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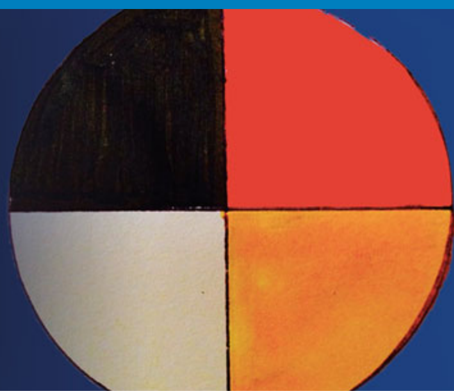

Heather Devere
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Peacebuilding and the Rights of Indigenous Peoples

Experiences and Strategies for the 21st Century

The Anthropocene: Politik—Economics—Society—Science

Volume 9

Series editor

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Peacebuilding and the Rights of Indigenous Peoples

Experiences and Strategies for the 21st Century

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Acknowledgement of the cover photo: Medicine Wheel, Cree Nation, Winnipeg, Canada. *Source* Jeffrey Ansloos who granted permission. Photo on the internal title page: Indigenous People rally for water rights, Bolivia, 2000 (see Chap. 7). Photo provided by Fabiola Vidaurre Belmonte, with permission of the Association of the Victims.
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ISSN 2367-4024 ISSN 2367-4032 (electronic)
The Anthropocene: Politik—Economics—Society—Science
ISBN 978-3-319-45009-4 ISBN 978-3-319-45011-7 (eBook)
DOI 10.1007/978-3-319-45011-7

Library of Congress Control Number: 2016950398

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Copyediting: PD Dr. Hans Günter Brauch, AFES-PRESS e.V., Mosbach, Germany

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Foreword

This is a hopeful book. Although it catalogues a number of the difficult and complex issues confronting Indigenous Peoples, and particularly the ongoing opposition from States and others to the effective exercise of collective indigenous rights, it highlights how such rights might be advanced within peacebuilding frameworks.

That in itself might seem hopeless, as it presupposes a way forward in spite of the centuries' old denial of indigenous rights and the implacable disruption of peace not just within the relationship between colonising States and Indigenous Peoples but throughout the world generally. Yet by highlighting local and international efforts by Indigenous Peoples to find peace and a meaningful exercise of self-determination the essays in the book nevertheless offer hope.

In various ways, the essays use the drafting of the United Nations Declaration on the Rights of Indigenous Peoples as a symbol that even the most violent and centuries' long denial of rights might at last be in the process of remediation if not yet repudiation. They also accept that although the maintenance of peace and the right to wage war have often been the contradictory palimpsests of human existence, the jarring contradictions that have too often marked the exercise of political power, they too may be remedied and hopefully repudiated.

There is surely need for such hope. Even though nations have regularly invented reasons to go to war, whether to defend the so-called national interest or to spread the word of a god, there is a peculiar and dangerous war-obsession today. In an age, where an invasion can be marketed as "shock and awe" and its innocent victims can be simply dismissed as "collateral damage" it almost seems as if war now draws on

its own bloodied history to acquire an obscene attraction as the fruit of diplomacy rather than its failure.

Most damagingly, politicians desperate for vicarious glory continually invent the "other" who can be demonised as an enemy and there is only a short distance between the free-wheeling lies that characterised Indigenous Peoples as inferior savages who needed to be destroyed in order to be "civilised" and the catch-all labelling of "terrorists" who must be destroyed in order to protect civilisation. In each case the wars that have followed the "othering" have been the corruption of peace and reason, a generation of fear and ignorance that has perverted the best in humanity.

The colonisation and dispossession of Indigenous Peoples has of course been one of the most pernicious and long-lasting affronts to the best in humanity that the world has ever seen. In a very real sense it has depended upon denying the full humanity of Indigenous Peoples which is why the United Nations Declaration is so important. For in its articulation of "indigenous human rights" it has been properly seen by many Indigenous Peoples as a restatement of our full humanness. Indeed it may be seen as a contribution to all the struggles that Indigenous Peoples continue to wage to reclaim all that that "full humanity" entails from the political and constitutional reaffirmation of our self-determination to the joyous pride in the cultural expression of our art, music and poetry.

As in all cultures that fullness of indigenous humanity has always traversed the usual range of stumbling mistakes and soaring achievements, of despairing weaknesses and inspiring strengths. As Indigenous Peoples, we may be unique in our collective obligations to each other and to Mother Earth but the very essence of a relational ethic necessarily includes an aversion to any belief in some mythic infallibility. So, war was often the sad collapse of that ethic in indigenous societies too and it manifested itself as a failure to hold together the fabric of relationships.

But Indigenous Peoples have also possessed profound understandings of the metaphysics of peace and its moral imperatives to honour and restore any damaged relationships. That is why in the Māori language there is no word for "enemy". Instead those with whom one might be in conflict were called "hoariri" or angry friend," and the highest aspiration, both individually and collectively, was to be at peace with one's friends.

Sometimes that aspiration evolved into social traditions where people turned away from war and founded a brave determination to live forever in peace. There is a quiet majesty in those traditions and in the conceptualisation of being at peace with one's friends that is still sorely needed in the world. As in so many things Indigenous Peoples have much to offer humanity and the common belief that everyone and everything is interrelated, that we are all friends, might be the most

important contribution of all. For it offers not just a framework for humans to find peace with each other but with the Earth Mother as well.

The contributions in this book illustrate how indigenous rights are being advanced through various peacebuilding strategies. But they also suggest strategies for peace too, strategies which understand that peace is more than the absence of war. It is living with "friends" respectful of the fullness of each other's humanity and mindful that such respect is itself an antidote to the "othering" that too easily leads to war. Therein lies the hope.

Aotearoa, New Zealand
June 2016

Moana Jackson
on the Omahu Marae

Moana Jackson (Ngāti Kahungungu, Ngāti Porou) is a lawyer who specialises in human rights issues, constitutional law and the rights of Indigenous Peoples. Moana graduated in Law and Criminology from the University of Victoria, Wellington, Aotearoa New Zealand. He worked as a researcher for the Justice department of the Navajo Nation in Arizona, United States of America. Moana has been a leading advocate on International Indigneous Peoples issues and in 1988 he was part of a working group that drafted the Declaration on the Rights of Indigenous People. In the same year, he was co-founder of Nga Kaiwhakamarama i Nga Ture (Māori Legal Services) in Aotearoa/New Zealand. Moana was appointed Chairperson of that working group in 1990 and subsequently appointed as a Judge on the International Tribunal of Indigneous Rights in Hawaii 1993 and Canada 1995. He was also appointed as Counsel for the Bougainville Interim Government at the time of the Bougainville Peace Process. Moana has dedicated his career to researching, advocating and championing issues around indigenous sovereignty and the consequences of colonising laws, spending time in the archives of the Colonial Office, Privy Council and Church Missionary Society. Moana Jackson is currently the Director of Te Hau Tikanga (Māori Law Commission) in Aotearoa.

Acknowledgements

Our first acknowledgement is to the First Peoples of the lands, the origin and hearth of human cultures, the caretakers of their lands and homes, the ancient wisdom and knowledge keepers, who have survived centuries of invasion, dispossession and genocide to reclaim their human and distinctive rights and, given the opportunity, offer understanding and guidance for humanity, as we confront the mounting challenges of the twenty-first century.

Since this book has its inception in the research papers, presentations and discussions of the Commission for the Rights of Indigenous Peoples within the International Peace Research Association (IPRA), we gratefully acknowledge the contribution of not just the authors in this book, but all members who have participated in the Commission over two decades of exchange and scholarship, recognising that the getting of knowledge is a collective process that has its basis in the search for understanding and communication of its outcomes.

We especially owe our gratitude to Hans Günter Brauch who has been a long-time member of IPRA and series editor with Springer Nature for his suggestion that the publisher could be interested to consider a proposal on the research proceedings of the Commission for the Rights of Indigenous People. Hans Günter Brauch astutely recognised the relevance of this work to the transformative work required to meet the contemporary challenges to creating a world culture of peace. Subsequently, when we presented our proposal for a volume of chapters, prepared from IPRA conference papers and a worldwide submission process, Hans Günter Brauch liaised with Springer Senior Editor Johanna Schwartz in the process of accepting the proposal and establishing the guidelines for the book. We thank them for their active involvement and contribution to the book. Along the publishing process many Springer staff including Divya Selvaraj contributed to the book and we gratefully thank them all for their efforts

We thank in particular our seventeen authors for their chapters and their ready cooperation in revising chapters and assisting the editors on many aspects of the preparation for publication. We believe that the collective effort on this book has

strengthened the networks of scholars working in areas of the rights of Indigenous People.

As any writer knows, a book benefits from feedback and we wish to acknowledge the contributions to this book from the various anonymous reviewers who assessed initial drafts of the manuscript and provided rigorous and constructive feedback that helped to shape the unity and clarity of the publication.

We acknowledge the support of many university departments that have provided support for the authors in the research, writing and editing of this book. We acknowledge the support of the National Centre for Peace and Conflict Studies at University of Otago, where Heather Devere is based, the College of Education at University of Otago where Kelli Te Maihāroa teaches, and the Centre for Peace and Conflict Studies at the University of Sydney for its support of John Synott in his publications and international leadership in peace studies and education.

We especially express our gratitude to Moana Jackson for his generous contribution to the book through the Foreword. Our respect is profound for the works and wisdom of this Māori leader and teacher, who has a powerful grasp of the significance of Indigenous Peoples in the local and international contexts. Let us all take his words to heart and be inspired by his vision for humanity.

We acknowledge the support of our families, communities and friends during the two years dedicated to the journey of designing, writing and editing this publication. We hope that the book benefits many, especially Indigenous Peoples, through its contribution to positive peace efforts to make the world a better place for all. In addition, each of the three editors wishes to express their appreciation for the experience of working with each other. The long and rigorous process has challenged our skills and developed our capacities as scholars, colleagues and friends. Finally, we acknowledge readers and encourage you to continue the work in support of peacebuilding and the rights of Indigenous Peoples.

Dunedin, Aotearoa New Zealand — Heather Devere
Dunedin, Aotearoa New Zealand — Kelli Te Maihāroa
Sydney, Australia — John P. Synott
August 2016

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Abbreviations

International and Regional

AIPP	Asian Indigenous Peoples Pact
APPRA	Asia Pacific Peace Research Association
CARE	A leading humanitarian organisation fighting global poverty
CBO	Community-based Organisation
CEDAW	Committee on the Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
IPRA	International Peace Research Association
IWGIA	International Work Group on Indigenous Affairs
MNC	Multinational Companies
NGO	Non-governmental organisation
PBSO	Peacebuilding Support Office (UN)
SHG	Self-help groups
UNCHR	United Nations Committee on Human Rights
UNDHR	United Nations Declaration of Human Rights
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Emergency Fund
UN	United Nations
USA	United States of America
WCIP	World Council of Indigenous Peoples

WOSCA	Women's Organisation for Socio-Cultural Awareness
WWI	World War I (1914–1918)

Australia

ABC	Australian Broadcasting Corporation
ATSIC	Aboriginal and Torres Strait Islander Commission
CAR	Council for Aboriginal Reconciliation
DAA	Department of Aboriginal Affairs
HCA	High Court of Australia
IAC	Indigenous Advisory Council
JSCATSI	Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander People
NACC	National Aboriginal Consultative Committee
NAC	National Aboriginal Conference
NTA	Native Title Act
NTI	Northern Territory Intervention
NT	Northern Territory
RDA	Racial Discrimination Act

Bolivia

INRA	Instituto Nacional de Reforma Agraria (National Institute of Agrarian Reform)
MAS	Movimiento al Socialism

Canada

#IDLENOMORE	Canadian Indigenous activist group
AANDC	Aboriginal Affairs and Northern Development Canada
AFN	Assembly of First Nations
B.C.	British Columbia
C-3	Gender Equity in Indian Registration Act
C-31	The Act to Amend the Indian Act
CANZUS	Canada, Australia, New Zealand and United States coalition
RCAP	Royal Commission on Aboriginal Peoples
RCMP	Royal Canadian Mounted Police
TRC	Truth and Reconciliation Commission
UOI	Union of Ontario Indians

India

ADC	Autonomous District Council
AFSPA	Armed Forces Special Power Act
GNLA	Garo National Liberation Army

KLO	Kamtapur Liberation Organisation
MNF	Mizo National Front
NBCC	Nagaland Baptist Church Council
NEC	Northeast Council
NEI	North East India
NPMHT	Naga Peoples Movement for Human Rights
NREGA	National Rural Employment Guarantee Act
NSCN-IM	National Socialist Council of Nagalim Isak-Muivah
NSS	Niyamgiri Suraksha Samiti
PCML	Purumunda Community Media Lab
PESA	Act Extension to Scheduled Areas (PESA) Act
PSSP	Prakrutika Sampada Suraksha Parishad
RTI	Right to Information Act
SoO	Suspension of Operations
ST	Scheduled Tribes
TACs	Tribal Advisory Councils
UAIL	Utkal Alumina International Limited
UPR	Universal Periodic Report
VAW	Campaign to Stop Violence Against Women
WOSCA	Women's Organisation for Socio Cultural Awareness

Taiwan

CIP	Council of Indigenous People
DPP	Democratic Progressive Party
KMT	Kuomintang

Chapter 1
Introduction: Advancing Indigenous Peoples' Rights Through Peacebuilding

John P. Synott

Abstract This chapter introduces the background and contemporary contexts for this book on peacebuilding and the experiences of Indigenous Peoples as they pursue their rights in the early decades of the 21st century. The trends of this century are being shaped by the 2007 pronouncement of the Declaration of the Rights of Indigenous Peoples by the General Assembly of the United Nations. I review this declaration in the context of the earlier Declaration of Human Rights (1948) and how Indigenous Peoples worldwide were neglected in the international adoption of the human rights agenda. The chapter examines the implications of this neglect and subsequent international developments, including the Cold War and the modern drive towards economic development and exploitation of Indigenous People, their lands and resources. The discussion reviews recent policies towards intercultural dialogue and the possibilities of this process towards advancing the rights of Indigenous Peoples. The analysis locates key themes of the chapters of the book and their significance as cases of Indigenous People pursuing their rights within the possibilities of local and international principles and frameworks.

