

ESSEX MALAYSIAN SOCIETY CONFERENCE 2008

**"The Status of Indigenous Peoples in the 21st century:
The Orang Asli of Peninsular Malaysia"**

Saturday, 9th February 2008 ♦ Room 5.300A, University of Essex



Organised by:

The Malaysian Society of the University of Essex

In partnership with:

HUMAN RIGHTS CENTRE

25th Anniversary 2007 – 2008



The United Kingdom and Eire
Council for Malaysian Students

www.emsc08.com

Programme

- 9:00 am Arrival and Registration of Participants
- 9:30 am **WELCOMING REMARKS**
- **Richard Doughty**, President, University of Essex Students Union
 - **Markus Ng**, Convenor, Essex Malaysian Society Conference 2008
- 10:00 am **PANEL DISCUSSION ONE:**
Framing the Global Indigenous Experience up to the 21st Century
- **Carlos Gigoux**, University of Essex
 - **Cynthia Morel**, Minority Rights Group International
- 11:00 am **PANEL DISCUSSION TWO:**
Left Behind at Home – The Orang Asli
- **Dr. Colin Nicholas**, Centre for Orang Asli Concerns
 - **Dr. Juli Edo**, Universiti Malaya
- 1:00 pm Lunch
- 2:00 pm **WORKSHOPS:**
Examining a few Case Studies
- 3:30 pm **PANEL DISCUSSION THREE:**
Finding the Way Forward
- 4:45 pm **CLOSING REMARKS**
- **Prof. John Packer**, Director Human Rights Centre, University of Essex
- 5:00 pm Photography Session
- 5:10 pm End of Conference

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**Annukka
Kurki**



Convenor
Essex Malaysian
Society Conference
2008



We warmly welcome you to the Essex Malaysian Society Conference 2008!

The Malaysian Society at our University has been very active in the past few years in organising conferences on various topics related to Malaysia, the latest of these being the 2006 conference which sought to examine regionalism of South East Asia through the lens of economic integration and separatist conflicts.

This year, the issue chosen is the status of the indigenous peoples in the 21st century, with a special focus on the Orang Asli of Peninsular Malaysia.

For centuries, the faith of the indigenous peoples have been determined by the oppressive policies and customary law of sovereign nation-states, the lack of concern by the international community and centuries of colonization that has left Indigenous Peoples defeated, deprived of their traditional environments and culturally, politically, economically, and religiously dispossessed. Even though there have been significant developments in the protection of the fundamental human rights of indigenous peoples over the past 25 years, there is much left to be hoped for. The national policies and projects of postcolonial governments have sought to enforce the cultural and social transformation of the indigenous peoples by generally promoting their common national culture, language and religion, and to eradicate what are regarded as backward or savage beliefs, lifestyles, customs and modes of adaptation among the indigenous peoples.

The principal justification for the implementation of such national policies and projects is the socio-economic development of the indigenous peoples and the achievement of national unity through their integration to the dominant society. Naturally the implementation of such policies and projects vary from one instance to another. However, ethnic and tribal minorities often do tend to occupy regions that contain valuable natural resources, such as land, water, minerals and timber that are regarded as indispensable for the development of the country.

Indigenous peoples have not only come to be used as an important source of labour for the extraction of these resources, but if they object to such developments, their interests often become regarded as secondary to what governments see as the greater needs of the national

integration and socioeconomic development of the indigenous peoples has taken place at the expense of previously implicit cultural patterns as autonomy, identity, cultural traditions, and the right to the native land of the indigenous peoples have become externalized or objectified.

Similar justifications are used for the framing of governmental policies and projects in Malaysia in regard to its indigenous population and their native land. Today, we will seek to examine the challenges faced by the indigenous peoples in the context of the Orang Asli of Peninsular Malaysia. For this purpose we have invited a range of experts on indigenous issues in general and the Orang Asli in particular to examine how the Malaysian nation-state has been able to provide for the protection of the fundamental human rights of its indigenous population in the face of national development. This conference is giving you the chance to listen to our conference speakers in two panels, followed by an interactive workshop that will induce you to examine the challenges faced by indigenous peoples through a real case study on an Orang Asli community. The conference will conclude with a panel where you will be given an opportunity to engage in a dialogue with our respected speakers.

I would like to thank today's conference speakers, Cynthia Morel, Carlos Gigoux, Dr. Colin Nicholas, Dr. Juli Edo, Kon Onn Sein, and Prof. John Packer to come and share their expertise knowledge with us on the indigenous issues. I would also like to express my gratitude to all the volunteers who have generously contributed their time and effort. A special thank you goes to Gabrielle Longhurst for designing an excellent conference website. I would also like to thank our sponsors for providing us with the financial support to organise this conference. Finally, more than anyone, I would thank my friend Markus Ng for working relentlessly to make this conference possible.

I truly wish that this conference day will enable you to widen your knowledge, and expand your curiosity on the challenges that the indigenous peoples and the Orang Asli in particular are facing in the 21st century.



About EMSC 08

The Essex Malaysian Society Conference has featured prominently on the University of Essex calendar in previous years since 2002. Among the internationally renowned speakers we have brought here are former Deputy Prime Minister of Malaysia, Anwar Ibrahim, as well as the Indonesian permanent representative to the United Nations, Marty M Natalegawa. Our 2006 conference, “South East Asia: A Maturing Regional Power?” won the Student Union’s award of “Best Society Event of the Year”.

This year, the conference is entitled “The Status of Indigenous Peoples in the 21st Century: The Orang Asli of Peninsular Malaysia”. It is run in partnership with the University of Essex Human Rights Centre and the United Kingdom and Eire Council for Malaysian Students (UKEC).

The conference will be divided into 3 panel discussions and a workshop session.

Panel Discussion 1: Framing the Global Indigenous Experience up to the 21st Century

- **Carlos Gigoux (Department of Sociology, University of Essex)**

Addressing genocidal patterns against Indigenous peoples.

Despite the plight of indigenous peoples gaining increasing international recognition in the United Nations forums and a strong support from human right organizations, daily threats to their lives, cultures and territories remain a persistent genocidal pattern. Carlos will argue for the need to complement Indigenous struggle for rights with a critique of the underlying social and cultural factors that, on the one hand, nourish the pervasiveness of such patterns and, on the other hand, foster social indifference towards Indigenous peoples.

