' submissions, the Committee on the Rights of the Child has recognized environmental health as a right protected under the Convention regarding children's and maternal health. Indigenous Peoples have been able to expand the understanding of the Special Rapporteur on Human Rights Defenders to take into account Collective and Environmental Human Rights Defenders and have utilized the Committee on the Elimination of All Forms of Racial Discrimination (CERD) to call on states to take responsibility for human rights violations against Indigenous Peoples carried out by corporations they license operating in other countries.

37. Conservation agencies, safari companies, businesses, and international financial institutions (IFIs) should develop clear updated guidelines and codes of conduct that uphold the rights of Indigenous Peoples as guaranteed in the UN Declaration on the Rights of Indigenous Peoples, other international instruments and relevant jurisprudence.

38. UN agencies, governments and other actors should generate disaggregated data on Indigenous Peoples as victims of conflicts.

39. The three Indigenous Peoples-related UN mechanisms—the UN Permanent Forum on Indigenous Issues, the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the

Rights of Indigenous Peoples—should consider alternative methods of cooperation in order to facilitate dialogue among relevant parties for the resolution of conflicts affecting Indigenous Peoples.

40. The UN system and other relevant actors should facilitate the strengthening of capacities of Indigenous Peoples in peace processes.

41. Indigenous Peoples' cultural heritage is a human rights issue. Indigenous cultural rights defenders often face persecution; the UN human rights mechanisms can be used to promote the protection and full respect of their human rights.

42. Education system reforms should be part of creating peaceful societies through the elimination of discrimination and the fostering of appreciation of diversity and understanding among cultures. The review of education curricula to include Indigenous Peoples is highly recommended.

43. Truth commissions are important tools for dealing with conflict. The UN Permanent Forum on Indigenous Issues Study on the rights of Indigenous Peoples and truth commissions and other truth-seeking mechanisms on the American continent (E/C.19/2013/13) provides significant insights and lessons learned in this field.

Through peace building processes, Indigenous Peoples are writing their own histories and creating more just societies. Indigenous Peoples continue to uphold a fundamental principle: DIGNITY.

Appendix Two

Conclusions and recommendations of the United Nations Permanent Forum on Indigenous Issues at its Fifteenth (2016) Session; excerpt from UN document E/2016/43 E/C.19/2016/11, the Annual Report of the UNPFII to the Economic and Social Council

Discussion on the theme “Indigenous peoples: conflict, peace and resolution”¹

49. Indigenous peoples often find themselves involved in situations of conflict, mostly relating to their lands, territories and resources or their civil, political, cultural, social and economic rights. During violent conflicts, indigenous peoples are often among the most vulnerable groups as a result of the situations of poverty, political marginalization and systemic discrimination that many still face today. In nearly every region of the world, indigenous peoples are being displaced and severely affected by violence on their lands and territories. In some countries, indigenous peoples are victims of massacres carried out by the army or paramilitary groups during conflicts. In many cases, indigenous women have been used as the “spoils of war” and subjected to sexual violence and rape. Indigenous children are sometimes forcibly recruited to participate in armed conflicts, leaving behind their homes and their childhood.

50. The Permanent Forum held two interactive discussions on the theme. The Forum invited the panelists to share examples of the kinds of conflict that indigenous peoples, including indigenous women, were facing around the world. The outcomes of the panel discussions are outlined in the recommendations below.

51. States should take effective measures to eliminate violence against indigenous peoples by studying the root causes of conflict and human rights abuses, developing indicators and methodologies for risk assessment and early warning mechanisms and improving

1. Paragraph numbering, orthography and layout as per the UN document.

national legislation for the administration of justice with regard to the perpetrators of war crimes.

52. Consistent with articles 7 and 30 of the United Nations Declaration, States should take measures for settlement, protection and security in the post-conflict period, and for the construction of durable and lasting peace, promoting the full and effective inclusion of indigenous peoples, including indigenous women, in any initiative for peace and reconciliation.

53. The Permanent Forum notes that a key message of the 2016 session was the need to combat pervasive violations against indigenous human rights defenders, including criminalization, persecution, violence, imprisonment and killing.

54. The United Nations Institute for Training and Research established training on peace and conflict resolution for indigenous peoples in 2000 at indigenous peoples' request. It is one of the most important human rights training programmes in the United Nations system that examines the root causes of conflict.