Keywords UNDRIP · Rights · Colonisation · Development · Nuclear tests · United Nations · Interculturality · Alliances · Commission · Peacebuilding

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_1

1.1 The Long March to the UN Declaration of the Rights of Indigenous Peoples

September 13, 2017 will mark a decade since the adoption by the UN General Assembly of the UN Declaration on the Rights of Indigenous Peoples, pronounced on that date in 2007. The march that led to the Declaration began much earlier and was a long and difficult one. Writing in the journal *Cultural Survival*, Coulter (1994) identified the momentum towards the Declaration from the adoption of a draft set of principles at the 1977 NGO Conference at the UN, with the conference theme of "Discrimination Against Indigenous Populations in the Americas". This set the platform for three decades of struggle in the United Nations system to have the principles acknowledged as applying to all Indigenous Peoples on the planet. The detailed history of this campaign is known to its participants and is written in smaller documents. However, a complete account has yet to be written of that process and the impetus of Indigenous peoples to achieve the goal that was nothing less than the first UN recognition of "group or community rights" (Coulter 1994: 1).

In a formal way the first steps of a growing international alliance of Indigenous Peoples was even earlier, with the formation of the World Council of Indigenous Peoples at its conference in British Columbia in October 1975, which was attended by Indigenous delegates from nineteen different nations. Among the key areas worked on at the conference was a Charter for Indigenous Rights. The Charter captured the growing recognition that Indigenous Peoples around the planet had suffered similar impacts both historically through colonisation and through the consequences of modern development. To meet this challenge, they required universal recognition of their rights in order to survive and achieve equality of treatment and opportunity. In this context George Manual, member of the Shuswap tribe of British Columbia, who was elected first president of the World Council of Indigenous Peoples (WCIP), declared the "preservation and protection of Indigenous interests essential to the preservation of world peace and world development" (Sanders 1977: 32). The process of formation of the WCIP was excellently documented by Sanders (1977).

The 1977 conference was followed by a series of regional and world conferences on Indigenous Peoples' cultures, achievements and concerns. These included sharing of needs and approaches to social issues such as education, health, law and justice, and languages, within the boundary issues of self-determination, human and distinctive rights, and land rights. The movement distinguished itself within the international context by identifying itself as the Fourth World movement, distinct from decolonising Third World movements, and characterised as Indigenous nations of distinct cultures deprived of their territories within nation states. These activities resulted in the formation in 1982 of the UN Working Group on Indigenous Populations, which was the first mechanism established in the UN with a specific focus on the rights of Indigenous Peoples.

The ongoing campaign involved political struggles in the UN to have the Declaration in its draft and final forms supported by the member states of the UN.

The processes of contestation, lobbying, political debate and governmental resistance were pursued passionately on both sides (Cooper 2003). There were issues regarding communications, representation, definitions and procedures within the relevant sectors of the United Nations, particularly the Economic and Social Council, now known as the Department of Economic and Social Affairs.

The undertaking at the UN was reflected by vigorous public struggles at national levels as politicians and much of the corporate mass media promoted wild speculations of Indigenous communities seceding from nations and presenting other threats to national unity, such as blocking essential economic development.

What stood out was the opposition by governments of wealthy nations that were already relatively advanced in providing social supports for Indigenous Peoples, namely the USA, Canada, New Zealand and Australia. These nations—all with sizable minorities of Indigenous Peoples—resisted the UNDRIP and refused to become signatories to it largely on the grounds that Indigenous Peoples might attempt to form independent nations. At the core of the resistance were lobby interests of pastoral, mining and resource development companies whose licenses to exploit resources from remote territories were threatened by empowerment of Indigenous Peoples to make informed decisions and maintain control over their homelands. Resistance to the Declaration on the grounds of possible secession also was supported initially by the nations of the African Union, concerned that the Declaration might lead to territorial secession and claims to statehood. This objection was countered largely by the introduction of Article 46 (1) of the Declaration that insisted that actions from the Declaration would not "dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent states" (quoted in Engle, 20). Subsequently, the African Union supported the declaration but the First World nations maintained their objections to the self-determination principle.

An additional objection, strongly advocated by the New Zealand representative, was that the Declaration as a statement of collective rights proposed that one group would hold rights that overrode the rights of other groups within the same nation. The representative argued that collective rights should be subordinated to individual rights (Engle 2011).

Support for the Declaration was promoted and pursued by a wide range of Indigenous Peoples organisations and communities plus many non-Indigenous supporters. During the years of lobbying, debate, reasoning and advocacy Indigenous leaders frequently made their way to the United Nations headquarters in New York and presented their cases as to why it was necessary to recognise that the First Peoples, as occupants of lands long prior to the formation of nation states, long before the colonisation that brought widespread destruction, held distinctive rights which extended beyond the umbrella of the Universal Declaration of Human Rights (1948). Moreover, the campaign for the UDRIP coincided with movements within nations for recognition of land rights, cultural and civil rights of Indigenous Peoples. These parallel struggles intersected and informed each other.

The Declaration was a watershed that dismissed the fictions and invented histories of many settler-nations that denied the existence, native title, cultural

continuity, brave resistances and survival of Indigenous people (Reynolds 1981). Overturning those fictions meant that the settler-nations had to acknowledge their invasions, destruction, genocide, theft, centuries of legal and cultural subjugation and exclusion of the occupants who had, in most cases, been courteous when European newcomers arrived in their lands (Matthieson 2004) and, once they experienced that they were being invaded, had fought valiantly to defend their ways of life and cultures and resist the powerful weapons, industrial technologies and seemingly limitless appetite for violence and dominance of the invaders (Reynolds 2001). By today's standards there would have been many cases before the World Court for genocide and ethnocide of Indigenous Peoples if such principles could have been employed in those times of colonial invasion.

1.2 The UN Declaration of Human Rights (1948), Nuclear Bomb Tests and Impacts on Indigenous Peoples

When the Universal Declaration of Human Rights was put to a vote in the General Assembly in 1948 it was ratified by the nation members of the United Nations, with 48 votes in support and eight abstentions, including the Soviet Union and its satellite nations, as well as Saudi Arabia, and South Africa. However, despite the declaration in the UNDHR of the "equal and inalienable rights of members of the human family," Indigenous Peoples, along with other oppressed social and cultural groups such as those in the nations that abstained from the vote, African-Americans and colonised minorities around the world, continued to be excluded from the entitlements of their inherent human rights. In the case of my nation, Australia, Aboriginal and Torres Strait Islander people were not given national citizenship until some twenty years after the Universal Declaration of Human Rights, and that was achieved in a national referendum to change the Constitution through a campaign by Indigenous Australians and supporters who were often vilified for their beliefs that human rights—including citizenship and social and political rights—applied to Indigenous Australians (Reynolds 2005).

In another example of how lightly the Declaration of Human Rights was taken by the Australian government, from 1952–1963 Aboriginal people who had lived in the southern desert regions around Woomera and Maralinga for tens of thousands of years were exposed to the nuclear bomb tests conducted by the British government with full support and complicity of Australian governments (Walker 2014). The human rights of the Anangu people were a scarce consideration for both Australian and British governments. Some of the inhabitants were forcibly removed from the test area, thus destroying their traditional way of life. However, some 1,200 Anangu people were given no warning or protection and were exposed to nuclear explosions, causing blindness, cancer and other chronic health conditions, in addition to the perpetual contamination of their lands.

Similar experiences were imposed on Indigenous populations of the South Pacific after they were exposed to the effects of French nuclear bomb tests. Their calls to stop the tests, backed by irrefutable evidence of health and environmental destruction in the Mururoa Atoll region, were so opposed by the French government and their military agencies that the authorities resorted to sabotage and murder against activists campaigning to ban the bomb tests, culminating in the terrorist-style bombing on July 10, 1985 of the Greenpeace protest ship *The Rainbow Warrior*, in Auckland harbour, New Zealand, causing the death of photographer Fernando Pereira.

Likewise, the US nuclear bomb tests, over one thousand tests from 1945 to 1992, were conducted in Indigenous Peoples lands in Nevada, Colorado, and New Mexico. The inhabitants of the most infamous US bomb test-site in the Bikini Islands in the Pacific Ocean were forcibly relocated to other Marshall Islands but still suffered the effects of the explosions and fallout. The inhabitants of Okinawa suffered similarly from the H-Bomb tests of the Americans. There was no consideration of the inherent human rights of Indigenous Peoples by the Cold-War obsessed governments of the West. Nor by the Soviets with their 456 nuclear tests in remote parts of Kazakhstan where lived Indigenous people, both nomadic and villagers, who were not even warned or moved out of danger. Along with the natural environments of these regions the Indigenous peoples suffered greatly. Such was the lack of recognition of their human rights by the nations that led the campaign to establish the Universal Declaration of Human Rights.

The on-going institutional racism and structural violence against Indigenous communities and individuals manifest in multiple ways across the Australian nation in such areas as removing children from Indigenous families, stolen wages, social segregation, and exclusion from medical, educational and employment opportunities. These policies, always challenged by Aboriginal families and communities, resulted in marginalisation, ignorance, poverty, apathy drug-dependence, family dysfunctions and criminality in many Indigenous communities. Unfortunately, the Australian experience was similar to those of Canada, New Zealand, the USA and multiple other sites where Indigenous groups lived as subordinated non-citizens.

1.3 Universal Declaration of the Rights of Indigenous Peoples (UNDRIP): Setting International Standards

The campaign for the UNDRIP was opposed by governments of nations such as USA, New Zealand, Australia and Canada on the grounds that Indigenous Peoples had their rights sufficiently framed within the Universal Declaration of Human Rights and other encompassing conventions. However, driven by the inherent moral power of the cause and the legal reasons for the production of the UNDRIP, a slow and sometimes faltering process was established that ran for over a decade until the UNDRIP was eventually endorsed by the General Assembly in 2007. With

the Declaration a set of specific and inherent collective and individual rights were recognised as belonging to over 370 million Indigenous people around the world (Burger 1990).

When the vote was taken in the UN General Assembly 144 nations voted in favour of the Declaration, 11 abstained and four nations opposed the Declaration. Those nations were the USA, Canada, New Zealand and Australia. These recalcitrant nations subsequently changed their positions and put their support behind the Declaration: Australia in 2009, New Zealand in 2010, USA in 2010. At the formal adoption of the Declaration on September 22, 2014 Canada remained alone among nations in withholding its support and maintaining its position that the notion of "free, prior and informed consent," of Indigenous communities within the Declaration in respect to external economic development on their lands was a problematic challenge to sovereignty of the State. However, the recently elected Liberal Party of Canada announced in late 2015 that it will implement the UNDRIP (Smith 2015).

With such a deep and profound background, there were many hopes that the Declaration would provide a watershed towards the advancement of the rights of Indigenous groups. Approaching two decades after the pronouncement we can begin to identify and evaluate impacts of the Declaration around the planet. While many Indigenous communities and supporters have claimed with justification that national governments have continued to spurn the Declaration and its specific content, the UNDRIP provided a vehicle for Indigenous Peoples to have their rights recognised by various UN bodies and also to put pressure on governments to take action towards abiding by the principles of the Declaration. The UDRIP also provided a legitimated set of principles which Indigenous Peoples have been able to summons in campaigns to protect their lands, cultures and communities, such as in opposition to rapacious and destructive impacts of mining, pharmaceutical, pastoral, water and forestry developments for commercial interests in homelands of Indigenous Peoples.

1.4 Embedding the Principles of Indigenous Rights in International Standards

Another area that can be examined for influence of the UNDRIP is its inclusion in a number of significant reports and guidelines of the United Nations that are intended to set international standards, goals and strategies. For example, the highly publicised *Millennium Development Goals* of 2000 set the agenda for global development for the new century with a range of social and economic goals. Reviewing the outcomes of these goals in respect to Indigenous Peoples a journalist reported in *The Guardian* newspaper after a decade of implementation that, "Indigenous People have been the group least well-served by the Millennium Development Goals," (*The Guardian* 2014).

In 2015 the Millennium Development Goals were replaced by the *Sustainable Development Goals*, seventeen of them ranging across a whole spectrum of global human activity and needs, newly focussed toward the emergent environmental crises associated with anthropogenic climate change. In reviewing this set of goals, with their specific targets and strategies, *The Guardian* commentator observed that, “Indigenous People are conspicuous only in the fleeting nature of references to them,” in spite of the fact that Indigenous Peoples make up 5 % of the world’s population and anything from 10–30 % of the world’s poorest people. In its 2015 table of the world’s fifty most vulnerable groups of people, compiled by Minority Rights International, Indigenous groups in South Sudan are identified as the world’s most vulnerable people and Indigenous groups generally comprise a disproportionate number of groups under threat (Minority Rights International 2015).

Given this clear indication of vulnerability, one would have expected a greater recognition of the existence, struggles and requirements of Indigenous Peoples around the globe in the *Sustainable Development Goals*. In fact, the circumstances of Indigenous Peoples warrant a specific goal being nominated towards social, cultural and economic sustainability for Indigenous Peoples. The difficulty was that such a goal would have resulted in some of the world’s richest and most powerful nations not endorsing the *Sustainable Development Goals*, due to the perceived threat that the achievement of these rights by Indigenous Peoples would threaten the economic plans of those nations. Thus, concluded *The Guardian* report, “the slow erosion of Indigenous People is one of the world’s greatest on-going tragedies” (*The Guardian* 2014).

Indigenous Peoples have not been so excluded in all United Nations agendas and statements of principle. One of the most important of these has been the *UNESCO Guidelines on Intercultural Education* (2006) and the general agenda for interculturality, which endorses the need to promote equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect. Interculturality “results from intercultural exchange and dialogue on the local regional, national and international level” (UNESCO, 2006: 17). With this recognition the Guidelines offer a useful definition of the characteristics of Indigenous Peoples that acknowledges:

> Specific social, cultural and economic and living conditions; distinct social, economic, cultural and political institutions and customs and traditions regulating their status; identification as “Indigenous” by others; self-identification as “Indigenous”; attachment to land and to a specific territory and a special relationship with nature or the earth and; their cosmovision (UNESCO 2006: 17).

In promoting the importance of intercultural communications, the *UNESCO World Report* 2009*: Investing in Cultural Diversity and Intercultural Dialogue* (UNESCO 2009) recognised the significance of Indigenous cultures in intercultural dialogues towards global peace and sustainability. Certainly, the dialogic space opened up by the emerging focus on intercultural relations has promise for greater understanding and engagement on an equal footing between members of non-Indigenous cultures and the Indigenous cultures locally, regionally, nationally

and internationally. However, in the current crises of war refugees in the Middle-East and other causes of mass migration into Europe the focus will remain over the next decade on building interculturality between the historic cultures of Europeans and those of the incomers, particularly those with Muslim religious views, due to security issues and the urgent problems presented by so many newcomer cultural groups. Nevertheless, there is an equal urgency to pursue enhanced intercultural relations between the thousands of Indigenous Peoples' cultures and other cultures.