- **Cynthia Morel (Minority Rights Group International)**

Indigenous peoples have made significant advances in securing their collective right to land through successful cases, particularly in the Americas. Recognition of who is and who isn't indigenous, particularly outside of the Americas, nonetheless remains a key obstacle in securing these advances in Africa and Asia. This presentation will explore that role the UN Declaration on Indigenous Peoples might play in strengthening their recognition; a recognition which is vital not only for land security, but also for the effective participation of indigenous peoples in decisions that affect their traditional way of life. The impact of tourism on indigenous peoples will be taken as a case in point, based on MRG's international Trouble in Paradise campaign.

Panel Discussion 2: Left Behind at Home – The Orang Asli

- **Colin Nicholas (Centre for Orang Asli Concerns)**

The Creation of Identity and the Contest for Resources

The Orang Asli – the indigenous minority peoples of Peninsular Malaysia – were once independent and autonomous peoples, each with a unique culture and each living within their own traditional territory. Today, however, the Orang Asli are among the most marginalized in Malaysian society, with their development and enjoyment as a people being dictated by others.

In fact, given that the main objective of the state today is to integrate the Orang Asli into the dominant or mainstream society, it is asserted that state's exertions on the Orang Asli have a single ideological goal: to enable the control of the Orang Asli and to control their traditional territories and resources.

The various moves to diminish Orang Asli autonomy and the concurrent contest for their traditional territories and resources invariably caused much social stress in Orang Asli communities. This common experience, however, helped the development of an Orang Asli political consciousness beyond the local level such that a new Orang Asli indigenism (or identity) emerged as a political strategy for more effective affirmation of their rights.

However, because aspirations and motivations vary between individual Orang Asli, the state was able to exploit such differences and pit Orang Asli against Orang Asli, and so continue to effectively control the Orang Asli as a people. As a consequence, the state continues to exercise control over their traditional territories and their traditional resources as well.

Colin Nicholas will demonstrate, through several documented cases, how Orang Asli identity was used, both by the Orang Asli and the state, to control the people and to control their resources.

- **Juli Edo (Department of Anthropology and Sociology, Universiti Malaya)**

Orang Asli and Sustainable Development

The Orang Asli have often been mis-represented in the Malaysian media as being anti-development. However, this is far from being an accurate description of the Orang Asli engagement with development.

Since independence and beginning with the empowerment of the Department of Aboriginal Affairs in 1954, the state approach to development of the Orang Asli have been one that can be categorized as top-down. The department have often been said to take care of the Orang Asli

from 'cradle to grave'. However this paternalistic approach to development is not only patronizing but misleading. In much of the encounters with development over the last five decades, the Orang Asli communities find themselves further marginalized from mainstream society. They are often depicted as backwards, incapable of comprehending the modern world and childlike.

We are told by the authorities that a precursor to bringing them up to par with the rest of society is a total revamped of the Orang Asli society through social engineering. The means of bringing development, such as through education and restructuring the society such as in the past the practice of resettlement, aims not at increasing their socio-economic standing in the country, rather it aims at changing the mindset of the people.

The popular argument here is that the Orang Asli's traditional mindset is not compatible to the demands of the modern world. Hence, if the Orang Asli protests against development, their resistance need to be understood as resistance against a particular development discourse that aims at ethnocide.

For a lack of a better word, the Orang Asli resistance is one that hopes for a development that recognizes their position as Bumiputeras while protecting their cultural identities as a diverse group of Indigenous minorities in Peninsula Malaysia. Central to the struggle over protecting their identity and securing their place as Bumiputera is recognition of their land as their own.

The struggle therefore over land rights is not a protest against modernity or for a return to the past, but one that ensures a continued stake in the present. The Orang Asli as an indigenous group asked that they be treated fairly and as equals in the development discourse of the nation.

Workshops

ADONG BIN KUWAU & ORS V KERAJAAN NEGERI JOHOR & ANOR, DECIDED 21 NOVEMBER 1996

Led by **Kon Onn Sein**, participants will have the opportunity to simulate negotiations between the Johor State Government and the Orang Asli living around the Sungai Linggiu catchment area, who were fighting for compensation after their traditional and ancestral land was taken away to build a water dam.

This will prove interesting, to draw out perspectives not only from that of the Orang Asli, but also that of the state, and to find a way to reconcile these differences.

Panel Discussion 3 : Finding the Way Forward

This last panel will be a roundtable with all speakers present. They will first comment on the outcomes of the workshop simulations, and then proceed to reframe the issues faced by the Orang Asli and discuss solutions to them. This panel will end with final remarks from **Prof. John Packer**, Director of the Human Rights Centre at the University of Essex.

Conference Rationale

The world today in the 21st century is a smaller place. Economic and technological advancements have functioned as a catalyst for convergences occurring globally across many fronts - enterprise, law, ideology, identity, language and culture.

Whether such trends are good or bad may be subject to debate. However, it is apparent that many nations, societies, segments of societies, and other actors are struggling to respond and adapt to the rapid changes happening. The sheer thrust of the developments taking place can be overwhelming. Among those struggling are indigenous peoples all around the world.

Although the original inhabitants of many countries, they are often excluded from developments taking place in their own countries experienced by other members of society. Left annexed by mainstream society, they are often discriminated against for being different. The pressure to assimilate into their surrounding societies is also great.

The Malaysian Society of the University of Essex finds the discrimination and forced assimilation faced by indigenous peoples worrying, and believes that these challenges are serious and need to be adequately addressed.

We subscribe to the tenets of the Universal Declaration of Human Rights, recognising and respecting the dignity, rights, and life of every individual human being, as well as the recently adopted UN Declaration on the Rights of Indigenous Peoples.

Looking at the Orang Asli in Malaysia, we empathise with their struggles and we hope that by providing the platform for their experience to be discussed, we can bring their plight to the knowledge of not only students in the University of Essex but also the many Malaysian students pursuing their education here in the UK.

Speakers' Profiles



Carlos Gigoux
Department of Sociology, University of Essex

CARLOS GIGOUX is currently working on his PhD in the Department of Sociology at the University of Essex. His research analyses the connections between longstanding cultural representations of the Indigenous peoples of Tierra del Fuego and their genocide. In particular, he looks at how notions of primitiveness and extinction continue to act as exculpatory devices of colonial violence, thus shaping social indifference towards it.

In Chile he has worked as a lecturer in social and cultural history in the Universidad Alberto Hurtado. He has also collaborated in social projects with Pehuenche and Huilliche communities.



Cynthia Morel
Legal Officer, Minority Rights Group International

CYNTHIA MOREL has been legal officer at Minority Rights Group International since 2002. In her capacity, she has taken the first indigenous land rights case to reach the merits stage before the African Commission on Human and Peoples Rights, for which a decision is imminent.