55. The Permanent Forum urges Member States to contribute support to make possible the annual UNITAR training programme to enhance the conflict prevention and peacemaking capacities of indigenous peoples' representatives so as to strengthen indigenous capacity to engage in negotiation, dialogue and peace processes to contribute to sustainable peace.

56. The Permanent Forum emphasizes that the protection, security and rights of indigenous girls and women in conflict settings constitute an urgent priority, including within the framework of Security Council resolution 1325 (2000) on women and peace and security.

57. Sexual and gender-based violence increases in settings of conflict. Sexual violence has also been used systematically as a weapon of war against indigenous women. In the light of the particular risks and vulnerabilities of indigenous women and girls relating to sexual and gender-based violence, the Permanent Forum recommends that Governments, local authorities, specialized agencies of the United Nations system and civil society collaborate with indigenous peoples to establish multisectoral and holistic approaches to combat the various forms of violence against women and girls.

58. Consistent with article 7 of the United Nations Declaration, the Permanent Forum recommends that the Inter-American Commission on Human Rights urgently establish an independent international commission to investigate the assassination of Berta Cáceres and Nelson García of the Lenca people of Honduras.

59. The Permanent Forum expresses its solidarity with the families of 43 trainee teachers of Ayotzinapa, Guerrero, Mexico, who have been missing since 26 September 2014, and supports their efforts to seek justice. The Forum also welcomes and acknowledges the steps taken thus far by the Government of Mexico to resolve this disappearance, and encourages the Government to continue its efforts in collaboration with the Inter-American Commission on Human Rights and in close consultation with the relevant indigenous peoples and families.

60. With reference to article 42 of the United Nations Declaration, the Permanent Forum invites African States, in particular Burundi, the Central African Republic, the Democratic Republic of the Congo, Libya, Mali, Nigeria and Rwanda, to present, at its sixteenth session, information on the situation of indigenous peoples affected by conflict in those countries.

61. The Permanent Forum urges the international community to support the peace process in Mali and establish an independent monitoring committee that, in accordance with articles 7 and 37 of the United Nations Declaration, would oversee the implementation of the peace agreement of 20 June 2015, with the effective and representative participation of the Tuareg peoples.

62. Owing to the particular vulnerability of indigenous peoples in conflict situations, the Permanent Forum recommends that the Department of Peacekeeping Operations of the Secretariat and regional peacekeeping forces factor the protection of indigenous peoples into analysis, planning and guidance on the protection of civilians.

63. The Permanent Forum is concerned at the lack of implementation of its previous recommendations that States implement the agreements reached in peace accords, and encourages States to engage in constructive dialogue with indigenous peoples, including the Maya, Garifuna, Xinka, Jumma, Kanak, Naga, Chin, Amazigh, Tuareg and Maohis peoples, and provide information to the Forum at its sixteenth

session on the status of the agreements. In accordance with articles 3, 4, 5, 18 and 27 of the United Nations Declaration, the Forum urges the States concerned to engage in implementation with the full participation of indigenous peoples.

64. The religious, spiritual and cultural sites of indigenous peoples, including the Ktunaxa Nation in Canada, the Aboriginal people of Australia, the Maya of Guatemala and the Amazigh peoples, continue to face destruction. This has profoundly negative impacts on indigenous peoples, including affecting their sacred practices. Consistent with articles 11, 12, 13, 19, 25, 31 and 32 of the United Nations Declaration and paragraphs 20 and 27 of the outcome document of the World Conference on Indigenous Peoples, the Permanent Forum recommends that, in their national action plans, strategies and other measures, States:

- (a) Take effective measures to ensure that indigenous peoples' spiritual and cultural sites are protected;
- (b) Ensure that, consistent with article 32 of the United Nations Declaration, indigenous peoples are not forced to defend these rights against proposed development projects or through litigation in courts;
- (c) Actively resolve disputes directly with indigenous peoples, consistent with article 19 of the United Nations Declaration, given that these rights constitute critical elements of the survival, dignity and well-being of indigenous peoples.

Appendix Three: Notes on Contributors

José Aylwin is a human rights lawyer. With his studies at the Faculty of Law of the University of Chile in Santiago (1981) and at the School of Law of the University of British Columbia (Canada), where he obtained a Master in Law degree (1999), he has researched and published for different academic and human rights institutions internationally. He currently teaches Indigenous Peoples' Rights at the School of Law of the Universidad Austral de Chile. He currently acts as Co-Director of the Observatorio Ciudadano (Citizens' Watch), an NGO aimed at documenting, promoting and protecting human rights in Chile. He is a member of the Board of the National Institute for Human Rights of Chile. He also provides legal advice for the International Work Group for Indigenous Affairs (IWGIA).