One way this can be done is by embracing dialogic opportunities for specialist knowledge areas such as Indigenous Studies to engage with other academic and policy areas. Challenging the apparent continuance of historic invisibility being assigned to Indigenous Peoples, scholars and knowledge-bearers, their knowledge and interests, the time is appropriate for experts in the field and researchers across allied social science disciplines and interests to work with Indigenous Peoples and specialist scholars engaged in the broad fields of Indigenous Studies, including historians, anthropologists, political scientists, and lawyers. This is particularly valuable as the small but growing number of Indigenous researchers and academics successfully build knowledge perspectives, including research theory and methodology, from Indigenous viewpoints.

This type of "interculturality", whereby Indigenous and non-Indigenous intellectual interests and approaches exchange knowledge and perspectives and collaborate on joint undertakings, can present new approaches for solving problems facing not only Indigenous societies but humanity as a whole. For instance, it is undoubted that Indigenous understandings of the relationship of human societies to nature sustained the spread and growth of human civilizations for tens of thousands of years. Similarly, Indigenous Peoples maintained traditional ways of resolving conflicts to ensure both justice and social harmony and such approaches offer sapient knowledge towards building a world culture of peace (Synott 1996). Many of the chapters in this book take up issues raised in this discussion and examine specific cases of peaceful efforts to achieve specific and general rights for Indigenous Peoples in a wide range of contexts. The Declaration of the Rights of Indigenous Peoples informs these discussions and often features as a significant force for change in the cases under examination.

1.5 International Peace Research Association and the Commission for the Rights of Indigenous Peoples

In this spirit of mutuality, the 16th Conference of the International Peace Research Association (IPRA), held in Brisbane, Australia, from July 8–12, 1996 was able to involve leading Indigenous academics in the preparation and ensuing conduct of the conference. Part of the conference preparation was undertaken by members of the

Oodgeroo Unit for Aboriginal and Torres Strait Islander Studies of the Queensland University of Technology. For the first time at an IPRA concert there was an Indigenous welcome to the local Jagera country by members of the Brisbane Elders and a didgeridoo performance by Aboriginal actor and performer, Sam Conway. The Indigenous presence continued throughout the conference.

On the following day, a plenary session titled “Indigenous Peoples in the Global Peace Movement”, chaired by Goorang-Goorang man Michael Williams, director of the Aboriginal and Torres Strait Islander Centre at University of Queensland, appraised the pursuit of the rights of Indigenous Peoples firmly within the peace research and education frameworks. The speakers in that session were Michael Dodson, the Australian Social Justice Commissioner, who went on to be a prominent member of the group that formed the UNDRIP; Maori Elder Pauline Tangiora who had travelled from Aotearoa/New Zealand; Roberta Sykes, then the Executive of the Black Women’s Action in Education Foundation in Sydney, Australia; and Alph Sekakuku, a Hopi Elder of the Snake Clan, Arizona, USA. These Indigenous scholars and activists discussed the possibilities for greater exchange and mutual support between internationally-oriented peace researchers and Indigenous Peoples movements around the world in the campaign for Indigenous Peoples rights.

Instigated by this small group of convenors and Indigenous participants and with the support of the IPRA delegates at that conference, the Commission for the Rights of Indigenous Peoples was established with the intention that the study and promotion of Indigenous Peoples rights and issues would be ongoing within the IPRA purpose, “to advance interdisciplinary research into the conditions of peace and the causes of war and other forms of violence” (IPRA Statutes, Article 3: Purpose).

Since that important occasion the Commission for the Rights of Indigenous Peoples has participated in every IPRA conference, bringing scholars from different locations and circumstances to share their knowledge and to continue to work on the areas of mutuality between the pursuit of the rights of Indigenous Peoples and different practices in peacebuilding. This is not to say that the Commission has always flourished. Researchers from Indigenous communities, often remotely located, commonly struggle with funds to attend conferences and gain other forms of financial support. We gratefully acknowledge such support as conference organisers have provided to the Commission in the form of travel scholarships but there are some eighteen commissions within IPRA and all have claims on limited funding for the conferences. Sometimes the Commission has presented a small number of conference papers and there were demands that we justify our existence in IPRA in the face being “de-commissioned.” So the Commission for the rights of Indigenous Peoples has remained small and has struggled to remain viable at times —much like Indigenous communities—but has survived so far and maintains an important presence within IPRA.

1.6 Documenting Peacebuilding Experiences of Indigenous Peoples in the Early 21st Century

After twenty years of the presence of the Commission for the Rights of Indigenous People within IPRA we have been able to engage the interest and commitment of an excellent group of scholars from around the planet to contribute to this book that we have titled *Peacebuilding and the Rights of Indigenous Peoples: Experiences and Strategies for the 21st Century*. The title confirms what we have advocated in IPRA and those earlier examples from nuclear bomb tests long ago—that the synergies of peace scholars and those advocating the rights of Indigenous Peoples overlap in significant ways. Issues of overt violence, structural violence, identity maintenance, poverty, gender relations, education, political recognition, economic development, and environmental protection on the paths to sustainability are core concerns both for Indigenous Peoples and peace researchers.

This book examines areas of contemporary experience in which the struggles and achievements of Indigenous Peoples have practised, pursued and promoted peacebuilding strategies in the pursuit of their distinctive, inherent and universal rights. The chapters presented here are not intended to present a complete portrait of conditions and struggles of Indigenous Peoples worldwide, where there are some 370 million people over 500 groups distributed across 90 countries. Nevertheless, reading across the chapters one can follow some of the key approaches pursued by Indigenous Peoples in pursuit of their rights. One of these is the platform presented by the Universal Declaration of the Rights of Indigenous Peoples.

Another theme that flows through these chapters is that of largely non-violent approaches used by Indigenous Peoples in the pursuit of their rights. Democratic pursuit of rights through national political and legal processes is the method employed in the majority of case studies presented in this book. Where there are continuing armed struggles, as in the case of North-East India, the study here also highlights the non-violent campaign for rights in that conflict, and the trend away from armed struggle towards peaceful dialogue and the use of administrative and legal processes to consolidate sustainable conditions.

In deep history Indigenous communities resolved conflicts usually through established conflict-resolution and peacebuilding activities (Fry 2006). When invaded by Europeans they defended their lands as bravely as any groups have ever done. They suffered destruction and atrocities, scientific definitions of their "non-human" status, derogation of their cultures, theft of all they had. They experienced the destructive impacts of ideologies through their encounters with those who invaded them from unknown lands. Across the thousands of distinct Indigenous groups there are tremendous variations in contexts, circumstances and capacities. Yet, there has been no broad trend in modern history of Indigenous groups engaging in terrorism or acts of mass murder on behalf of some ideology or cause. Admittedly, in these early decades of the 21st century there have been terrorist incidents in struggles between some recognised Indigenous groups and the governments of nation states. However, the broad pattern is of adapting to majority

cultures while asserting Indigenous rights and working through legal and institutional means to achieve them. This includes demonstrations and other nonviolent campaign tactics. This trend follows the general expansion of democratic political systems across the nations.

While several chapters analyse achievements and setbacks to Indigenous Peoples' rights through legal-political processes, other chapters provide insights into certain Indigenous traditions and concepts for non-violent conflict resolution and the maintenance of peaceful societies. The perspectives offer comparative and historical dimensions, and examples of efforts to sustain cultures and traditional knowledge. These important studies provide insights into concepts that embody the holistic nature of social relations in Indigenous societies. They also present a range of peaceful mechanisms and nonviolent conflict resolution practices to maintain social harmony.

A third theme that runs through these chapters is that Indigenous Peoples, whilst largely engaged in securing their rights within the nation-states in which they are situated, are important social and cultural actors in the global context. For instance, to achieve economic and social development goals such as employment, education, technology and health, Indigenous communities become involved in projects with the support of international agencies assisting the process of free, prior and informed consent (Weitzner 2011). As discussed in this book these relationships are often supportive but also can be problematic.

In another aspect of the global dimension, many of the local struggles of Indigenous Peoples are against global corporations in pursuit of resources on Indigenous Peoples' lands, or the lands themselves. The conflicts involve governments and their agencies, sometimes collaborating against the interests of the Indigenous communities. At stake are vast amounts of profit to be made by the developers versus the rights of the Indigenous communities. However, wherever possible, Indigenous groups engage the protections of the law, support from international NGOs, global information networks, and the Principles of the Universal Declaration of the Rights of Indigenous Peoples to assert their collective and individual rights.

The impacts of the UNDRIP and the global strengthening of the Indigenous Peoples alliance have also transformed some of the major transnational corporations and development agencies, so that they have established their own guidelines and protocols regarding development processes in Indigenous Peoples' lands. The powerful UN development agencies, the World Bank and the IMF, have established such policies. Giant transnational corporations such as Rio Tinto and Shell Oil have developed protocols for engaging with communities and building partnerships, often after protracted conflicts, public exposure and shaming for their exploitative treatment of Indigenous Peoples in development sites (Sonthalan 2012). The range of issues raised in the case of Bolivia in this book has parallels in most nations where Indigenous Peoples are engaged in conflicts over resource development.

The chapters in this book contain discussions and analyses of a wide range of cases where Indigenous Peoples are involved in different forms of peacebuilding towards the achievement of rights that have been identified and validated within the

UNDRIP. Several of these chapters were first presented as papers in the Commission for the Rights of Indigenous Peoples at the 25th General Conference of the International Peace Research Association in Istanbul, Turkey, 12–15th August 2014. As convenor of the Commission, I was invited by Professor Hans Gunter Brauch, Consultant Editor of Springer Press, to submit a proposal for a book on Indigenous Peoples and Peacebuilding, based on the conference presentations. With our team expanded by the inclusion of my invaluable co-editors Heather Devere of the Centre for Peace and Conflict Studies, and Kelli Te Maihāroa of the College of Education, University of Otago in New Zealand, we invited further chapter proposals from around the world and the process was finally refined down to the set of chapters that now appear in this book. We thank all those who have contributed to the publication and express our hopes that the book will be a valuable contribution to Indigenous Peoples in achieving their rights and to comparative and globalising studies in peacebuilding and the rights of Indigenous Peoples.

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Part I
The Pursuit of Indigenous Peoples' Rights Through Political Processes in Contemporary Peacebuilding

Indigenous Peoples' Peace March, Bolivia, 1990. *Source* Fabiola Viddaure Belmonte (see Chap. 7)

Chapter 2
Reconciliation, Peacebuilding and Indigenous Peoples in Australia

Andrew Gunstone

Abstract The Australian Constitution that 'created' Australia as a nation in 1901, prevented the new Australian Commonwealth government from legislating on Indigenous Affairs, a power the Constitution reserved for the lower tier of State governments. In 1967, an Australian Constitutional Referendum was passed, that granted, for the first time power to the Australian Commonwealth governments to legislate on Indigenous Affairs. This chapter examines almost fifty years of Commonwealth government involvement in Indigenous Affairs. Specifically, the chapter examines Commonwealth government involvement in Indigenous rights, including self-determination, land rights and native title. The chapter argues that, overwhelmingly, the Commonwealth governments have failed to genuinely acknowledge and recognise these rights.

Keywords Aboriginal · Australian governments · Indigenous Affairs · Indigenous rights · National Aboriginal Conference · Policies · Self-determination

2.1 Introduction

When Australia became a 'nation' in 1901, the Constitution, Section 51(26), specifically forbade the new Commonwealth government from legislating in Indigenous Affairs, restricting this power to the State governments. This restriction remained for another two-thirds of a century. A Constitutional Referendum was

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_2

finally passed by over 90 % of the electorate on 27 May 1967, that granted the Commonwealth government the power to legislate on Indigenous Affairs.

Almost fifty years since the Commonwealth government was granted this power, there have been many Commonwealth governments that have legislated and developed policies in Indigenous Affairs. In this chapter I examine the legislation and policies that Commonwealth governments have developed in the area of Indigenous rights. Indigenous rights, such as self-determination, land rights and a treaty, are critical to Australia progressing towards peace, justice and reconciliation regarding Indigenous and non-Indigenous relations (Behrendt 2003; Gunstone 2009). I argue, however, that the legislation and policies developed over the past five decades have failed to genuinely acknowledge and recognise Indigenous rights.

2.2 Whitlam Government (1972–1975)

Despite the constitutional change in 1967 to allow Commonwealth governments to legislate on Indigenous Affairs, the subsequent Holt, Gorton, and McMahon conservative governments generally did not implement legislation or policies in this area. This inactivity occurred despite Indigenous people strongly advocating for their rights through activities such as the implementation of the Aboriginal Tent Embassy in 1972 (Foley 2007). It was not until the election of the Whitlam Labour government in 1972 that a Commonwealth government first started to substantially implement legislation or policies in Indigenous Affairs. The Whitlam government attempted to address two key areas of Indigenous rights—self-determination and land rights—in their legislation and policies.

The long-standing policy of assimilation had been held by State and Commonwealth governments since the 1930s. This policy was formally abolished by the Whitlam government and replaced by a policy of self-determination. This policy stated:

> The Government no longer expects that they [Indigenous people] will want to become like other Australians in all respects, nor that they should do so. The former policy of assimilation which assumed that Aborigines would choose to and eventually become indistinguishable from other Australians in their hopes, loyalties and lifestyles is no longer part of Australian Government policy … our aim is … to make it possible for Aboriginal communities and individuals to develop as they wish within the overall Australian society (Pollard 1988: 36).

Although the Whitlam government's rhetoric was supportive of self-determination, it failed to address self-determination in policy development (Foley 2007). For instance, the Whitlam government established the National Aboriginal Consultative Committee (NACC), and asserted that the process of Indigenous people electing Indigenous members to the NACC would address self-determination. The reality, though, was that the Whitlam government created the NACC as an advisory and consultative organisation with little effective power (Bennett 1999). Another example was the creation by the Whitlam government in

1972 of the first Commonwealth Department focussing on Indigenous issues, the Department of Aboriginal Affairs (DAA). While many Indigenous programmes were created by the DAA, many Indigenous people were concerned about the ineffective delivery of these programmes (Bennett 1999).

The Whitlam government was also the first Commonwealth government to look at Indigenous land rights and to respond to Indigenous political land rights campaigns. In 1972, they created the Woodward Royal Commission into Land Rights. This Commission examined the issue of Indigenous land rights in the Northern Territory, an area of Australia at the time controlled by the Commonwealth government. The Whitlam government, in responding to the Commission's report, drafted Northern Territory land rights legislation. Although the government was defeated before the draft legislation was enacted, the following Fraser government passed the *Northern Territory (NT) Land Rights Act 1976 (Cth)*, which was modelled on the draft legislation (Pollard 1988: 92). However, while this Act has returned over 40 % of the Northern Territory to Indigenous people over the last four decades and enabled Indigenous owners to veto mining proposals, this returned land is the most economically unworkable land in the Territory and is almost entirely uninhabited by non-Indigenous people (Neill 2002: 267).