Ms Morel has also served as a lecturer at Essex for the LLM course on the protection of minorities under international law in 2006 and 2007. Previous to this, Ms Morel held positions at the Inter-American Institute of Human Rights and the Canadian International Development Agency.



Dr. Colin Nicholas
Coordinator, Centre for Orang Asli Concerns

COLIN NICHOLAS is the founder and Coordinator of the Centre for Orang Asli Concerns (COAC), a non-governmental organization that serves as a resource center to facilitate Orang Asli initiatives at self-development and in the defence of their rights. He was awarded a PhD with distinction from the Institute of Advanced Studies, Universiti Malaya, in 1999, on the topic of Orang Asli politics, development and identity.

Colin has authored several popular and academic articles as well as published 4 books on indigenous and Orang Asli issues – including *Pathways to Dependence* (Monash University, 1996) and *The Orang Asli and the Contest for Resources* (COAC/IWGIA, 2000, reprinted 2004).

He was also one of the expert witnesses in the precedent-setting Orang Asli land rights case that was judged in the Orang Asli's favour in 2002, and is also a keen photographer and has had his photos used and exhibited in various media and events.

 **Dr. Juli Edo,**
Universiti Malaya

JULI EDO was born on April 29, 1959 in Ulu Bernam, in the interior of Perak state, Malaysia. While growing up as a Semai, Juli started his primary education in 1966 and begun tertiary level in 1981.

He obtained his PhD in 1999 from the Australian National University. His field of study is cultural anthropology. The primary focus of his research includes indigenous cultures, social history, indigenous rights and development issues related to indigenous peoples and the primary methodology are ethnography and ethno-history.

He also sits on various committees among which are the National Advisory Council on Orang Asli Development (Ministry of Rural and Regional Development), Committee for the Development of Education for Orang Asli and Penan (Ministry of Education), and on the on the Civil Rights Committee (CRC) Advisory Committee for Orang Asli (Human Rights Commission).

 **Kon Onn Sein**
Foundation for Community Studies and Development

Kon Onn Sein is trained in law and was admitted barrister to the Bar in England. Later Mr. Kon was admitted to the Malaysian bar and holds a MA in Social Development from the University of Sussex under a Chevening scholarship. Since 1990, Kon has been in legal practice and has been a partner of a legal firm in Muar, Johor.

In 2000, Mr. Kon assumed the position of a managing director of the Foundation for Community Studies and Development, which works in poverty alleviation and community development programmes for the poor and needy, in particular the Orang Asli and the urban poor. Mr. Kon has run various training programmes at grass root level as well as at NGO forums including presenting a paper at the International Conference of Social Workers.

He was leading a team of Orang Asli graduates to present a proposal for the National Economic Consultative Council in policies to up grade the standards of living for the Orang Asli. He has also sat in a number of working committees for SUHAKAM in Orang Asli development. At the same time, he is also supervising an urban community development project among a low cost flat neighbourhood in Selangor. The project has been adopted by the Prime Minister's Office of National Unity and Integration.



Prof. John Packer
Director, Human Rights Centre, University of Essex

John Packer is Professor of International Law and Director of the Human Rights Centre at the University of Essex in the United Kingdom. He is a frequent consultant advising a number of governments and inter-governmental and non-governmental organizations on matters of peace and security, conflict prevention and resolution, diversity management, prevention of genocide and the protection of human rights. From 2004 through September 2007, he was Coordinator of the “Initiative on Conflict Prevention through Quiet Diplomacy” which, through a global consortium, is seeking to establish or strengthen institutions dedicated to prevent conflict through quiet diplomacy within regional inter-governmental organizations; Prof. Packer remains a Senior Adviser to the Initiative.

In 2003-2004, he was a Visiting Assistant Professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University and a Fellow at the Carr Center for Human Rights Policy at the John F. Kennedy School of Government at Harvard University under the Direction of Dr. Michael Ignatieff. Until February 2004, he was Director of the Office of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Co-operation in Europe (OSCE), located in The Hague. Between September 1995 and March 2000, Mr. Packer was Senior Legal Advisor to the HCNM.

He was previously (1991-1995) a Human Rights Officer at the Office of the United Nations High Commissioner for Human Rights in Geneva where he held responsibilities for the Commission on Human Rights investigative mandates on, *inter alia*, Iraq, Myanmar (Burma), Afghanistan and the Independence of the Judiciary, and for the Secretary-General’s reports on the Use of Forensic Sciences in Human Rights Investigations and on Civil Defense Forces and State Responsibility. Prior to his employment with the UN, Mr. Packer was a consultant for the International Labour Organisation (1989-1991) and the UN High Commissioner for Refugees (1987-1989). He holds degrees in Political Studies and Law and has lectured at a number of universities and professional institutions around the world and has been widely published.

In a pro bono capacity, Prof. Packer is Associate Editor of the *Human Rights Law Journal* and a member of the editorial boards of the *International Journal of Minority and Group Rights*, the *European Yearbook of Minority Issues*, and the *European Diversity and Autonomy Papers*, and he is a member of the editorial advisory boards of the *Journal on Ethnopolitics and Minority Issues in Europe* and of *Ethnopolitics* (formerly *The Global Review of Ethno-Politics*). Prof. Packer also serves on the boards of *Minority Rights Group (International)*, the *Centre on Housing Rights and Evictions (COHRE)*, and the *World Federalist Movement-Canada*.

About the Orang Asli

The Orang Asli (“Original Peoples”) are the indigenous minority peoples of Peninsular Malaysia. They are the descendants of the early inhabitants of the peninsula before the establishment of the Malay kingdoms in the 15th century. In 2003, they numbered 147,412, making up a mere 0.6% of the national population (26.5 million) in Malaysia. They are a visible minority compared to the other major ethnic groups

The Orang Asli are not a homogenous group of people. They consist of 3 main groups (Negrito, Senoi, and the Proto-Malay) which in themselves comprise several distinct tribes or sub-groups. They speak different languages and practice equally varied occupations and ways of life. However, relations between the Orang Asli and the dominant population, which have been neither amiable nor beneficial to the former, have caused these dispersed and unrelated groups to develop a common identity under the now widely-accepted label, ‘Orang Asli’.