Albert K. Barume is an African trained lawyer, with a Ph.D. in international law from the University of Essex in the United Kingdom and a Master degree in Environmental Management from Yale University in the USA. Dr. Barume is a specialist in Indigenous Peoples' issues, with over twenty years of work experience. He is the current Africa representative and Chairperson of the United Nations Expert Mechanism of the Rights of Indigenous Peoples (EMRIP), a sub-organ of the Geneva-based United Nations Human Rights Council. He has worked for several international organizations, including as a Geneva-based Senior Specialist on Indigenous Peoples at the International Labour Organization (ILO) for over four years and as an Expert Member of the African Commission on Human and Peoples' Rights' Working Group on Indigenous Populations/Communities. He teaches human rights courses in Africa, including a course on Indigenous Peoples at the University of Pretoria in South Africa. He has written and published books and articles on human rights issues in Africa, most notably on Indigenous Peoples' rights.

Dmitry Berezkhov has, for the last 17 years, been involved in the Indigenous movement in Russia. First as a volunteer and then later as a fundraiser for the Kamchatka Regional Ethno-Ecological Information Center “Lach,” then finally as a president of the Kamchatka Regional Association of Small-Numbered Indigenous peoples of the North. In 2004, he started to work at RAIPON (Russian Association of Indigenous Peoples of the North) as Vice-President of Fisheries and then as Executive Director in Moscow. In 2011, he moved to Norway and has been a master’s student of Indigenous Studies at the University of Tromsø. He has also established a small company in Norway, “Arctic Consult,” to consult Russian Indigenous communities on legal issues.

Tone Bleie (Ph.D.) has worked on majority-minority relations in Bangladesh in a range of professional capacities since the early 1980s. Bleie has written extensively on human rights, development, environmental change, peace and conflict in Asia. Among her Bangladesh focused and regionally contextualized publications are: *Tribal Peoples, Nationalism and the Human Rights Challenge: The Adivasis of Bangladesh*, published by University Press Limited in 2005. Bleie is currently Professor of Public Planning and Cultural Understanding at UiT - the Arctic University of Norway. In 2013–14, Bleie was Visiting Scholar at Columbia University, at the Center for the Study of Ethnicity and Race.

Andrea Carmen, Yaqui Nation, has been a staff member of the International Indian Treaty Council (IITC) since 1983 and IITC’s Executive Director since 1992. Carmen has many years of experience working as a human rights trainer and urgent action observer for Indigenous Peoples from around the world, and was IITC’s team leader for work on the UN Declaration on the Rights of Indigenous Peoples for over 20 years. In 1997, she was one of two Indigenous representatives invited to formally address the UN General Assembly for the first time in history at the UN Earth Summit +5. In 2006, Andrea was a Rapporteur for the United Nations “Expert Seminar on Indigenous Peoples’ Permanent Sovereignty over Natural Resources and their

Relationship to Land,” the first time an Indigenous woman had been selected to serve as a Rapporteur for a UN Expert Seminar. Andrea has been an expert presenter at UN bodies and seminars addressing Treaties and Treaty rights; Indigenous Peoples’ cultural indicators for biological diversity, food sovereignty and sustainable development; the Millennium and Sustainable Development Goals; Indigenous Peoples’ right to participation in decision-making; Indigenous children under state custody; climate change and human rights; cultural rights and repatriation; and reproductive and environmental health. Since 2010, she has served on the Indigenous Peoples Global Steering Committee for the UN Framework Convention on Climate Change, including for coordination of Indigenous Peoples’ work at COP 21 in Paris. Most recently, Andrea was an invited presenter addressing the rights of Indigenous Peoples at the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris and an Expert Group meeting organized by the UN High Commissioner on Human Rights on Climate Change and Human Rights in Geneva.

Myrna Kay Cunningham Kain, of the Indigenous Miskito community of Waspam, is a teacher and physician working for over two decades to advance the rights of Indigenous women and knowledge on Indigenous Peoples and the impacts of climate change, serving as FAO Special Ambassador for the International Year of Family Farming; adviser to the President of the UN World Conference of Indigenous People; and on boards of the Global Fund for Women, the UN Permanent Forum on Indigenous Issues, the Association for Women's Rights in Development (AWID), and The Hunger Project. She is currently Chairperson of the Center for Autonomy and Development of Indigenous People (CADPI) and Vice President of the Board of the Latin American and Caribbean Indigenous People Development Fund. Dr. Cunningham was the founding Chancellor of the University of the Autonomous Regions of the Nicaraguan Caribbean Coast (URACCAN), one of the first Latin American institutions for Indigenous, intercultural, and gender-sensitive higher education. She has been honored with an Award of Woman Distinction from MADRE and the first American Award for Human Rights and Culture of Peace.