2.3 Fraser Government (1975–1983)

The Fraser Liberal/National conservative government was elected in 1975. This government continued a similar approach to its immediate predecessor, the Whitlam government, in regards to self-determination and land rights. The Fraser government also had to address the political demands from Indigenous people regarding a treaty.

In regard to land rights, as mentioned above, the Fraser government passed the *Northern Territory (NT) Land Rights Act 1976 (Cth)*, based on the Whitlam government's draft legislation. In regards to self-determination, the Fraser government abolished the NACC in 1977 when the advice provided by the NACC clashed with the Fraser government's policies. A new organisation, the National Aboriginal Conference (NAC), was then created by the Fraser government. There were strong similarities between the NACC and the NAC, with both organisations having members elected by Indigenous people and were theoretically able to influence policy. Neither the NACC nor the NAC though were actually able to impact on the government's Indigenous Affairs policies (Bennett 1999). Another similarity between the two Indigenous organisations, which weakened government claims that the organisations advanced self-determination, was that both bodies were abolished by governments when governments disagreed with their advice (the NAC was subsequently abolished by the Hawke government in 1985).

In 1979, given the negligible actions by Commonwealth governments to address Indigenous rights, along with the High Court of Australia twice rejecting Indigenous claims of sovereignty (Wright 1985; Harris 1979), the NAC began

campaigning for a treaty to be negotiated between Indigenous and non-Indigenous people. The NAC called for a *makarrata*, which meant in the Yolngu language, "the end of a dispute between communities and the resumption of normal relations" (Wright 1985: 125). The NAC took this position as they understood the broader Australian public would reject the word 'treaty'. The Fraser government argued they would consider a makarrata, but would reject a treaty as it "implies an internationally recognised agreement between two nations" (Baume 1981: 713). The government's position that Indigenous people needed to acknowledge they were part of a single Australian nation was at odds with many Indigenous people's viewpoint that a treaty should be negotiated with an Indigenous nation (Brennan 1991).

In late 1981, the Senate in the Commonwealth Parliament referred the debate over a treaty to the Senate Standing Committee on Constitutional and Legal Affairs. This Committee investigated "the feasibility, whether by way of constitutional amendment or other legal means, of securing a compact or 'Makarrata' between the Commonwealth Government and Aboriginal Australians" (Wright 1985: 173). There were a number of concerns expressed by Indigenous leaders regarding this Committee investigation. The concerns included: no funding from governments for education programmes on a Makarrata for Indigenous people; the Committee potentially prejudicing the investigation by referring to makarrata instead of treaty; the absence in the Committee's terms of reference to Indigenous sovereignty and the assumption of Commonwealth sovereignty; and, questioning whether the NAC could appropriately represent all Indigenous people throughout Australia (Wright 1985). The Senate Standing Committee eventually completed and reported on its investigation in 1983, after the election of a new Commonwealth government, the Hawke government.

2.4 Hawke Government (1983–1991)

The Labour Party announced on several occasions in the period 1980–1982 that it would implement a national land rights policy, based to some extent on the Northern Territory model, if it was elected at the 1983 Commonwealth election (Broome 1982). This position was a result of political campaigns from Indigenous people and was supported by several key sectors of the Australian community, including unions and churches. However, once the Hawke Labour government was elected in 1983, they retreated from this long-standing commitment to Indigenous people to legislate on national land rights. The government experienced a substantial campaign against national land rights from many elements of the wider community, most particularly the mining industry but, also, the media and both progressive and conservative sides of politics, including the Commonwealth Opposition, internal Labour elements and most critically, the Western Australian Labour Premier Brian Burke. As a result of this significant opposition the Hawke

government announced in 1986 that they were no longer supporting a policy of national land rights (Bennett 1999).

As mentioned above, the Senate Committee established to investigate a makarrata delivered its findings in 1983. This Committee, which included five Labour senators, unanimously rejected a treaty and Indigenous sovereignty (Brennan 1991). These findings contradicted the Hawke government's 1983 commitment to a treaty (Evans 1983). Further, the Committee's recommendation that the Hawke government discuss with Indigenous people about possible Constitutional reform to allow the Commonwealth to negotiate a compact with Indigenous people was rejected by the Hawke government. "The Government considers that …the wider issues involved in a makarrata could make it difficult at this stage to enlist the support necessary to achieve constitutional amendments as recommended by the Commonwealth" (Australian Parliament 1985: 2961). Also, in 1988, Prime Minister Hawke argued his government's commitment to a treaty, stating: "We would expect and hope and work for the conclusion of such a treaty before the end of the life of this Parliament" (ABC 1991), before rescinding on this commitment just a few weeks later, stating that he was "not hung up on the word treaty, it's not the word that's important … if there is a sense of reconciliation (DPMC 1991: 15).

The Hawke government's "betrayal of Aboriginal rights and aspirations" (Riley, cited in Bennett 1999: 95) led to a poor relationship between the government and the NAC which eventually led to the government abolishing the NAC in 1985. In 1990, under sustained pressure to address self-determination (Kelly 2001), the Hawke government legislated to create the Aboriginal and Torres Strait Islander Commission (ATSIC). The Hawke government argued the formation of ATSIC, which had the administrative role of a government department and the political role of the NAC, advancing self-determination (Bennett 1999; Kelly 2001). Self-determination, though, was undermined by a number of factors, such as: a mainly non-Indigenous workforce; fundamental policy areas such as education and health were excluded from ATSIC oversight; two-thirds of ATSIC funding was controlled by the Commonwealth government; and ATSIC's Chairperson was selected by the Commonwealth government rather than being elected by Indigenous people (this was changed from the 1999 ATSIC election).

2.5 Keating Government (1991–1996)

The Keating Labour government was not engaged to any great extent with a treaty as the dialogue shifted in the early 1990s to a reconciliation conversation. In relation to self-determination, the Keating government continued with the ATSIC model, and echoed the same concerns with ATSIC (as outlined earlier), ensuring self-determination was not genuinely addressed by the Keating government. The key Indigenous right that was engaged with by the Keating government concerned the issue of land rights. This issue came to the forefront following the 1992 High

Court ruling in the *Mabo and Others v Queensland (No 2)* case that terra nullius was a legal fiction and that, in a restricted set of circumstances, Indigenous land rights, or native title, had survived the British invasion and colonisation.

The Keating government developed two broad strategies in regard to the Mabo decision. The first strategy was to address the substantial level of racism in the wider community concerning the Mabo decision, particularly among the pastoral and mining industries. For instance, Derek Fisher, president of the Association of Mining and Exploration Companies, stated that the judgement was "probably the greatest single threat to the development and progress of this country yet encountered" (cited in Lavelle 2000: 102–103). The Council for Aboriginal Reconciliation argued that discussion over the judgement was "often characterised by misinformation, fear and even long discredited notions of racial 'purity' and cultural hierarchy" (CAR 1994: 52). To address this racism, the Keating government developed a pamphlet, *Rebutting Mabo Myths*, which detailed the Mabo judgement in an attempt to debunk the racist attacks against the decision. Keating publically supported the philosophy and ideas of the Mabo judgement through forums such as Keating's Redfern speech (Keating 2000).

The second broad strategy was a legislative response to the Mabo decision. Along with the development of the Indigenous Land Fund to support those Indigenous people who would be unable to have their native title rights recognised, the Keating government enacted the *Native Title Act 1993 (Cth)* (NTA). This legislation created a formal bureaucratic process for making native title determinations and addressing the needs of both Indigenous native title claimants and the mining and pastoral industries. However, there were a number of significant restrictions in the NTA to genuinely recognise Indigenous native title. One restriction was that the NTA did not allow Indigenous groups who had native title the right to veto mining on their land, which meant that native title was an inferior form of land title than the land rights addressed in the *Northern Territory (NT) Land Rights Act 1976 (Cth)*. Another restriction was the failure of the Keating government to include several key Indigenous leaders in the negotiations over the development of the NTA, including Gary Foley and Michael Mansell (Bennett 1999). A third restriction was that the Keating government did not address significant concerns raised by Indigenous leaders regarding previous government land legislation but, instead, agreed with the mining industry and validated this past government legislation. The fourth and most significant restriction was the failure of the Keating government to acknowledge Indigenous sovereignty (Mansell 1992, 1993).

2.6 Howard Government (1996–2007)

Although very limited, the bipartisan policy of self-determination, which had survived since its creation by the Whitlam government, was abolished in 1996 by the Howard Liberal/National conservative government. The government, on the basis

of its accusations of absence of accountability and the misuse of public funds within ATSIC, significantly cut $470 million from ATSIC's budget, with the focus of the cuts being in political programmes instead of socio-economic programmes (Howard 1996). The government also argued in 1998 for the term 'self-determination' to be removed from the United Nations *Draft Declaration of the Rights of Indigenous Peoples* (Forbes 1998). ATSIC was abolished by the Howard government in 2005 and, in its place, the government created a non-elected, advisory committee, the National Indigenous Council. In 2007 the Howard government legislated for an Intervention in the Northern Territory, which involved suspending the *Racial Discrimination Act (Cth) 1975* and marginalising self-determination (Behrendt 2008).

Following another High Court decision concerning native title, *The Wik People and the Thayorre People v State of Queensland and Others* (1996), which found native title might not be extinguished by pastoral leases, there was an outpouring of negativity, hysteria and racism by the mining and pastoral industries, as well as some in the Howard government (Nicoll 1998). The Howard government criticised the High Court decision and proposed legislation that significantly attacked Indigenous rights. The draft legislation marginalised the High Court judgement, discriminated against Indigenous people and restricted the rights of Indigenous people to negotiate over development proposals and to access their land (Attwood/Markus 1999). The Howard government held consultations over their draft legislation with the mining and pastoral industries but noticeably not with Indigenous people (Bennett 1999). Following these consultations, the Howard government was able to pass the *Native Title Act Amendment Act (Cth) 1998* which included most of the draft legislation.

While the debate over a treaty subsided during the reconciliation decade (1991–2000), the issue gained prominence again following Corroboree 2000, a major reconciliation event. Several key Indigenous leaders, such as Geoff Clark, Pat Dodson, Gary Foley, Marcia Langton, Michael Mansell, Noel Pearson, Charles Perkins and Peter Yu argued for a treaty (Mitchell 2000). However, the Howard government strongly rejected any calls for a treaty. Prime Minister Howard stated that, "a nation, an undivided nation, does not make a treaty with itself. I mean, to talk about one part of Australia making a treaty with another part is to accept that we are in effect two nations" (Wright/Taylor 2000: 2). Howard also argued a treaty could result in "national separatism, land claims and litigation" (Saunders/Nason 2000: 1). Within two years Howard government also rejected the argument for a treaty from the Council for Aboriginal Reconciliation (Commonwealth Government 2002).

Previous Commonwealth governments had discussed Indigenous rights, even though the policies and legislation had not matched their rhetoric. However, the legacy of the Howard government, with its strident opposition to Indigenous rights, was an increasing rejection of Indigenous rights by the wider community (see Johns 2006; Sutton 2008) and a general failure of later Commonwealth governments to even genuinely discuss Indigenous rights.

2.7 Rudd/Gillard Governments (2007–2013)

The Rudd and Gillard Labour governments were significantly different from the Howard government in regard to symbolic acts concerning Indigenous Affairs. Both the Rudd government in 2007 and the Gillard government in 2010 implemented an Indigenous Welcome to Country ceremony for the Opening of the Commonwealth parliament (Coorey/Davis 2008; ABC 2010a). The Rudd government also apologised to the thousands of Indigenous people impacted by the past stolen generations policies (Rudd 2008a). The Rudd and Gillard governments though had a similar focus to the Howard government in concentrating on addressing Indigenous socio-economic disadvantage. Closing the Gap targets were established and the outcomes were reported annually (Rudd 2008b; Gillard 2012).

Both governments did to some extent address Indigenous rights. The Rudd government established a new Indigenous national body with its leaders directly elected by Indigenous people, the National Congress of Australia's First Peoples, and did ratify the United Nations Declaration on the Rights of the Worlds Indigenous Peoples. The Gillard government supported Constitutional change to acknowledge Indigenous people in the Constitution (ABC 2010b).

Overall, both governments were similar to the Howard government in their approach to Indigenous rights. Neither the Rudd nor Gillard governments genuinely addressed Indigenous rights during their terms. This approach was strongly impacted by influential opinions from conservative organisations, commentators, media and politicians that policies and legislation should not be enacted regarding Indigenous rights. These conservative opinions were, as discussed above, strongly encouraged and cultivated during the term of the Howard government.

In regard to the 2008 Apology, the Rudd and Gillard governments did not sufficiently address Indigenous rights. The governments ignored demands and recommendations for a national compensation scheme and reparative justice from Indigenous leaders and the Human Rights and Equal Opportunity Commission (Rudd 2008c). Neither the Rudd nor Gillard government made substantial changes to improve the capacity of native title legislation to address the needs of Indigenous people. The governments failed to adequately address demands from Indigenous people for a treaty, expressed at several times during their terms, particularly during the Rudd government organised national 2020 Summit (Rudd 2008d). Both the Rudd and Gillard governments did not appropriately recognise and support Indigenous self-determination, with the Commonwealth public service bureaucracy, and not the National Congress, (unlike ATSIC), being predominately in control of managing, funding and creating Indigenous Affairs programs.

One of the most notable failures of the Rudd and Gillard governments to address Indigenous rights was that both continued to generally support the Howard government's Intervention into the Northern Territory. The right to pursue Indigenous self-determination by numerous Indigenous leaders and community members critically opposed to this intervention was largely marginalised by both governments (Rudd 2008b; Gillard et al. 2011). The suspension of the *Racial Discrimination Act*

(Cth) 1975 was not addressed until well into the term of the Gillard government. This lack of recognition of Indigenous rights lasted right to the conclusion of the Rudd and Gillard era. In the 2013 Commonwealth election campaign, the Rudd government (and the Abbott Opposition) released no policies at all on Indigenous rights, instead concentrating almost entirely on policies concerning Indigenous socio-economic issues.

2.8 Abbott Government (2013–2015)[1]

In the short time that the Abbott Liberal/National conservative government was in power, it approached Indigenous Affairs in much the same manner as did the previous conservative Commonwealth government, the Howard government. The Abbott government focussed predominately on policies and legislation relating to Indigenous socio-economic disadvantage in areas like health and education, while largely ignoring issues relating to symbolism and Indigenous rights.