State of affairs

Like indigenous peoples the world over, the Orang Asli are among the most marginalized communities, faring very low in all the social indicators both in absolute terms and relative to the dominant population. For example, while the national poverty rate has been reduced to 6.5 per cent, the rate for Orang Asli remains at a high 76.9 per cent. Official statistics also classify 35.2 per cent of Orang Asli as hardcore poor (compared to 1.4 per cent nationally).

Literacy among the Orang Asli in 1991 was at 43 per cent, while the national rate was 86 per cent; however, not all Orang Asli children attend school and in 1995, 68 per cent of the attendees had dropped out at the primary level. This drop-out rate means that no more than 30 per cent were functionally literate.

In terms of health, the Orang Asli are still disproportionately afflicted with health problems like tuberculosis, malaria, leprosy, cholera, typhoid, and measles, which are easily preventable and curable. They also have a much higher infant mortality rate (median=51.7 deaths per 1000 infants) and life expectancy (52 years for females and 54 for males) than the general population (median=10.4; 68 years for females and 72 for males).

These indicators sit uncomfortably alongside the rapid development and improvement in quality of life experienced by the rest of Malaysia since gaining its independence from the British in 1957.

State of affairs

Their situation is only made worse by the misguided policies of the Department of Orang Asli Affairs (JHEOA) and the lack of proper legal recognition and protection of the rights of the Orang Asli.

The initial stand of the government (via the JHEOA) towards the Orang Asli was “to adopt suitable measures designed for their protection and advancement with a view to their ultimate integration with the Malay section of the community”, making explicit their assumptions about the Orang Asli as being sub-par with that of mainstream society.

Programmes to introduce cash-crop agriculture were introduced (thereby placing the Orang Asli at the mercy of the world economy), education was introduced (with the national Malay-based curriculum being used), and social organisation transformed (with headmen now being appointed by the JHEOA, for example). The end effect of such a policy of integration has been a slow, but sure, decline in the traditional structure and content of Orang Asli society, and of course, a loss of Orang Asli autonomy. In more recent times, the policy of integrating the Orang Asli with the Malay section of the national society has taken on a new dimension: making Orang Asli Muslims.

However, without doubt, the greatest visible threat today to Orang Asli culture, identity and livelihood is their dispossession from their traditional homelands. Orang Asli are guaranteed no rights whatsoever to their lands under the Aboriginal Peoples Act 1954. Under present Malaysian laws, the greatest title that the Orang Asli can have to their land is one of tenant-at-will -- an undisguised allusion to the government's perception that all Orang Asli lands unconditionally belong to the state. However, provisions are made for the gazetting of Orang Asli reserves, although such administrative action does not accord the Orang Asli with any ownership rights over such lands

At any time should the state want the land back, it can revoke the status of the land and the Orang Asli practically has no other legal recourse. To make matters worse, in the event of such dispossession occurring, the state is not obliged to pay any compensation or allocate an alternative site. This is provided for in the Aboriginal Peoples Act, as asserted by the government.

Workshop Notes

CASE STUDY OF ADONG BIN KUWAU & ORS V KERAJAAN NEGERI JOHOR & ANOR, DECIDED 21 NOVEMBER 1996

FACTS & BACKGROUND

The 52 plaintiffs are heads of families representing a group of aboriginal people (Orang Asli) living around the Sungai Linggiu catchment area which also includes the tributary Tebak ('the Linggiu valley'). The defendants are the Government of the State of Johor and the Director of Land and Mines, Johor, Malaysia.

The Orang Asli plaintiffs claimed that the lands within the vicinity of Sungai Linggiu were their 'kawasan saka' (traditional and ancestral land) and upon which they depended to forage for their livelihood in accordance with their tradition. The plaintiffs stated that the defendants had alienated 53,273 acres from their 'kawasan saka' to the State Corporation by way of four titles.

The State Corporation had in turn entered into an agreement with the Government of the Republic of Singapore which, through its Public Utilities Board, had agreed to build a dam and supply water to both Singapore and the State of Johore for a sum of RM320 million. The plaintiffs claimed that the defendants had restricted those areas and had prohibited the plaintiffs and/or their families from entering those areas to forage them.

In the course of negotiations, the JHEOA (Department of Orang Asli Affairs), a statutory body charged by the Federal government of Malaysia to oversee the affairs of the Orang Asli, recommended that the Orang Asli be compensated under section 11 of the Aboriginal Peoples Act 1954 for a sum of RM560,535 based on the value of the rubber and fruit trees planted by the Orang Asli in the land.

The Orang Asli claimed that the compensation was inadequate as it did not recognize that the land was ancestral land in which they depended for their livelihoods.

The Orang Asli argued that since they were the original inhabitants of that forest and they have a rightful claim to native title recognized by common law. This common law native title include the right to live off the forest and to collect the forest produce. It is a right they had from time immemorial, being the original inhabitants of the land.

The State's argument was that all land belongs to the State including those occupied by the Orang Asli since time immemorial. The Sultan (kings) owned the land and that it merely gave the license to the Orang Asli to live on the land and to collect produce therein but not to ownership of the land itself. Since the

establishment of the Sultanate and the introduction of the Torrens land system by the British, all Kawasan Saka (traditional land) became State land. Hence any common law right to native title had been extinguished by the sovereignty of the Sultans and colonization.

Secondly, the State claimed that any such common law right to native title had been extinguished by making provision to adequately compensate the Orang Asli under Section 11 of the Aboriginal Peoples Act 1954 (the “Act”).

Section 11 Aboriginal Peoples Act 1954 reads:

“Where an aboriginal community establishes a claim to fruit or rubber trees on any State landthen such compensation shall be paid to that aboriginal community as shall appear to the State Authority to be just.”

The only right the Orang Asli had to the land were the trees they had planted and the Act had provided for such adequate compensation. According to the learned State Legal Adviser, the Orang Asli rights and the manner of their enforcement were exclusively governed by the Aboriginal Peoples Act 1954 (the Act). Consequently, there is no room for the co-existence of common law rights.

The Orang Asli challenged the claim of the State in the High Court and in first instance the case was heard before Mohktar Sidin JCA.

DECISION

Two key issues were raised:

- (1) Can native title and interest in aboriginal land be lost by colonization or sovereignty?
- (2) Can native title be extinguished by clear and plain legislation or by an executive act authorized by such legislation without adequate compensation?

On the first issue, Mokhtar Sidin held that the Orang Asli had a common law right to native land by the following rationale:

“The question now is whether the plaintiffs have any rights over their traditional and ancestral lands. For this purpose, it is better for me to trace the plaintiffs' historical claim on the said land.