Ulia Gosart (Popova) holds a Ph.D. from the University of California, Los Angeles (UCLA). Her research focuses on the protection of Indigenous Peoples' rights to culture and political participation. She has served on an Indigenous Russian umbrella organization for several years as a United Nations representative. She has been collaborating closely with scholars at the UCLA American Indian Studies Center. Her current project examines socio-economic conditions and political opportunities open to Indigenous persons living in Russia.

Shayna Halliwell is an international development professional with expertise in proposal development; program design; monitoring and evaluation; implementation; grant compliance; and operations. Shayna is currently managing large-scale children's rights-focused projects funded by the Government of Canada across Africa and South Asia for the INGO Right To Play. Shayna completed her Bachelor's of Arts Honors degree in International Development from Queen's University in Kingston, Canada, and later her Masters in Human Rights Studies from Columbia University in New York City. While in New York, Shayna worked as a Research Fellow for the NGO Global Action to Prevent War, based in the United Nations Security Council. Her areas of programmatic and research focus are the intersection of international security, mass atrocity prevention, and Indigenous rights.

Neal Keating is Associate Professor and Chair of Anthropology at the College of Brockport, State University of New York. He has published widely about the history and contemporary practice of Haudenosaunee visual expression in North America, and the Indigenous Peoples' movement in Cambodia. His research practice includes ethnographic and decolonizing methodologies, along with public exhibits curation. In his current work he is studying the political ecology of indigeneity and international human rights within the context of the anthropocene, focusing on Indigenous land rights and dispossession in Cambodia, and the issues of truth and reconciliation following the Indian residential school genocide in Canada. He has served as a facilitator of Indigenous delegations to the UNPFII since 2012.

Naomi Kipuri is a Maasai from Kenya with a Ph.D. in anthropology from Temple University, USA. She has worked as Head, Oral Traditions Division at Kenya's National Archives; as Research Fellow/Lecturer at the Institute of African Studies, University of Nairobi; as Coordinator of the Arid Lands Resource Management (ALARM), a network for Eastern Africa; and as Executive Director of the Arid Lands Institute, an NGO working on Indigenous Peoples' issues. She has also been a Pastoralist Advisor on projects touching on Indigenous pastoralists in Northern Tanzania, SNV; a reviewer of various projects touching on Indigenous peoples; as well as a Member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (ACHPR). Her publications include *Oral Literature of the Maasai, Nairobi*, Heinmann, 1983; *Maasai Women in Transition: Class and Gender in the Transformation of a Pastoral Society*, Ph.D. Dissertation, Temple University, 1989; *Poverty, pastoralism and policy in Ngorongoro: Lessons Learnt from the Ereto I Ngorongoro pastoralist project with implications for pastoral development and the policy debate*, co-authored with Carol Sorensen and edited by Ereto I & IIED. She is now a consultant in arid and semi-arid areas of eastern Africa occupied by pastoralist communities.

Binalakshmi Nepram, born in the state of Manipur located in India's northeast region, is a writer and a civil rights activist spearheading work on making women-led disarmament a movement and an issue that is meaningful to people's lives. She is the author of four books and she co-founded India's first civil society organization that works specifically on conventional disarmament issues, namely the Control Arms Foundation of India. In 2007, in order to help thousands of women who are affected by gun violence in her home state, Nepram launched the Manipur Women Gun Survivors Network. Nepram is a recipient of the Dalai Lama Foundation's WISCOMP Scholar of Peace Award (2008); the Sean MacBride Peace Prize (2010); the CNN IBN Real Heroes Award (2011); and her organization, the Manipur Women Gun Survivors Network, won the "Indian of the Year" Award in the category of Special Achievement (2011). In 2013, the London-based

organization Action on Armed Violence named Ms. Nepram as “one of the 100 most influential people in the world working on armed violence reduction.” In January 2015, Forbes (India) listed Binalakshmi Nepram among 24 “Young Minds of India that Matter.” India’s largest circulated women’s magazine, Femina Women’s Magazine, honored her with the Femina Women Award in 2015, followed by the Young Women Federation of Indian Commerce and Industry’s “Young Women Achievers Award 2014–15” for her work with 20,000 women gun violence survivors.