The Abbott government implemented the Indigenous Advisory Council (IAC) upon being elected in 2013. Through this approach the government marginalised the process of self-determination, by ensuring members of this organisation were not elected by Indigenous people, (like its predecessor institutions were, such as the NACC, NAC, at SIC and the National Congress of Australia's First Peoples). Rather its members are selected by the Commonwealth government. Further, the IAC is purely an advisory committee with no policy-making powers or programme management roles (Australian Government 2015). The Abbott government has also been criticised for ignoring advice from the IAC (National Indigenous Times 2015). In September 2015, following the overthrow of the Abbott government, there was an announcement from the new Turnbull Liberal/National conservative government that it would continue to support the IAC (ABC 2015a).

The Abbott government also largely disregarded the National Congress of Australia's First Peoples, the Indigenous organisation established by the Rudd government, which is directly elected by Indigenous people, and slashed its funding in the 2014 Commonwealth Budget, as part of an overall cut of $550 million to Indigenous programmes throughout Australia (National Congress 2015). Further, the Abbott government generally continued with the Northern Territory Intervention, failing to address the concerns of many Indigenous leaders and communities. The Abbott government also centralised the policy area of Indigenous Affairs into the Department of Prime Minister and Cabinet, which reduced the capacity for Indigenous people to engage with decision-making (ABC 2015b).

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[1]On September 14, 2015 Tony Abbott was voted out as leader by his party and replaced with Malcolm Turnbull, whose approaches to Indigenous affairs have yet to be established at the time of writing this chapter.

The Abbott government supported the national campaign among the Australian community to recognise Indigenous people in the Constitution. However, the Abbott government's new approach to Indigenous funding, through their Indigenous Advancement Strategy, significantly impacted on Indigenous peoples, communities and organisations, and substantially restricted the national constitutional reform campaign (Davis 2014). Further, some members of the Abbott government openly opposed a constitutional referendum on Indigenous recognition (ABC 2015c). The government also initially failed to support calls by some of the most prominent Indigenous leaders in Australia, including Megan Davis, Patrick Dodson, Kirstie Parker and Noel Pearson for the Commonwealth government to fund a series of Indigenous conferences regarding Indigenous recognition in the Constitution (Kildea 2015). These conferences were intended to obtain a broad understanding of the views and opinions of Indigenous people and to develop a consensus among Indigenous people regarding constitutional reform. Further, when the Abbott government seemed to support the concept of Indigenous conventions and announced the creation of a Referendum Council to oversee the conventions, they did not provide essential details, such as who would be appointed to the Referendum Council, how the conferences would be funded and organised (Castan 2015).

2.9 Conclusion

Nearly five decades have passed since the Australian Constitution was altered in the 1967 Referendum to enable the Commonwealth government to enact legislation concerning Indigenous Affairs. Over this time, there have been eight Commonwealth governments, four Labour and four Liberal/National conservatives. All of these governments have developed many policies and passed much legislation regarding Indigenous Affairs.

In this chapter, I analysed a particular area of these voluminous Indigenous Affairs policies and legislation from the eight Commonwealth governments, namely those policies and legislation concerning Indigenous rights, such as self-determination, land rights and a treaty. Indigenous rights are a fundamental component of achieving peace, justice and reconciliation concerning Indigenous Affairs in Australia. I have argued that these Indigenous rights have not been addressed and recognised by the policies and legislation developed by eight Commonwealth governments since the 1967 Referendum. This abysmal failure has ensured that Australia remains a nation that does not provide justice for Indigenous Peoples.

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Chapter 3
World Declaration on the Rights of Indigenous Peoples in the Canadian Context: A Study of Conservative Government Rhetoric and Resistance

K.J. Verwaayen

Abstract Canada promotes itself as a nation of peacemakers concerned with justice. However, in its dealing with Indigenous peoples the reality does not reflect the rhetoric. Despite pressure from both within and outside the country, Canada initially would not sign the UN Declaration on the Rights of Indigenous Peoples. When it finally signed in 2010 the government explained to the Canadian public that the document's goals and recognitions are "aspirational" (and not legally binding). My chapter addresses the Conservative government's justifications for delay and denial, as well as the ways in which its eventual adoption of the Rights document misappropriates the document's language and intent. Specifically, I argue that the Declaration's objectives, to protect/enshrine the rights of Indigenous peoples and ensure processes of participation, cooperation, and consultation between governments and Indigenous peoples have been co-opted and re-directed against Canada's First Nations communities. This chapter examines the legal challenges of Indigenous women against such discriminatory legislation. I conclude that for peacebuilding to be real and meaningful, Canadian governments must transform rhetoric into reality and vigorously protect (rather than resist) Indigenous rights through law.

Keywords Indian Act · Bill C-3 · Consultation · Alibi · Missing and murdered Indigenous women · Sharon McIvor · United Nations · Declaration on the Rights of Indigenous Peoples

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_3

Canada has numerous examples of internal unpeacemaking (Calliou 1995).

The consistent feature of policies considered, established, and maintained by Canada with respect to Indigenous peoples has been our termination (Chrisjohn and Tanya 2009).

Invasion is a structure not an event (Patrick Wolfe, in Cannon 2014).

3.1 Aspirational Versus Actionable: The Ties that (Do not) Bind

September 13, 2015, marked the eighth anniversary of the adoption of the Declaration on the Rights of Indigenous Peoples[1] by the United Nations General Assembly. Canada played a significant role in the drafting of the Declaration, yet the election of the Harper Conservative government in Canada's 2006 federal vote was a critical factor in Canada's opposition to, and delay in, signing the Declaration, including the country's encouragement to other UN member nations to oppose it.[2] The Harper government, as a member of the CANZUS coalition (composed of Canada, Australia, New Zealand, and US), and the sole eligible voting CANZUS member; attempted unsuccessfully to defeat the Declaration first presented before the United Human Rights Council in 2006, and all four member countries united to block its adoption in the UN General Assembly (Benjamin et al. 2010: 63), only relenting in 2010 after amendments were made to protect their centralised sovereignty. The actions of the Canadian government follow a historical pattern of raced and sexed discriminatory laws and policies in contravention of international human rights encouragements, obligations, and legal requirements.

In November 2010, "Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples" was issued online by the federal government (Aboriginal Affairs and Northern Development Canada [AANDC] 2010). The statement endorsed the government's "opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada," but reminded the public that Canada's participation in the tenets of the Declaration is *not* legally binding (AANDC 2010). Indeed, the semantic deceit here, when read against the broader context of government—Indigenous relations in Canada, might appear to be an *undercutting* of support in its articulation. One of the primary issues of concern is the discrepancy between how the Conservative government understands "Canada" and a "better Canada" and its commitment to partnership and the rights of Canada's Indigenous peoples. This

[1]The full, unmediated text of the Declaration is available at: http://indigenousfoundations.arts.ubc.ca/home/global-indigenous-issues/un-declaration-on-the-rights-of-indigenous-peoples.html.

[2]The Conservative position was in contravention of support for the Declaration by senior bureaucrats, the three opposition parties, and the Parliamentary Committee on Aboriginal Affairs. See Benjamin et al. (2010: 63–4).

criticism is perhaps best encapsulated by The Truth and Reconciliation Commission of Canada's assertion in its Final Report of 2015 that, "we believe that the provisions and the vision of the Declaration do not currently enjoy government acceptance" (188).

Central to this discussion are Canada's objections in September 2014 to the "Outcome Document" adopted by the UN General Assembly at the World Conference on Indigenous Peoples (WCIP) to facilitate Implementation of the Declaration. Canada, the sole dissenter, filed an objection around the issue of "free, prior and informed consent" for Indigenous groups/communities, which, it argued:

> could be interpreted as providing a veto to Aboriginal groups and in that regard, cannot be reconciled with Canadian law, as it exists … [and] would *risk fettering Parliamentary supremacy*… [T]he Crown may justify the infringement of an Aboriginal or Treaty right if it meets a stringent test to reconcile Aboriginal rights with a broader public interest. ("Canada's Statement on the World Conference," 2014; emphasis added).

The Statement concluded with the government's commitment to "improve the well-being of Aboriginal Canadians, based on our shared history, respect, and a desire to move forward together". However, the determination to deny Indigenous communities the right to prevent development on their own lands shows the exercise of a form of state-centred neo-colonialism.

The Conservative's revisionist position can be traced to Prime Minister Stephen Harper's 2009 fantastical statement on Canada's benevolent history of liberal democracy:

> We are one of the most stable regimes in history. There are very few countries that can say for nearly 150 years they've had the same political system without any social breakdown, political upheaval or invasion. We are unique in that regard. We also have no history of colonialism (Aaron Wherry, cited in Henderson/Wakeham 2009: 1).

Challenges to the Prime Minister's attempt to erase Canada's colonial history[3] and the violence perpetuated against Canada's Aboriginal peoples through European colonisation, as well as its legacy of racially-grounded discriminatory policies and actions and the complexity of their intergenerational effects are increasingly recognised. While Canada can be said, in its preliminary public accounting of governmental wrongs, to have entered the "age of reconciliation" in the 21st century, scholars have begun to examine how the acknowledgment of state-generated trauma and the culture of redress can serve particular symbolising

[3]There is a long history of denial in this country. As Lynne Davis recounts, the Royal Commission on Aboriginal Peoples (RCAP) released its final report in 1996; RCAP contended that relationships between Indigenous and non-Indigenous peoples in Canada could change only with radical break from our colonial past toward recognition, respect, responsibility. Governments, Davis argues, largely ignored the Report's findings and potential (2010: 3). The TRC Executive Summary also notes that the majority of the Commission's recommendations "were never implemented" (TRC 2015: 7).

functions that perform a reversal of a state's rhetoric of intention.[4] In earlier work (2013) I have addressed this as the government's consumptive and substitutive trope of hearing for healing—for taking and taking in, but not the ethically accountable action of taking *up*.

The official government webpage which functions more like a publicity campaign than a genuine attempt to acknowledge the gaps between the Declaration's mandate and Canadian federal practices, states:

> Under this government, there has been a shift in Canada's relationship with First Nations, Inuit and Métis peoples, exemplified by the Prime Minister's historic apology to former students of Indian Residential Schools, the creation of the Truth and Reconciliation Commission, the apology for relocation of Inuit families to the High Arctic and the honouring of Métis veterans at Juno Beach. These events charted a new path for this country as a whole, one marked by hope and reconciliation and focused on cherishing the richness and depth of diverse Aboriginal cultures (AANDC 2010).

The characterisation of the government-as-explorer "chart[ing] a new path for this country" is a telling colonial metaphor. While on one hand I do not mean to diminish these and other actions undertaken by the federal administration, *nor* especially the tireless work of Indigenous individuals and groups toward real and meaningful action-change (including participation in these and other government 'events'), on the other hand, Canada's Aboriginal peoples are increasingly suspicious of government rhetoric of reconciliation as an alibi for material action, perhaps best encapsulated in the rising movement Idle No More.[5] Again, the problem is not so much that the government page 'spins' its involvement in self-enhancing ways but rather that, weighed against a number of government actions and inactions with material consequences for the dignity, health, safety and respect of Indigenous peoples in this country,[6] these claims, intentions, and actions become suspect through context and pattern. There is a critical breach in the public trust.

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[4]For further discussion of rhetorical performance as substitutive for government action, see Chrisjohn/Wasacase (2009), Henderson/Wakeham (2009), and Verwaayen (2013), among others.

[5]I do not mean to relegate this powerful grassroots-become-global movement—for civil rights, sovereignty, and environmental protection in Canada—to a footnote. See Pam Palmater: "In general, Idle No More was opposition to the immediate threat before us–Prime Minister Harper's aggressive 'assimilatory' legislative plan *meant to break up our communities* and assimilate First Nations peoples. It also was opposition to the substantial funding cuts to our political and advocacy organizations and communities that were designed to silence our voices when the legislation was brought into fruition" (qtd. in Radia 2012; emphasis added). But as I haven't scope here to appropriately address the aims, methods, and (*sometimes* contested) impact of Idle No More, I point readers instead to information on the movement at its homepage: http://www.idlenomore.ca/. This page offers not only a history of Idle and resources, but ongoing/current political activities, and a call to action for all.

[6]As Chrisjohn and Wasacase note, there are a number of long-standing examples of deep harm perpetrated by previous Canadian governments against Indigenous peoples in addition to status violence against Indigenous women: the residential school system, the "60s Scoop", treatment of Native veterans; failures in relation to health care, housing, water, and overall economic responsibility; "the list seems endless" (2009). See also Leanne Simpson (2011: 22) on reconciliation.

Thus, while the Harper administration has moved to formulate some constructive changes, there also have been legal challenges launched *against* Indigenous rights and dignity, some of which I will now discuss, with specific attention to raced and sexed discrimination of Indigenous women in Canada and their descendants.

3.2 Canada's Indian Act, Its History of Raced and Sexed Discrimination, and Ongoing Colonisation

Since at least 1876, Canada's Indigenous peoples—that is, those established as 'Indian' under Canadian law—have been governed by federal legislation known as The Indian Act, recognised since its inception as a legislative impetus toward (cultural) genocide and which institutionalised gender inequality in Canadian law. The Act defined 'Indian' as male; while women and children were seen as dependent extensions of husbands and fathers. Indeed, by 1951, European patriarchal and patrilineal values were formally codified in the Act under Section 12(1)b, the "marry out" clause: a woman registered with status under the Act who married a non-Indian (that is, non-status) man would lose her status—along with its attendant entitlements, *like traditional hunting and fishing rights, the right to reside on her reserve, inherit property there, and be buried in her community*; and to collect treaty annuities and access federal programs, among other rights and services negotiated or established by treaty. Because a man's status determined those of his wife and children, a registered Indian male would retain his status and also would transmit status to his non-Indian wife and to their children.

There is a long record of various forms of resistance by Indigenous women in Canada against this gendered institutional violence, with parallel history of government resistance and blockage against these efforts. The case of Sandra Lovelace is illustrative. Lovelace, a Maliseet woman originally from the Tobique reserve had married out, lost status, and moved away with her husband; her marriage dissolved, she divorced, and sought to return to her reserve. But because of the "marry out" punishments of 12(1)b, Lovelace was not entitled to housing or band services. She was without status and, it appeared, legal remedy. Since Canada's highest domestic court had already ruled against Indigenous women's complaint of sexism and racism,[7] Lovelace took her case to the United Nations Committee on Human Rights (UNCHR). The UNCHR decided, in 1981, in Lovelace's favour, citing, in particular, that "the major loss to a person ceasing to be Indian is the loss of the cultural benefits

[7]The federal government had challenged earlier anti-discrimination cases against 12(1)b launched independently by Jeannette Corbiere Lavell (Anishinaabe, Wikwemikong First Nation) and Yvonne Bedard (Haudenosaunee, Six Nations), whose successful claims against 12(1)b in the lower courts were contested by the federal government at the Supreme Court of Canada. The Supreme Court ruled in favour of the government and overturned Indigenous women's victories in the courts in 1973.

of living in an Indian community, the emotional ties to home, family, friends and neighbours, and the loss of identity" (UNCHR, "Lovelace v. Canada" 1981).