It is not disputed that traditionally, Peninsular Malaysia was occupied by two groups of people; namely, the Malays who lived along the coast and the rivers and the aboriginal people who lived in the interiors or locally known as the 'Ulus', each group occupying their own areas of spheres and living in harmony. Within the Malay Peninsula were found the Malay Sultanates and, within the Malay Sultanates, some areas were occupied by the aboriginal peoples without any disputes as to their occupation of their lands. Land disputes in this part of the world began with the coming of the Europeans.

The British introduced their system of government and administration which included the demarcation of lands.

The British introduced the Torrens land system (current Malaysian land law legal system requiring registration of title and alienation), which introduced alienation and title for the first time. This system brought within it all the people except the aborigines who continued to live in the jungle and roamed freely and sheltered wherever they wanted. These people continue to live from the produce of the jungle and the jungles are still their hunting grounds. Before the introduction of the Torrens land system, these lands were unclaimed land in the present sense but were 'kawasan saka' to the aboriginal people. On the introduction of the Torrens land system, all the kawasan saka became state land but the aboriginal people were given the freedom to roam about these lands and harvest the fruits of the jungle.

.....My view is that the aboriginal peoples' rights over the land include the right to move freely about their land, without any form of disturbance or interference and also to live from the produce of the land itself, but not to the land itself in the modern sense that the aborigines can convey, lease out, rent out the land or any produce therein since they have been in continuous and unbroken occupation and/or enjoyment of the rights of the land from time immemorial. I believe this is a common law right which the natives have and which the Canadian and Australian courts have described as native titles and particularly the judgment of Judson J in the Calder case at p 156 where His Lordship said the rights and which rights include '... the right to live on their land as their forefathers had lived and that right has not been lawfully extinguished ...'. I would agree with this ratio and rule that in Malaysia the aborigines' common law rights include, inter alia, the right to live on their land as their forefathers had lived and this would mean that even the future generations of the aboriginal people would be entitled to this right of their forefathers.

.....Much nearer to us, the High Court of Australia consisting of seven judges including the Chief Justice, in the case of *Mabo & Ors v State of Queensland & Anor* (1986) 64 ALR 1 sealed the statement of law pronounced in the Calder case by according rights to the aboriginal peoples of the Torrens Island of Queensland and overturning two centuries of court ruling that Australia was found terra nullis, that is Australia was an uninhabited island discovered by the British, or in other words, legally not recognizing the existence and/or occupation of Australia by Australian aboriginal people. [*429] The Mabo case (No 2) decision was succinctly condensed by the Federal Court of Australia in the case of *Pareroultja & Ors v Tickner & Ors* (1993) 117 ALR 206 at p 213 where the court held:

As mentioned earlier, Mabo (No 2) is authority for the proposition that the common law of Australia recognizes a form of native title which, except where it has been extinguished, reflects the entitlement of the indigenous inhabitants in accordance with their laws or customs to their traditional land which is preserved as native title. Native title

has its origins in and is given its content by the traditional laws acknowledged by, and the traditional customs observed by, the indigenous inhabitants of the territory. The nature of native title must be ascertained by reference to the traditional laws and customs of the indigenous inhabitants of the land. Native title does not have the customary incidents of common law title to land, but it is recognized by the common law. It may not be alienated under the common law. If a group of aboriginal people substantially maintains its traditional connection with the land by acknowledging the laws and observing the customs of the group, the traditional native title of the group to the land continues to exist. Once the traditional acknowledgment of the laws and observance of the customs of the group ceases, the foundation of native title to the land expires and the title of the Crown becomes a full beneficial title. The possession of land under native title may be protected by representative action brought on behalf of the people concerned ...”

In fact on appeal , the Court of Appeal in the Adong case went further and opined that the deprivation of livelihood of a people group by the state may amount to deprivation of life itself and that state action which produces such a consequence may be impugned on

JCA Gopal Sri Ram held:

“In my view, if the aboriginal people are now to be denied the recognition of their proprietary interest in their customary and ancestral lands, it would tantamount to taking a step backward to the situation prevailing in Australia before the last quarter of the 20th century where the laws, practices, customs and rules of the indigenous peoples were not given recognition, especially with regard to their strong social and spiritual connection with their traditional lands and waters. The reason being that when a territory was colonized by the Whites, it was regarded as practically unoccupied, without settled inhabitants or settled land, an empty place, desert and uncultivated even though the indigenous peoples had lived there since time immemorial because they were regarded as uncivilized inhabitants who lived in a primitive state of society. However, Mabo No 2 changed the position, and since then, there had been a flurry of state and federal legislation relating to native titles. Brennan J in his reasoning, referred to international human rights norms. He said:

The common law does not necessarily conform with international law, but international law is a legitimate and important influence on the development of the common law, especially when international law declares the existence of universal human rights. A common law doctrine founded on unjust discrimination in the enjoyment of civil and political rights demands reconsideration. It is contrary both to international standards and to the fundamental values of our common law to entrench a discriminatory rule which, because of the supposed position on the scale of social organisation of the

indigenous inhabitants of a settled colony, denies them a right to occupy their traditional lands.”

On the second issue, can the State take away the livelihoods rights of the Orang Asli through enacting special legislation or Acts without adequate compensation?

Mokhtar Sidin had this to say:

“These people live from the hunting of animals in the jungle and the collection of jungle produce. Those are the only source of their livelihood and income. Can these rights be taken away by the government without compensation? At a glance this could be done, but upon looking further and deeper, it is my opinion that compensation ought to be made. This can be discerned from s 11 of the Act, which guarantees adequate compensation for land, bearing rubber or fruit trees claimed by the aboriginal people, that is alienated..... In the present case, I am of the view that adequate compensation for the loss of livelihood and hunting ground ought to be made when the land where the plaintiffs normally went to look for food and produce was acquired by the government. The compensation is not for the land but for what is above the land over which the plaintiffs have a right.”

With regard to their rights under the Act, it was affirmed in the Adong case (which was concerned with the aboriginal inhabited place) that the Act does not limit the aborigines' rights therein and in order to determine the extent of the aboriginal peoples' full rights under the law, their rights under the common law and the Act has to be looked at conjunctively, for both the rights are complementary, and the Act does not extinguish the rights enjoyed by the aboriginal people under the common law.

Mohktar Sidin further amplifies this common law and statutory right by the provision of the Federal Constitution. On their constitutional rights, the constitution is the supreme law of the country. Article 4 of the Constitution provides that all laws passed after independence day, which are inconsistent with the constitution, are void to the extent of the inconsistency.