Elsa Stamatopoulou joined Columbia University in 2011 after a 31-year service at the United Nations with some 22 years dedicated to human rights, in addition to 8 years exclusively devoted to Indigenous Peoples’ rights. Indigenous issues were part of her portfolio since 1983 and she became the first Chief of the Secretariat of the United Nations Permanent Forum on Indigenous Issues in 2003. In 2011, she taught the first-ever course at Columbia on Indigenous Peoples’ rights and is also the first Director of the Indigenous Peoples Rights Program at the Institute for the Study of Human Rights at Columbia, and also co-chairs Columbia’s University Seminar on Indigenous Studies. Her academic background is in law, international law, criminal justice and political science and she has worked on international normative frameworks, institution-building, the rights of Indigenous Peoples and other groups, women’s rights, cultural rights, development, private sector and inter-governmental cooperation. She has cooperated closely with non-governmental organizations and has received the Ingrid Washinawatok El Issa *O’Peqtaw Metaehmoh*-Flying Eagle Woman Peace, Justice and Sovereignty Award; the award of the NGO Committee on the Decade of the World’s Indigenous Peoples; the Eleanor Roosevelt Award of the Human Rights Center and of Voices 21; the Innovation in Academia Award for Arts & Culture, 2016, by the University of Kent (UK); and in 2010, the Museum “Tepee of the World” was given her name in the Republic of Sakha, Siberia, Russia. In 2016, she was featured as one of the UN’s Leading Women from 1945–2016. Her writings include articles on Indigenous Peoples’ rights, women’s rights, victims of human rights violations, cultural rights and on the UN; in 1998, she

co-edited *The Universal Declaration of Human Rights: 50 Years and Beyond*; her book *Cultural Rights in International Law* was published in 2007 by Martinus Nijhoff Publishers; she oversaw the first edition of the UN publication *State of the World's Indigenous Peoples*, New York, 2009; and in 2014, she co-edited a volume on *Indigenous Peoples' Access to Justice, Including Truth and Reconciliation Processes*, published by Columbia's Institute for the Study of Human Rights.

Rodion Sulyandziga is an Udege (“Forest People”), one of the small-numbered Indigenous Peoples from the Far East of the Russian Federation. Their total population is 1587. Since 2000, Rodion is a Director for the Center for Support of Indigenous Peoples of the North/Russian Indigenous Training Center (CSIPN/RITC) with consultative status with ECOSOC. In the period of 2003–2013, Rodion was a Board member of the Arctic Council Indigenous Peoples' Secretariat (IPS) based in Denmark and he was Acting Chair of the IPS Board from 2011 to 2013. Rodion has Ph.D. in Social Science (Institute of Sociology of the Russian Academy of Science, Moscow, 2005). He is actively involved in international advocacy and Indigenous rights activities at the national and international levels.

Victoria Tauli-Corpuz is the UN Special Rapporteur on the Rights of Indigenous Peoples since 2014. In the fulfilment of her mandate, she conducts fact-finding missions and reports on the human rights situation in specific countries; addresses cases of alleged violations of the rights of Indigenous Peoples through communications with governments and others; promotes good practices to implement international standards concerning the rights of Indigenous Peoples; and conducts thematic studies on topics of special importance to the promotion and protection of the rights of Indigenous Peoples. She is an Indigenous leader from the Kankana-ey Igorot people of the Cordillera Region in the Philippines. As an Indigenous activist, she has worked for over three decades on building movements among Indigenous Peoples and as an advocate for women's rights. Ms. Tauli-Corpuz is the former Chair of the UN Permanent Forum on Indigenous Issues (2005–2010) and has also served as the Chairperson-Rapporteur of the Voluntary

Fund for Indigenous Populations. As an Indigenous leader, she was actively engaged in drafting and in the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007. She has founded and managed various NGOs involved in social awareness raising, climate change and the advancement of Indigenous peoples' and women's rights. She is also a member of the United Nations Development Programme Civil Society Organizations Advisory Committee. In her capacity as the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Ms. Tauli-Corpuz has provided expert testimony before the Inter-American Court of Human Rights and policy advice to, *inter alia*, the World Bank and the World Intellectual Property Organization (WIPO).