Embarrassed, and compelled by international law (and by 1985, with the domestic establishment of Section 15, Canada's equality rights section in the Charter of Rights and Freedoms) Canada made legal remedy. But the amendment implemented by the government, C-31: The Act to Amend the Indian Act (1985) assured to some extent the re-instatement of gender inequality rather than its removal. On the one hand, from 1985 forward, the Act *ostensibly* treats female and male individuals with status "the same" in terms of registration.[8] On the other hand, the amendment inscribes residual and generational discrimination through "the second-generation cut-off rule," since the grandchildren of a woman who "married out" prior to 1985—unlike the grandchildren of a man—would be ineligible for status and (thus, likely) band membership. The effects of discriminatory policy are mapped through matrilineal heritage. The Royal Commission on Aboriginal Peoples (RCAP) denounced the 1985 Indian Act's perpetuation of sex discrimination. Also the International Covenant on Civil and Political Rights (ICCPR), the Committee on the Elimination of Discrimination Against Women (CEDAW), and the Committee on Economic, Social and Cultural Rights (CESCR) have all criticised Canada's persistent registration discrimination against Aboriginal women ("Sharon McIvor and Jacob Grismer V. Canada" 2010: 16).

3.3 Compulsive Repetitions and the Dishearteningly Familiar: Further Inequality for Indigenous Women

In protest against legislation meant to redress gross discrimination against Indigenous women under the Act, Sharon McIvor (member of the Lower Nicola First Nation, law professor, human rights activist, and feminist) initiated action. Ineligible for status prior to 1985, post C-31 she petitioned the Registrar and was informed she would be granted 6(2) status but could confer no status to her son,

[8]Under C-31, there are two classes of registration, 6(1) and 6(2), based on having one or both registered parents. The children of women who married out pre-1985 and had status restored under C-31 were granted 6(2) status; 6(2) registrants cannot pass status to their children per se—unless the other parent has status also, whereas the children of men who married out before 1985 retained 6(1)—full—status. See the McIvor/Grismer (2010) petition to the ICCPR for more discussion of the gendered implications of the 1985 amendment. Further, C-31 (and its successor, C-3) produced new fears of the disappearance of 'Indian' altogether with receding registration as an ultimate fulfilment of the government's original assimilation directive. Indeed, C-31 has been named the "Abocide Bill": "Like genocide, it refers to the extermination of a people; in this case, the extermination not of Indians per se, but of their status as Aboriginal people" (Daniels 1998). It is important to note also that various Indigenous groups contest the government's right to taxonomize citizenship; participants at the Union of Ontario Indians (UOI) 2007 conference, "E-Dbendaagzijig (Those Who Belong)" have insisted on the fundamental right of Indigenous peoples' self-definition (Cannon 2014: 35).

Jacob Grismer. Later, the Registrar reconsidered her case and assessed her son would have 6(2) status but could not on his own confer status to his children. Simply: had McIvor been a man, her children and grandchildren would have status. McIvor and Grismer challenged C-31before the British Columbia Supreme Court, alleging discrimination contrary to S. 15 of the Canadian Charter of Rights and Freedoms.[9] Decision was reached in June 2007 and established a resounding victory for the plaintiffs and indeed widely for Aboriginal women and their descendants. Madam Justice Ross declared the C-31 provisions unconstitutional and that:

> the evidence of the plaintiffs is that the inability to be registered with full 6(1)(a) status because of the sex of one's parents or grandparents is insulting and hurtful and implies that one's female ancestors are deficient or less Indian than their male contemporaries. The implication is that one's lineage is inferior. The implication for an Indian woman is that she is inferior, less worthy of recognition (qtd. in Barker 2008).

The trial judge struck down S.6 of the Act and required a remedy that would restore status to women under the same section as male Indians, and see their male and female descendants also entitled to registration under the same section (Cannon 2014: 32); too, their grandchildren would be entitled to status. Reaction was inevitable, as Cannon (2014: 32) explained,

> The *McIvor* decision stood at trial to increase the status of the Indian population, a prospect that has never been in the vision of the coloniser. Not surprisingly, then Minister of Indian Affairs Jim Prentice was quoted as saying that his government would appeal the decision just one week after it was delivered (Cannon 2014: 32).

The appeal case was scheduled before the B.C. Court of Appeal approximately 4 months *after* the federal government's residential schools' apology (of June 11 2008)—an apology hailed as inaugurating Canada's era of reconciliation and which recognised, it said, Canada's perpetration of deep harm in removing Aboriginal children "from [their] rich and vibrant cultures" (AANDC 2008).

In October 2009, the B.C. Court of Appeal in the *McIvor v. Canada* case rendered its decision, significantly stripping the earlier judgement of its broad implications for justice.[10] The Court of Appeal ruled, as the McIvor and Grismer (2010) complaint contends, that "Canada can continue discriminating in favour of

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[9]The government of Canada argued to the trial judge that "infringement of the applicants' rights *was justified* in light of the broad objectives of the 1985 amendments to the Indian Act. The Government contended that the amendments represented a policy decision that was entitled to deference because it was made after extensive consultation, and represented the outcome of an exercise in balancing all affected interests" ("Sharon McIvor and Jacob Grismer V. Canada" 2010: 58; emphasis added). Certainly at stake was critical resource allocation by the federal government for individuals entitled to status return.

[10]For more explanation of the 2009 decision, see Verwaayen 2013.

male lineage descendants so long as their superior status was merely *preserved* by the 1985 Act and not *improved*" ("Sharon McIvor and Jacob Grismer V. Canada": 73).[11]

In response to the Appeal ruling, McIvor and Grismer sought leave to the Supreme Court of Canada, the last domestic resort for appeal. On November 5, 2009, this petition was refused, without explanation ("Sharon McIvor and Jacob Grismer V. Canada" 2010: 29).

Bill C-3 is the legislation established by the federal government of Canada in response to the 2009 Appeal decision (which, while narrowing the victory established by the trial ruling nevertheless determined aspects of Canada's registration provisions in violation, on the basis of sex, of Section 15 of the *Canadian Charter of Rights and Freedoms*). C-3 received royal assent in December 2010; note the temporal relationship between the legislation becoming law and Canada's signing onto the Declaration.[12]

Although the short title of C-3 is "Gender Equity in Indian Registration Act," the bill's full title is, more tellingly, the "Act to Promote Gender Equity in Indian Registration by responding to the Court of Appeal for British Columbia Decision in McIvor v. Canada." The full title belies the 'equity' of its shorthand and more commonly referenced nomenclature and, too, of government discourse on the bill's intentions and effects. In fact, the full title reveals that the bill's intention is neither to address systemic discrimination nor to achieve gender equity. It sets out only to 'respond' to the watered-down legal requirements determined by the appellate court with a goal to merely 'promote' gender equity not necessarily achieve it. This demonstrates a rhetorical performance mirroring the government's insistence on the Declaration as an aspirational-only document.

In fact, C-3 continues to support rather than eradicate sex discrimination in registration; examples of unjust exclusion include, as McIvor and Grismer indicate, "the grandchildren of status women and non-status men who were unmarried; the female child of a status man and a non-status woman who were unmarried; and the grandchildren born prior to September 4, 1951 (the date of the double mother rule) who are the descendants of women who married out" ("Sharon McIvor and Jacob Grismer V. Canada", 2010: 30). Perhaps most starkly, "C-3 will only grant s. 6(2) status, and never s. 6(1)(a) status to the grandchildren of Aboriginal women who married out, notwithstanding that grandchildren born prior to April 17, 1985 to status men who married out are eligible for s. 6(1)(a) status" ("Sharon McIvor and Jacob Grismer V. Canada" 2010: 30). As Cannon outlines, C-3 "does not eradicate the 'second generation cut-off.' It merely suspends it for one generation, so that it is now the great-grandchildren of out-marrying women (but not of men) who face

[11]This is an especially ironic form of logic, given the government's decision to name C-3 an 'equity' rather than 'equality' bill—since 'equity' is, by definition, meant to progressively *correct* for historical oppression.

[12]As Benjamin, Preston, and Léger remind us, while a Declaration is not legally binding, it *is* intended to guide governments in understanding and acting for Indigenous rights—and should "*help shape the development of future law and policy*" (2010: 60; emphasis added).

ongoing legal assimilation" (Cannon 2014: 26). Further, as Cannon argues, "for any child of an out-marrying woman to become a Section 6(1) Indian today…he or she must have children…This part of the new legislation is not only troublesome in light of the history of institutionalised heterosexism, it is also puzzling" (2014: 35). Pam Palmater, too, writes of the lived consequences of C-3 in relation to longer histories of government policy:

> The state continues with its policy of assimilation by taking our children from us on many different levels. They take them from us physically through child welfare agencies, over-representation in prisons, and they take them from us legally and politically through the Indian Act's exclusionary status and membership provisions. This sends a clear signal to our children that they are not a part of their community or Nation and that they are not equal even within their own families. This often has the effect of removing them from their cultural context and source of meaning for life. Under Bill C-3, my own children, Mitchell and Jeremy, are denied Indian status and thus their band membership not because they are less Indigenous than their cousins, but because my grandmother was a woman. On some First Nations, no band membership means you can't live on reserve and will be evicted. In that way, our brothers and sisters and children could even be physically prevented from being with their family…. We cannot continue to allow our children to be the casualties of this war to assimilate us (2013).

In response to federal opposition and the foreclosure of protection under Canadian law, Sharon McIvor and Jacob Grismer, with the Council of Gwen Brodsky their principal attorney, took their case against C-3 to the UNCHR. Their 2010 petition contends that "The State party has thus been aware for many years of the concerns of human rights treaty bodies regarding continuing sex discrimination in its registration scheme. The State party can have no doubt that the current legislative scheme is incompatible with its international human rights obligations" (Sharon McIvor and Jacob Grismer V. Canada 2010: 44). Indeed, there is a compulsive repetition of traumatic colonial histories: their appeal invokes the very same ICCPR articles as the Lovelace case launched 3 decades ago:

> Article 26, which enshrines the right of all persons to equality before the law and to the equal protection of the law without any discrimination on the basis of sex; Articles 2(1), 3 and 27, which together guarantee the equal rights of men and women to the enjoyment of their culture, without discrimination based on sex; Article 2(3)(a), which guarantees the right to an effective remedy for violations of rights recognised in the ICCPR (Sharon McIvor and Jacob Grismer V. Canada 2010: 6).

3.4 Conclusions: What's 'Missing' in Government Systems of Conferral, Consultation and Collaboration

Five years later, the UNCHR has not arrived at a decision on the McIvor case. Meanwhile, violence against Indigenous girls and women in Canada has reached epidemic levels. Recently the RCMP identified these numbers at approximately

1224 missing and murdered Indigenous women since 1980 (Smith 2015). This demography of violence is grossly disproportionate and is not only interpersonal but connected to institutional-structural apparatuses: the structural violence against Indigenous girls and women through intersecting operations of racism and sexism, including through government laws and practices around status provisions and concomitant dislocation from Indigenous communities by status denial[13] and dispossession from community networks and culture. Despite calls from the UN, First Nations leaders and women's groups, the government's opposition parties,[14] and, the TRC Final Report, the government continued to refuse a national inquiry. Less than a year ago (17. 12. 2014) Harper said in an interview that "it isn't really high on our radar." In another interview, in an insensitive turn of phrase, he stated that: "the issue has been studied to death" (qtd. in Onstad).

The mythological story Canada writes of itself as a nation of peace, rights, and fairness[15] must be juxtaposed with its historical and ongoing practices of profound structural discrimination—and ultimately what must be urged is movement away from aspirational-only goals and objectionable actions to actionable objectives and materialised realities, in a legal, social, cultural, political 'accounting' that allocates appropriate resources, redresses historical wrongs with fair and just restitution, and establishes future policy in line with international human rights standards. As stated in TRC's Final Report: "A critical part of this process [for *reconciliation, peace, justice*] involves… *following through with concrete actions that demonstrate real societal change*" (2015: 16; emphasis added).

[13]This claim (which challenges popular media insistence on violence against Indigenous women as fundamentally tied to family violence; see Smith 2015) is supported in the recent TRC Final Report, which specifically identifies "discriminatory practices against women related to band membership and Indian status" as among significant precipitating factors in the epidemic of missing and murdered Indigenous women (2015: 188). The Report urgently supports calls for national public inquiry.

[14]The new PM Justin Trudeau, has promised to call a national inquiry in response to this issue. See Maloney (2015). Further, Sharon McIvor, in her presentation before the UNCHR July 2015, addressed the catastrophic number of murdered and missing Indigenous women; she spoke to the recognition of Canada's record of failure on this issue in relation to calls for an inquiry in both 2015 reports of the Inter-American Commission on Human Rights (IACHR) and the CEDAW Committee ("Sharon McIvor Delivers" 2015).

[15]See, for example, Paulette Regan (2010). Regan suggests that most Canadians buy into the Canadian "peacemaker myth"—wherein European settlement into Canada, unlike in the story of US frontier violence, is understood as a practice of negotiation, with officers of the Crown arriving here as "neutral arbiters of British [and Christian] law and justice" bringing "peace, order, good government and Western education" (83)—but, as Regan suggests, this idea of benevolent gift is itself a narrative of violence, whose contemporary neo-colonial return comes in the guise of the reconciliation project; the myth functions as an alibi for our real roles as perpetrators (2010: 106).

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Chapter 4
Pursuing Indigenous Self-Government in Taiwan

Cheng-Feng Shih

Abstract This chapter introduces the ethnic structure of Taiwan and the status of the Indigenous Peoples in Taiwan. Efforts are then made to look into how the government has reacted to the appeal for Indigenous Peoples self-government since 2000, with a special focus on the various forms of the *Indigenous Self-government Bill*. Before offering some conclusions, we investigate controversial issues that have arisen during the dialogues among the government, scholars, and activists in recent years.