The learned judge, in so holding, said:

The Federal Constitution art 13 supersedes both statutory law and common law and mandates that all acquisition of proprietary rights shall be compensated and that any law made for the compulsory acquisition or use of property without compensation shall be rendered void in accordance with art 4 of the Federal Constitution. I assume that the alienation of the Linggiu valley lands in four titles was done under the National Land Code 1965 but the National Land Code 1965 does not provide for compensation of land acquired. However, the National Land Code 1965 must read as being subservient to article 13 of the Federal Constitution and where there is no provision for compensation under statutory law, art 13(2) should be read into that statute.

In this case the defendants purported to compensate the Orang Asli only for what had been provided for under the Act. Such compensation is not adequate within the meaning of art 13(2) of the Constitution, although the Act is a special Act relating to the Orang Asli. Therefore, the court held that the deprivation of the plaintiffs' proprietary rights was unlawful because they are entitled to the compensation in accordance with art 13(2).

It was held that the aborigines' common law rights include, inter alia, the right to live on their land as their forefathers had lived and this would mean that even the future generation of the aboriginal people would be entitled to this right of their forefathers, and further, that the Act does not exclude rights vested in the aboriginal people at the common law and the sum of RM26.5 million had to be paid to the Orang Asli as compensation. (However, Mohktar Sidin opined "I must bear in mind that in making this award I am only giving a monetary equivalent to the loss of land use and the land produce. The sentimental, cultural and heritage attachment is not objectively achievable for that is a subjective matter.")

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Appendix 1

***How can I get involved?*¹**

Online Forum

The purpose of the online forum is to give all stakeholders the opportunity to move the debate forward. On a monthly basis, a new topic will be posted for indigenous peoples, tourists, the tourism industry, decision-makers and interested members of civil society alike to comment on obstacles they perceive, and solutions they propose. Comments can also point to resources for people to tap into, best practices to draw from, etc. Those wishing to propose monthly themes are welcome to send their suggestions to cynthia.morel@mrgmail.org.

The online forum is located at <http://www.minorityrights.org/forum>. You are required to register as a user in order to be able to use this forum. For technical support, please email richie.andrew@mrgmail.org.

Information-Gathering

Collection of case studies and best practices.

As previously cited, one of the key objectives of the campaign is to collect as much information as possible on the new developments on displacements caused by tourism. Case law or best practices relating to displacements of indigenous peoples due to other development imperatives can also be most useful for drawing comparisons and to use as tools for comprehensive strategies.

As a work in progress, we urge all those wishing to either send case law (judgments), case studies or best practices to cynthia.morel@mrgmail.org. These can be sent in English, French, Spanish, Swahili or Portuguese. Given that the campaign is also designed to give a voice to affected indigenous communities, such communities are strongly encouraged to share their experiences. When permission is granted, accounts of the violations experienced can be made available on the website as a case-study for MRG and other partner organizations to help point towards helpful information, strategies and tools.

Accounts of success stories (from any source) are also most welcome, serving as best practices for other indigenous communities to draw from.

Mapping out the tourism industry in your area

Again as a work in progress, and with limited resources, it is difficult for MRG and its partners to map out all key tourist operators. Any interested individual is encouraged to map out key tourist operators in their country or greater region. Our primary focus is on ecotourism operators, as we believe that the goodwill behind their industry makes them more susceptible to engaging on this issue and work towards new alternatives and solutions. You are nonetheless also welcome to map out mainstream tourist operators.

¹ *Note that information is welcome in English, French, Portuguese, Spanish, Swahili.

Questions you should seek to answer include:

- Name of organization
- Date of establishment
- Geographic areas in which they operate
- Main clientele (which would be inextricably linked to key pressure points)
- Best practices and/or areas requiring improvement (e.g. do their brochures say anything about indigenous community involvement with the nature reserve, the history of the people originally inhabiting the land, etc.)

At the end of 2007, such information will be compiled as an informal database for indigenous communities or NGOs wishing to target these tourism operators for dialogue and improvement in their business practices.

Informing us of related events in your area

Under the links section, we will be developing a calendar of events. We welcome any information on relevant conferences (pertaining to ecotourism, tourism more generally, tourism trade shows, indigenous rights or development) that you do not see posted on the MRG website, whether local, national or international in scope.

This will enable MRG and its partners to better identify key advocacy opportunities. The information you forward will also make it possible for all interested individuals or organizations to raise some of the questions and issues underpinning the Trouble in Paradise campaign. This could include seeking thoughts and opinions vis-à-vis the preliminary recommendations set out by the 2006 Kenya Pastoralist Week forum, listed under the previous section. MRG would be most grateful if those putting such questions forward report back to us with the response of those having engaged on the issue. This input can either be posted onto the MRG online forum, or sent to cynthia.morel@mrgmail.org. We would kindly ask you to specify which event you attended, and the names of speakers or organisations who pronounced themselves on the issue if possible.

Informing us of relevant links, publications, materials

Under the links section, we will be developing an inventory of tour operators, NGOs and governmental programmes working on related issues, and publications that can be of use to furthering the awareness-raising goal of this campaign. MRG and its partners warmly welcome all resources brought to our attention.



Trouble in paradise – tourism and indigenous land rights: together towards ethical solutions

Background

National Parks were first created in the 1920s in North America. The development of nature tourism led to South American countries following suit in the 1980s. In East Africa, ecotourism originated as wildlife tourism in the 1970s.¹ One of the underlying principles behind this new form of tourism was to allow for development and support of community, while maintaining wildlife migrations, ecosystems and diversity.

Ecotourism has passed a number of milestones. As a result, there has been a growing sensibility worldwide with regard to animals and the environment, as well as an increasing sensitivity towards nature and culture. Tour operators market the ecotourism logo, creating a “do good, feel good, leave no trace” ethos. Organizations such as the International Ecotourism Society (TIES) and other non-governmental organizations (NGOs) have been building agendas and raising awareness, while an increasing number of governments are promoting policies and regulations that will create ratings and standards.²

Despite these important contributions, too little attention has been paid to the impact of conservation efforts on local peoples and, in particular, on indigenous peoples whose traditional way of life and mode of production depends on their access to their ancestral lands. Indeed, the majority of indigenous communities who traditionally occupied current ecotourism destinations, such as wildlife or biosphere reserves, have been forcibly evicted from these areas in order to create these spaces. An escalating number of case studies around the world confirms that the majority of these evictions were undertaken without the free prior informed consent of indigenous communities, and/or without adequate compensation for their loss.

Many of these displacements appear to be implemented on the premise that wildlife and natural resource conservation is incompatible with human activity. This is despite indigenous peoples’ ancestral role as custodians of the land and despite their traditional knowledge systems that ensure the sustainable use of the resources in question. In the case of semi-nomadic pastoralists, the danger of over-grazing has only become more acute as land tenure systems

(which, since colonialism, fail to recognize their way of life) continue to parcel out large areas to individual and commercial interests. In these instances, particularly where pasture is rare in times of drought, it is important to reconsider the interplay between conservation and the cultural survival of indigenous peoples. A further problem, as highlighted by the NGO Tourism Concern, is the insistence by tour operators that tourists do not want to see cattle or pastoralists such as the Maasai, whose lifestyle has supported the wildlife for all these years, because it spoils the idea of ‘pristine wilderness’.³

Who is affected?

In the 2006 drought that heavily affected Kenya, numerous pastoralist communities such as the Maasai and the Endorois lost, on average, 50 per cent or more of their cattle, despite the availability of fresh water and grazing pastures in their respective ancestral lands of the Mara and the Lake Bogoria Game Reserve in the Rift Valley.

More broadly speaking, well over 50 per cent of indigenous communities in Kenya have experienced some form of land dispossession in the name of ecotourism or other development initiatives (this reaches 60–70 per cent in northern Kenya). Affected communities, to name but a few, include the Maasai and the Ogiek in the Southern rangelands; the Endorois, Ilchamus, Pokot, Sabaot, Sengwer and Turkana in the Rift Valley; the Borana, Ghabra, Rendille and Somalis in northern Kenya; and the Orma in the wetlands of the Kenyan coast.

In Tanzania, numerous issues arise out of the evictions targeting the Maasai around Ngorongoro, Monduli, Lake Manyara and Tarangire. The Maasai and other communities such as the Hadzabe (hunter-gatherers) have drawn attention to the exploitation and discrimination they face as a result of the continuing imbalances between human rights, wildlife conservation and the management of natural resources.

Legal cases regarding these same issues are on the rise around the world, in Australia, Botswana (the San), Honduras (the Garifunas) and Kenya (the Maasai and Endorois), to name but a few.⁴

Trouble in paradise: campaign outline

Target audience

Minority Rights Group International (MRG) launches this campaign in partnership with the Kenyan-based Centre for Minority Rights Development and the Kenya Pastoralist Week (<http://www.cemiride.info>). The campaign's primary target audience consists of indigenous peoples, ecotourists and tourism industry representatives.

Campaign goals

- To raise awareness among tourists, ecotourists and the tourism industry of the acute challenges faced by indigenous peoples, despite the numerous merits of ecotourism as it is currently practiced.
- To increase dialogue between indigenous peoples, ecotourists and the tourism industry in order to increase understanding of each others' needs, interests and goals.
- To actively seek the input and recommendations of the aforementioned stakeholders, with a view to finding new ethical solutions.
- To produce a final report (to be launched at the 2008 World Social Forum) that will compile the overarching conclusions drawn from the exchanges, interviews and consultations taking place through 2007. The report's proposed frameworks and recommendations will also draw from lessons learned around the world, as well as best practices that ecotourists and the related ecotourism industry can use to inform new and improved practices.
- Finally, the campaign also seeks to facilitate dialogue between indigenous leaders and local/national authorities in order to ensure compliance with international standards on the rights of indigenous peoples, including their right to land, natural resources and participation.

Campaign scope

The campaign scope is international in focus. Though most of MRG's experience is rooted in Africa, we welcome all interested indigenous communities to share their experiences about ecotourism – negative as well as positive – and to forward questions, comments and/or recommendations. While this text is only available in English at the moment, correspondence can be sent in English, French, Portuguese, Spanish or Swahili. Tourists, ecotourists and tourism operators from all countries, along with interested local or national authorities, are also encouraged to provide input. In this regard, the campaign will be as international as its participants and contributors allow.

Campaign tools: website and online forum

MRG's Trouble in Paradise campaign website will serve as one of the focal tools for collecting all information and input through the course of 2007. You can access the site at http://www.minorityrights.org/Trouble_in_Paradise. The website maps out the key targets of the campaign and initial recommendations for comment from all stakeholders. It contains relevant international human rights standards and case law, as well as case studies on the subject matter. Throughout the year, visitors are welcome to suggest new content materials or links to cynthia.morel@mrgmail.org. Finally, the website also hosts an online forum where pastoralists, ecotourists, tourism industry representatives, decision-makers and wider civil society alike, are given a space to share ideas, put forward recommendations and raise questions. Contributions to the online forum will also inform the content of the final report at the end of the campaign.

International standards

In order to be human-rights-friendly, as well as friendly to the environment, the tourism industry and local governments must strive to ensure greater respect for, and implementation of, the following rights:

Land rights

The problem of displacement faced by indigenous communities has been widely recognized.⁵ For example, the Working Group on Indigenous Populations/Communities from the African Commission on Human and Peoples Rights has pointed out that, for pastoralist communities:

*'[...] their customary laws and regulations are not recognized or respected [...] as national legislation in many cases does not provide for collective titling of land. Collective tenure is fundamental to most indigenous pastoralist and hunter-gatherer communities and one of the major requests of indigenous communities is therefore the recognition and protection of collective forms of land tenure.'*⁶

Despite these difficulties, the recognition of indigenous peoples' communal land rights as property rights has become increasingly established under international law. One of the leading cases on this principle is the *Mayagna (Sumo) Awas Tingni v Nicaragua* case, where the Inter-American Court of Human Rights recognized that the American Convention on Human Rights protected property rights 'in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property'.⁷ Moreover, the Inter-American Court stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.⁸

Right to participation and right to development

While interest in the traditions and cultures of indigenous peoples is consistent with the wider ethical framework of ecotourism, the reality is that, under current prevailing models, local peoples are being overwhelmingly marginalized in the process of development. In most cases, communities are afforded only a token role, performing cultural dances at the borders of reserves for contributions that pale in comparison to the fees collected by tour operators. Few structures currently exist to ensure that a set percentage from tourist proceeds goes towards community funds that can enable the community to secure wells, cattle dips, veterinary supplies, medicines, school fees and other necessities for their well-being. Even fewer of the existing best practices ensure the full participation of the community in how these funds should be allocated and spent, or how the reserve should be managed.