Keywords Indigenous peoples · Indigenous rights · Indigenous self-government · Indigenous Self-government Bill · Taiwan

4.1 Introduction

This chapter will examine historical and contemporary experiences of Indigenous Peoples in Taiwan. Against a background of colonialism and assimilation the chapter will document efforts made by Indigenous Peoples of Taiwan to arrive at the goal of self-government by the Democratic Progressive Party (DPP) and the Kuomintang (KMT) administrations since 2000. The focus will be on comparing the five versions of the *Indigenous Self-Government Bill*, particularly how the notion of "nation-to-nation" is embodied. And then, we will examine how Indigenous intellectuals have reacted to them. Finally, we will look into barriers that have arisen on the road to Indigenous self-government. Through this discussion the

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_4

chapter will illustrate how the Indigenous Peoples in Taiwan have sought peacefully to protect their rights as enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* (2007).

4.2 Ethnic Structure of Taiwan

Taiwan is a settler society like Canada, United States, Australia, and New Zealand. Before settlers began arriving at the island four centuries ago, the Indigenous Peoples had resided here since time immemorial, people of Austronesian or Malayo-Polynesian descent (Li 2009; Moodley et al. 2009; Gray et al. 2009). While the original people lived right across the island, as a consequence of conquest and settlement by Han-Chinese invaders they gradually retreated to remote areas or succumbed to cultural assimilation. In recent times there has been a revival of some assimilated groups, reclaiming collective identity as Plaines Indigenes who had, by the 1930s, almost lost their Indigenous characteristics. In the old days, they had chosen to Sinicize themselves and become "human beings" in order to avoid systemic discrimination. In modern times some people from this background have begun to revive and assert their Indigenous identities.

Thus, there are four major ethnic groups in Taiwan: Indigenous Peoples, Mainlanders, Hakkas, and Holos, of which the latter three are descendants of those Han refugees-migrants-settlers of Mongoloid race sailing from China as recently as 400 years ago (Shih 1995).

As of June 2015, the Indigenous population of Taiwan is 542,973, constituting roughly 2.3 % of the 23,000,000 population of Taiwan (Taiwan, Council of Indigenous People 2015).[1] There are sixteen officially recognized Indigenous Peoples, including Amis; Ayal, Bunun, Hla'alua, Kavalan, Kanakanavu, Paiwan, Puyuma, Rukai, Saisiyat, Sakizaya, Sediq, Thao, Truku, Tsou, and Yami.[2] Their traditional territories occupy the Central Mountain Range and Orchid Island to the southwest. As tribal economies are in persistent crisis and lack job opportunities, an estimated one-third of the Indigenous population has no choice other than to squat in urban areas. In addition, there are some eight Plains Indigenous Peoples, including Babuza, Hoanya, Ketagalan, Makattao, Pazeh, Papora, Siraya, and Taokas.[3] Most of them have lost their Indigenous status after World War II (Shih 2010). This deprivation of their Indigenous status has perpetuated their traditional acrimony with those groups that have status.

[1]For indigenous perspectives, see Mona (2007) and Cheng (2010).

[2]The government has arbitrarily separated the Indigenous Peoples into the Hills and the Plains ones for the sake of administrative convenience.

[3]While some of the Siraya and the Makattao, along with the Kavalan, may be found in the east coast, the rest scatter around the great plains of the west.

In the past three decades, the Indigenous Movement in Taiwan, based on the idea of inherent Indigenous rights,[4] has focused on three interlocked goals: the right to be indigenes, self-rule, and land rights. Being the "original resident" Peoples of Taiwan, they claim that they are not merely ethnic minorities but Indigenous Peoples. Further, they assert that Indigenous Peoples have never renounced their sovereignty that was seized by the aliens. Indigenous elites insist that Indigenous lands dispossessed centuries ago must be returned to the Indigenous Peoples. Buttressed by the idea of self-determination, they demand the establishment of self-government in place of present-day local administrative units. It is believed that only self-rule without being patronised can lead to true autonomy.

Over the years, the government seems to have realised that protecting Indigenous rights is a gesture of reconciliation even though different administrations have disparate ideas. For instance, the Democratic Progressive Party (DPP 2000–2008) embraced the appeals of the Indigenous Peoples to reclaim their inherent rights, while the Indigenous policy of the current Nationalist Chinese Party (KMT 2008–2016) government has been assimilationist by means of welfare colonialism in order to reach the goal of turning Taiwanese Indigenous Peoples into Han "human beings".[5] Although multiculturalism is now enshrined in the *Constitutional Amendment*, unfortunately, the mainstream society tends to consider Indigenous Peoples as objects for cultural consumption and, thus, scorn their efforts for protection of their rights.

In the area of Indigenous rights to property, traditional territories of the Indigenous Peoples are indiscriminately designated as Public Reserved Lands so that Indigenous Peoples have almost lost control of utilising resources on their lands. In the name of development, governments at all levels exploit Indigenous lands without consultations or permissions. In terms of rights to culture, while Indigenous languages are becoming extinct, the government has made efforts at neither revitalisation nor development, with the Ministry of Education and the Council of Indigenous Peoples (CIP) passing the responsibility to each other on the lack of Indigenous education demanded in the *Indigenous Education Law*.

Economically, the average income of the Indigenous Peoples is much lower than the national average while that of the unemployment rate is much higher than the latter. Socially, the non-Indigenous society tends to deem that the Indigenous Peoples are only fit for such activities as singing and dancing or careers in the military service.

Politically, as government largesse is linked to political patronage, the Indigenous Peoples have no free will during elections. In fact, affirmative action plans have been largely ridiculed, if not neglected. Even if the *Indigenous*

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[4]For a general treatment of indigenous rights, see Anaya (2004).

[5]The term Han means the human beings and thus non-Han stands for non-human beings or barbarians.

Fundamental Law enacted in 2005 stipulates that those laws infringing Indigenous rights ought to be revised or abolished and that relevant laws are passed within three years, nothing has come into existence. Worst of all, the current government has attempted to sabotage the *Indigenous Fundamental Law* in the draft *Indigenous Autonomy Bill*, wherein the Indigenous councils are nothing but empty shells, devoid of any administrative and legal powers or land titles.

4.3 Efforts at Implementing Indigenous Self-Government

Before the 2000 presidential election, Chen Sui-bien, candidate of the then opposition DPP, signed a "Nation-to-Nation" partnership agreement with leaders of the Indigenous movement in Taiwan. Once elected, President Chen signed another agreement with these leaders and reconfirmed his determination to honour those pledges in the earlier agreement, including promoting Indigenous self-government. After his re-election in 2004, President Chen, to the surprise of the Indigenous Peoples, further announced that he would put up an exclusive chapter for the Indigenous Peoples in the much-discussed new constitution. While endeavouring to draft such a constitutional bill for themselves, Indigenous leaders were concerned that President Chen was only paying lip service to them.

So far, five versions of the *Indigenous Self-Government Bill* have been prepared, two by the DPP government and three by the succeeding KMT government. Bill A was drafted by experts on local government and fashioned after the *Local Institutions Law* in the spirit that the authority of the Indigenous government was delegated by the central government. It was then replaced by Bill B after being stalled during the process of cross-ministry reviews. The new simplified version was intended to be a model of procedural law rather than substantial foundation for future drafting of autonomous statutes, (read 'treaties') between each Indigenous people and the central government. Tactically speaking, it was purposefully calculated that this reduced bill would ease the painstaking process of lawmaking.

However, after heated deliberations in the Legislative Yuan (the national parliament) the government was forced to withdraw the bill because Indigenous legislators complained that no adequate Indigenous rights had been guaranteed in the bill. The Indigenous legislators forcefully insisted that some itemised list of Indigenous rights, especially financial support in certain proportion to the annual national budget, be specifically recognised in the bill. They argued that the bill-in-principle, without such details, was nothing but an undisguised hoax to deprive the Indigenous Peoples of their rights.

The outcome of this withdrawal of the *Indigenous Self-Government Bill* was that an *Indigenous Basic Law* was unexpectedly passed by the outgoing legislators in 2005. Praised as the Indigenous Constitution, the law may be considered as a de facto treaty between the Indigenous People and the state. Essentially a synthesis of abstract principles and concrete protections of Indigenous rights, the law designated the formation of an Enacting Committee under the Executive for its enforcement, where two-thirds of its members be reserved for the Indigenous Peoples.[6] It also required concerned ministries and agencies to revise, within three years, relevant laws and statutes to embody its principles. Last but not least, it attached a requirement that there shall be a separate chapter for the Indigenous Peoples in the intended *Bill of Rights*.

At the time it was believed that, guarded by the three-layered protection from the *Indigenous Basic Law*, with a special chapter on Indigenous Peoples proposed for the *New Constitution* (Shih 2006), and a similar one pledged by President Chen for the *Bill of Rights*, Indigenous self-rule would enjoy a better fate. However, since there was no guarantee that the latter two could be eventually passed by the opposition-dominated Legislative Yuan, the bills had been drafted to include as many Indigenous rights as possible stipulated in the United Nations Draft Declaration on the Rights of Indigenous Peoples (1995).

Within the Council of Indigenous Peoples, a working group made up of ministerial delegates, Indigenous representatives, and scholars was established in early 2006 to assist further considerations of the above-mentioned enacting committee. Members worked under four substantive groups: administration, education-culture, economics-development, and Indigenous lands. While ministerial delegates were ready to protect their constituencies, Indigenous representatives were similarly eager to defend their local interests. This sometimes left scholars as crucial arbitrators when disputes arose. When civil servants threw doubts, if not ridicule, upon the whole idea of Indigenous rights, non-Indigenous participants *qua* scholars were forced to come up with legitimate rationale based on international laws, political philosophy, and practices from other countries that accord with the *Indigenous Basic Law*.

From time to time, civil servants claimed that Indigenous rights would conflict with national interests and thus demanded that their implementations be suspended. At this juncture, scholars pointed out that there is no necessary contradiction between Indigenous rights and national interests and where there is, some compensatory measures to Indigenous communities are warranted. In providing professional knowledge, scholars had to walk a thin line between the quarrelling parties, so that they would not be suspected of being agents of either.

[6]The members include the premier, 11 ministers, 23 indigenous representatives, and 5 experts and scholars. The author is honoured to be included in the last categories.

4.4 A Change of Government Undermines Progress on Self-Government

After the KMT political party returned to power through the 2008 election, Indigenous policy changed direction from the framework of protecting Indigenous rights to that of offering welfare, and from partnership to tutelage. At first, the Indigenous Peoples were excited as the President-elect, Ma Ying-Jeou, had promised during the Presidential campaign that his government would experiment with Indigenous self-rule. However, the euphoria that followed the historic pledge soon turned into disappointment and despair.

Three versions of the *Indigenous Self-Government Bill* have been introduced by the KMT government. At first, apparently misinterpreting the President Ma's authentic intentions, the Council of Indigenous People came up with Bill C, which is basically a synthesis of Bill A and B and acceptable to the Indigenous Peoples. However, after the cabinet reshuffle, the Premier's Office declared a so-called "Three No's" direct order, that is: no administrative readjustment, no adjustment of local authorities, and no interference with current rights and benefits for the Indigenous Peoples. As a result, the Council of Indigenous People drastically revised this version of the *Indigenous Self-Government Bill* in order to appease the government.

Under the revision, the would-be Indigenous governments become nothing but administrative units within the framework of the *Local Institutions Act* rather than autonomous ones equipped with sufficient executive, legislative, and judicial powers. Nor is revenue-sharing provided for at the county level as envisioned by Indigenous elites. Most disappointing of all, there is no land reserved for Indigenous governments. Finally, some articles were smuggled in to sabotage important articles of the *Indigenous Fundamental Law* such as the requirement for prior Indigenous consent for economic development of Indigenous lands and resources, and that of co-management. Last, but equally important, rampant verbal abuses were launched against Indigenous Peoples by officials, including President Ma himself who once asked members of CIP to behave as human beings.

In the face of serious demands from Indigenous activists, scholars, and legislators for a response to these measures the Council of Indigenous People in 2014 produced a newly drafted proposal for the *Indigenous Self-Government Bill*. According to a document leaked to the press, this is basically an interim arrangement whence the Indigenous areas will be under the management of a downgraded CIP without any significant autonomous powers. Under the so-called guideline of "Spatial Unity," the idea of self-government has been downgraded to the notion of "cultural autonomy."

4.5 Issues and the Roadmap

The fundamental question raised through all of these political machinations is whether the idea of Indigenous sovereignty is compatible with the existing state's indivisible sovereignty. From governmental perspectives there is doubt that sovereignty can be shared by Indigenous Peoples and the state. There are concerns that the territorial integrity of the state would be undermined if the Indigenous Peoples choose to exercise their right to self-determination and declare outright independence. Some opponents even argue that the Indigenous Peoples have never possessed any right to the lands except the right to exploitation. Others have gone so far as to dismiss the whole notion of Indigenous rights. Strongest resistances come from the Bureau of Forest Services and from the Bureau of Water Resources, whose jurisdictions largely overlap with the designated areas for Indigenous self-governments.

Logically, there are three choices facing Indigenous Peoples: to accept assimilation and welfare colonialism, to maintain self-government, or to seek independence. Each of these paths is fraught with difficulties and there are divisions between communities, often related to their particular circumstances. For instance, historically a series of alien rulers had sought at all costs to assimilate Plains Indigenes in western Taiwan, whose descendants are now almost inextinguishable from non-indigenes. In contrast, Indigenous Peoples who have been geographically segregated in mountain areas in central and eastern Taiwan are lucky enough to retain their cultural identities. These circumstances influence their positions on the difficult choices.

Some Indigenous people, for fear of discrimination, suspect the wisdom of resisting further assimilation. Judging that non-Indigenous peoples have only exploitation on their minds, they believe that the models of economic development and social welfare assured by the government are the only guarantee for progress. In their view the abstract principle of self-determination and the remote goal of self-rule are nothing but futile illusions. On the extreme of the spectrum, some Indigenous elites claim that only political independence can lead to authentic salvation, even though no serious effort has been made to promote this outcome. As a result, the middle path of self-government turns out to be a pragmatic compromise: while reserving their right to claim independence, Indigenous leaders would work with the government to prevent Indigenous governments from being empty shells.

The most crucial battleground is found in the appropriation of lands for Indigenous self-governments. Under Article 2 of the *Indigenous Basic Law*, two relevant terms are defined: "Indigenous Areas" means those areas traditionally occupied by Indigenous Peoples and sanctioned by the executive branch of the government, and "Indigenous Lands" includes traditional lands occupied by the Indigenous Peoples and current lands nominally reserved for them. It is understood that there is no genuine Indigenous self-government without any land base.

The CIP have largely finished preliminary surveys on traditional lands that had once been utilized by the Indigenous Peoples in the past. According to the maps of

traditional territories drawn based on oral narratives of the elders so far, some Indigenous Peoples have claimed that their tribal lands extend beyond the highly restricted "Indigenous Areas." Nonetheless, it is not clear whether the "Indigenous Lands" will be returned to the Indigenous self-governments on the "Indigenous Areas."