The right to participation is implicit in the United Nations (UN) International Covenant on Economic, Social and Cultural Rights, in Articles 8 (on freedom of association) and 15 (on cultural life), and explicit in the UN International Covenant on Civil and Political Rights. The right to participation is also spelt out in the 1986 UN Declaration on the Right to Development, where Article 2(3) notes that the right to development includes 'active, free and meaningful participation in development'. The right to participation is also outlined in the 1993 Vienna Declaration and Programme of Action.

Individuals, groups and communities have a human right to be involved in decision-making, planning and implementation processes affecting their economic, social and cultural rights, and are entitled to information that enables the decision-making process to be meaningful. It follows that states and non-state actors, particularly development agencies, have a duty to enable people affected by a development activity to participate in ways that can positively transform their social, political and economic conditions.

Free prior informed consent

International development organizations have begun adopting participation and consultation standards with respect to indigenous peoples. A UN Development Programme policy paper notes that participation is 'essential in securing all other rights in development processes'.⁹ The World Bank has recently updated its Operational Policies on Indigenous People, now requiring that all borrowers from the Bank 'engage in a process of free, prior and informed consultation... [that] results in broad Community support' by the indigenous peoples affected.¹⁰

The International Labour Organization (ILO) delineated consultation standards with respect to indigenous peoples in Convention No. 169. The relevant text of the Convention (Article 6(2)) states: 'The consultations carried

out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures'.

The most developed explanation of what free prior informed consent means has been made by the UN Committee on the Elimination of Racial Discrimination (CERD). CERD adopted General Recommendation 23 Concerning Indigenous Peoples, which emphasizes that no decisions directly relating to the rights or interests of indigenous people should be taken without their 'informed consent'. The Committee has reiterated this duty in its Concluding Observations to states parties.

The requirement of prior informed consent has also been delineated in the case law of the Inter-American Commission on Human Rights. In *Mary and Carrie Dann v. USA*, the Commission noted that convening meetings with the community 14 years after title extinguishment proceedings began constituted neither prior nor effective participation.¹¹ To have a process of consent that is fully informed 'requires at a minimum that all of the members of the Community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives'.¹²

The above standards are obligations imposed upon states under international law. The tourism industry should use these standards as important guidelines in all their dealings with indigenous communities when consulting with them on conservation efforts taking place on their ancestral lands.

Concluding remarks

As ecotourism grows in popularity, there are a number of challenges that need to be faced. Stakeholders must strive to ensure that global standards are established, monitored and met, to ensure that all those affected by (or involved in) ecotourism may benefit. The standards in question need to be respectful of the rights of indigenous peoples. As traditional custodians of their lands, with intimate knowledge of the eco-systems they long protected, indigenous peoples must be viewed as key contributors to the ecotourism industry. The time has come for all stakeholders to join hands in making the shift towards ethical solutions that can allow for an ecotourism industry that thrives alongside empowered and involved indigenous communities for the benefit of all.

Notes

- 1 David Western, 'The Responsible Business Opportunity', East Africa International Year of Ecotourism Regional Meeting Information Summary of Proceedings (2002).
- 2 *Ibid.*
- 3 Tourism Concern, *Tourism in focus*, Spring 2006, p. 8.
- 4 Links to these cases are available at http://www.minorityrights.org/Trouble_in_Paradise

working to secure the rights of minorities and indigenous peoples

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Recommendations

Recommendations from the Kenya Pastoralist Week, 2006*

The Kenya Pastoralist Week (KPW) is a multi-stakeholder advocacy platform for pastoralists and minorities, established in 2003. The KPW meets annually with a view to lobbying and advocating for recognition and participation of pastoralists and minorities in development processes. Of the hundreds of communities having taken part in the KPW, many suffer directly from tensions between ecotourism and their pastoralist way of life.

Since 2003, the KPW has established solidarity linkages with other similar platforms in Ethiopia, Tanzania and Uganda. In November 2006, the KPW developed a preliminary list of issues and recommendations to be considered by the tourism industry, local authorities and other relevant stakeholders. Contributions via the online forum on MRG's website will help develop a perspective on the concerns of other indigenous peoples around the world; a further understanding of what the tourism industry and decision-makers might consider as obstacles or first steps to addressing these concerns; and what ecotourists themselves wish to support.

KPW 2006 Recommendations:

1. That the private sector should respect the rights of indigenous communities in the conduct of their business, including within the tourism industry.
2. That governments and the tourism industry recognize the pastoralist way of life as an ancestral mode of

production that must be protected and promoted alongside ecotourism.

3. That spaces be created to afford indigenous peoples the opportunity to actively participate in decision-making processes that target their land and natural resources.
4. That restitution mechanisms be developed to ensure that land and natural resource rights are restored to the communities in instances where they were unfairly acquired or expropriated.
5. That governments provide for policy recognition of communal land tenure and pursue equitable sharing of resources.
6. That deliberate and specific benefit-sharing measures be instituted to ensure that indigenous peoples benefit from resources that accrue from the tourism industry using their ancestral lands.
7. That funds be made available through tourism revenues and government grants to facilitate indigenous peoples' human rights education, solidarity building and advocacy before national and international human rights bodies.
8. That, in instances where litigation is necessary, indigenous peoples can engage in this process free from intimidation and harassment.
9. That governments that have not yet signed and ratified international instruments for the protection of minorities and indigenous peoples do so immediately.

* See Kenya Pastoralist Week 2006 at <http://www.cemiride.info>

5 Report of the African Commission's Working Group of Experts, Submitted in accordance with the 'Resolution on the Rights of Indigenous Populations/Communities in Africa', Adopted by the African Commission on Human and Peoples Rights at its 28th ordinary session (2005).

6 *Ibid.* p. 21.

7 *The Awas Tingni Case* (2001), para 148.

8 *Ibid.* at para. 151.

9 *Integrating Human Rights with Development: A UNDP Policy Document*, United Nations Development Programme (1998), Sec. 2.

10 *Revised Draft Operational Policies on Indigenous Peoples 4.10*, World Bank (2004), para. 1.

11 *Mary and Carrie Dann v USA* (2002), para. 136.

12 *Ibid.* at para. 140.

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Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities worldwide, and to promote cooperation and understanding between communities. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights. MRG is registered as a charity, no. 282305, and a company limited by guarantee in the UK, no. 1544957. **ISBN 1 904584 58 6** This study is published as a contribution to public understanding. The text does not necessarily represent in every detail the collective view of MRG or its partners. Copies of this study are available online at www.minorityrights.org. Copies can also be obtained from MRG's London office.

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