For an Indigenous self-government to work effectively with an eye to protect Indigenous rights, three aspects are crucial for meaningful institutional designs: authority, efficiency, and representativeness. First of all, to be truly autonomous, political authority of the Indigenous government must find its place in the Constitution. Otherwise, its uniqueness as a manifestation of inherent Indigenous rights would run the risk of being compromised, if not nullified, by a legislature dominated by non-indigenes.

There are also concerns over which body is going to arbitrate between Indigenous self-governments and central/local governments when disputes arise. Without any precedent, four options have been suggested: the Parliament, the Constitutional Court, a special committee, and the President. Since Indigenous MPs comprise less than 5 % of Parliamentary members, it is doubtful how this mechanism, brought into being under the principle of one-man-one-vote, would be in any position to defend Indigenous rights, unless a parliamentary committee where Indigenous MP's dominate is created. While the Constitutional Court seems an impartial branch of the central government, it is still precarious to leave the future of Indigenous Peoples in the hands of an organ where no Indigenous judge would be a member.

There are suggestions that some kind of special committee is designed under the President, or the President is responsible to resolve disputes. Nonetheless, it is uncertain whether the President would consider himself/herself as the head of the state mandated by the dominant non-indigenes only, or as a dispassionate arbitrator supported by the Indigenous Peoples as well. In the end, there is no answer for the following challenge: "If the relationship between the Indigenous Peoples and the state is considered as 'partnership,' shouldn't there be an outside third party to play the role of arbitrator?" This question deserves further considerations not only among the Indigenous Peoples but also between elites from Indigenous and non-Indigenous sectors.

In terms of the scope of the self-government, there are debates over whether there shall be one pan-Indigenous government only, mixed-nation government, one national self-government for each Indigenous People, or as many tribal governments as possible. Since not all Indigenous Peoples opt for self-rule; at least in the short run, a pan-Indigenous self-government, even a confederation in the loosest sense, seems impractical. On the other hand, tribal governments appear to be the best model to express grassroots participation for direct democracy but caution should be made against low economy of scale.

Also, there have been conflicting views over what institutional arrangements work for representing the Indigenous Peoples. It appears that the goal of sufficient representation may at times contradict that of efficiency. Ideally, there would be one tribal council for each tribe. As a result, depending on the definition of tribe, it is

estimated that there would be at least 250 tribal councils. While retaining their autonomy, these tribal councils are expected to forge some form of coalition along cultural lines in order to bargain with the government. Depending on different patterns of tribal organisations, whether scattered or concentrated, these processes of internal integration warrant some cautious procedures.

4.6 Conclusion

Based on the rights to self-determination, the essence of Indigenous right to self-government is to have their own political, social, cultural, and economic arrangements. While adequate legislative, executive, and judicial powers are preconditions, there is no authentic autonomy without territorial and land bases. Under the liberal DPP government, the two versions of the *Indigenous Self-Government Bill*, the substantive Bill A and the procedural Bill B, were stalled by the divided government. So far, the current conservative KMT government has formulated three models of self-government. The most recent model on the agenda would merely transfer jurisdictions of Indigenous lands from other branches of the government to the CIP, making it a modern day Bureau of Indian Affairs.

The author was fortunate enough to deliver a speech on Indigenous Peoples' constitutional rights at the first assembly of Indigenous leaders and elders in history at Taichung, Taiwan, on 28 June 2006.[7] At this historical occasion, these tribal leaders expressed their endorsement for the draft indigenous chapter of the new constitution. They also declared their determination to take back their traditional lands. Seemingly optimistic, the Thao People, a people with a population less than 1,000, has been recognised by the government, which has agreed to return a 150-acreage land to this people. And yet, no substantive progress has been made on the road to Indigenous self-government although some Indigenous assemblies have been formed, including the Atayal, Saisiyat, Sediq, Thao, and Truku assemblies.

While the DPP, even if not without some reservations, is willing to espouse the ideas of Indigenous rights to self-government, the KMT seems suspiciously determined to relegate it to the notion of self-administration at most, and self-management at worst. Engulfed between the philosophy of protecting Indigenous rights and that of welfare colonialism, the Indigenous Peoples, after more than four hundred years of deprivation, marginalisation, assimilation and domination, are still divided among themselves about the road ahead. For most Indigenous politicians, subservience appears to be the most beneficial deal that they

[7]The author was then co-convenor of the Indigenous Working Group for Promoting New Constitution, CIP. He also served as chairman of the Administrative Sub-committee of the Working Group for Enacting the Indigenous Basic Law, CIP.

can realistically strike. Nonetheless, having been exposed to the current of Indigenous rights protection in the world, the Indigenous intellectuals are not satisfied with being strangers on their own lands.

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Part II
Cases of Traditional Peace Strategies and Nonviolent Actions Inspiring Campaigns for the Rights of Indigenous Peoples

Te Heke (The Migration; Maori, Aotearoa New Zealand), 1927, to commemorate 50 years since the first Te Heke in 1877. *Source* Private Album of Te Maihāroa family collection (see Chap. 5)

Te Heke (The Migration), 2016. A group of about 50 people walked 135 km over 4 days to remember Te Maihāroa and his people who were wrongfully evicted by the Crown from ancestral land in 1879. *Source* Hamish Maclean, *Otago Daily Times*, January 14, 2016, with permission (see Chap. 5)

Chapter 5
Regeneration of Indigenous Peace Traditions in Aotearoa New Zealand

Heather Devere, Kelli Te Maihāroa, Maui Solomon and Maata Wharehoka

Abstract In this chapter, we relate the little-known stories of some Indigenous peace traditions of Aotearoa New Zealand. We provide an historical account of three peace traditions: the Moriori of Rēkohu (Chatham Islands); Waitaha in the South Island; and Parihaka in the North Island. The Moriori people adhered to an ancient vow to never kill another person and were almost wiped out by occupying Māori tribes in the 1830s. The Waitaha people, who believe their tribe or 'iwi' to be the "caretakers of the god of peace", took part in a peace march for justice in 1877. The people of Parihaka used passive resistance to oppose European occupation of their land in the mid to late 1800s. All three peace traditions are currently being sustained and regenerated to promote lessons of peaceful interactions as alternatives to violence.

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_5

Keywords Aotearoa New Zealand · Peace traditions · Māori · Moriori · Rēkohu · Waitaha · Parihaka

5.1 Introduction

In this chapter, we are re-tracing what is known about some of the indigenous peace traditions in Aotearoa New Zealand. While New Zealand has gained a reputation as a peaceful country, judged as being near the top of the Global Peace Index, Māori, the indigenous people, have historically been typecast as a "warrior culture". Both past and current literatures have emphasised the warrior archetype of Māori culture. During the New Zealand Wars (1820–1872), Māori warriors were described in English-language literature as "proud and warlike", "masters of bush fighting" who "built sophisticated defence forts" (Knight 2013). Alan Duff's 1990 novel *Once Were Warriors* has been described as a "watershed in social realism in New Zealand, and Maori writing," (Macdonald1991). Wilson (2008: 116) claims that the film version "commodified the novel's images of the Māori as a marginalised, broken race grasping at the remnants of its heroic warrior heritage in the death-driven rites of black power gangs, and in the psychologically disturbing domestic violence." Controversial research into the warrior traditions of Māori, claims that a "warrior gene" exists in the Maori community (see the debate in Perbal 2013 and Hook 2009).

We are working to redress the balance by ensuring that there is academic research about peace traditions that exist within Māori and Moriori cultures. This academic research includes *whakapapa* (genealogy) and historical tribal knowledge. Each of the three peace traditions discussed in this chapter is narrated by an 'insider' researcher, closely involved in the regeneration of these peace traditions. A non-indigenous researcher has acted to coordinate the chapter.

5.2 Indigenous Peace Traditions of Aotearoa

Narratives of peace traditions have been passed down orally, and tell of peace-loving communities that reside in Aotearoa. Similarly, to the First Nations Peoples of Canada, whose philosophy of interconnected holistic and spiritual beliefs has "been successfully passed on through many generations" (Abolon 2011: 55), the indigenous narratives within Aotearoa also embrace this inclusive, spiritual way of thinking, and describe spiritual connections as peace emerges from conflict.

The Māori *atua* or spirit of war is Tūmatauenga, who represents the art of weaponry and warfare. The domain of Tūmatauenga, is the *marae ātea* (front of meeting house), where visitors are challenged, and the traditional greeting, or *pōwhiri* takes place. Warriors who returned from an event would pass through a

ritual to make them *noa* (no longer sacred), and enable them to resume a state of peace, required for those entering into the *whare* or meeting house.

The *whare* is the domain of Rongo, the *atua* of peace (also called Rongo Hīrea, Rongo-marae-roa-a-Rangi, Rongo-mā-Tāne), who also presides over the entrance of the *whare*. He is the deity responsible for peace, humanitarian elements, emotions, generosity, sympathy and everything that comes under *manaakitanga* or hospitality. The ritual includes the physical movement from the domain of Tūmatauenga, from outside where strangers introduce themselves and state their intentions, to the inside of the *marae* or ancestral meeting house, where there is an agreement to follow the teachings about peaceful interaction and hospitality.

The history and teachings of three indigenous communities of Aotearoa, each with their own unique peace traditions, are presented in this chapter. Each narrative is given by a researcher intimately connected to that tradition, and incorporates both 'insider' and 'outsider' knowledge, interweaving both the indigenous oral stories, and written material from Pākehā (non- Māori) and Māori writers.

Maui Solomon, whose heritage includes Moriori, relates the peace tradition of the Moriori of Rēkohu. Kelli Te Maihāroa, whose ancestor is considered to be a Māori peace prophet of the Waitaha people, tells of the Waitaha of Te Waipounamu. And Maata Wharehoka, the Kaitiaki or Guardian of Te Niho o Te Atiawa meeting house, gives an account of Parihaka in Taranaki. Both the Moriori and Waitaha peace traditions can be traced back to pre-1350s. The Christian missionaries of the 1800s were an additional spiritual influence to the Waitaha and Parihaka people, and their peace traditions. In turn, charismatic Māori leaders of this era recognised the need to incorporate biblical teachings with traditional Māori beliefs, in an effort to maintain *Mana* (prestige) and leadership for their people. This was particularly important for collective mobilisation of Iwi tribes, in an effort to challenge land confiscations that dominated the political 19th century landscape.

5.3 Moriori and "Nunuku's Law": Maui Solomon

Moriori are the first settlers of the remote islands of Rēkohu and Rangihaute (known in English as the Chatham and Pitt Islands, and to Māori as 'Wharekauri'), 800 km off the East Coast of New Zealand. Acknowledged as the indigenous people of Rēkohu and entitled to separate recognition to Māori, Moriori developed a culture and identity as an egalitarian people, with unique laws for peace (Waitangi Tribunal 2001: 24). The abandonment of warfare and killing is an ancient covenant that has been handed down from the earliest Moriori ancestors. Our *karāpuna* (ancestors) tell us, that the covenant was reaffirmed and passed from one generation to the next:

> It was passed down to Mu and Wheke, and from them and their descendants down to Rongomaiwhenua, and from him to his descendants Nunuku, Tapata and Torea. You may continue to fight; but the meaning of his words was, do not kill (1894 transcript).

By forbidding the taking of human life and placing their weapons of war upon the Tūahu (the sacred altar), Moriori entered into a *tohinga*, or covenant with their gods. From that time forward, power over life and death was removed from the hands of man and placed into the hands of their gods. Fighting became ritualised, and upon the first drop of blood being drawn, fighting was to cease. The leader, Nunuku Whenua, reaffirmed the covenant of peace some 600 years ago.

Tradition tells us that knowledge of the peace covenant, was passed from father to son, during a baptismal rite or ceremony, known as '*tohinga*'. The old weapons of war, which had been placed on the Tūahu, were removed and handed to the child. An explanation was then given to the child that the weapons were once used for fighting, and could kill another human being. By placing the weapon back on the Tūahu, the child was symbolically renewing the covenant for the next generation, and completing the *tohinga* ceremony.

This covenant of peace was put to the test, when two Māori tribes from northern Taranaki, on the mainland of Aotearoa, Ngati Mutunga and Ngati Tama, invaded the islands in 1835. A large gathering of Moriori took place at Te Awapatiki on the east coast of Rēkohu in early 1836, to decide what response they would make to the invasion. While the young men urged resistance, the elders, Tapata and Torea, insisted that the people hold fast to the teachings of Nunuku. As they said, the covenant was a spiritual pact entered into with their gods. To break that covenant would represent a betrayal of their gods and a loss of *mana* (prestige) for them as a people. Instead, they offered peace, friendship and a sharing of the Island's resources, as was their custom. Many Moriori were enslaved and killed, and the Moriori population was decimated, but despite the great suffering and loss, their legacy of peace and hope has lived on.

For the current generation of Moriori, it has become a rallying point—a beacon of light and inspiration that has guided us in reclaiming our culture and identity as the first peoples of Rēkohu. The covenant has been renewed at subsequent auspicious occasions, such as the opening of the Kōpinga Marae (2005), a blessing for the World March for Peace and Non-Violence (2009), and at the inaugural Me Rongo Congress for Peace, Sustainability and Respect for the Sacred (2011).

The Me Rongo Congress had been conceived at a gathering in 2010, convened in Tofino, Canada, as part of the International Society of Ethnobiology International Congress. The gathering was held in an indigenous centre, and named *Hishuk-ish tsa'walk*, after a Tla-o-qui-aht expression, meaning "everything is one". The session entitled "Peace Sustainability and Respect for the Sacred" brought together elders and other experts from around the world, who have traditions in peace keeping/making, as an integral part of their philosophy. It focused on the importance of the preservation and transmission of inter-generational knowledge of "living in country", as the Aboriginal peoples of Australia say, and promoting the retention of the local language(s) and cultural practices of the communities that sustain this knowledge. At its heart was an understanding of the importance of the sacred *wairua* (spiritual) traditions—as an expression of the thread that binds people together with their natural worlds, and which provides the basis for living in respectful and mutually enhancing relationships of humans, plants and animals.

In addition to providing a collective forum for learning about peace traditions and the importance of being able to practise cultural continuity, the session examined ways in which the modern world may come to a better understanding of how this sacred knowledge or knowledge of the sacred, is critical to humankind, (re)learning how to live "in connections with", rather than increasingly "disconnected from", our planet and planetary systems.

At the opening of the Me Rongo Congress (2011), the Moriori peace covenant was renewed and reaffirmed by all delegates. "*Me Rongo"* is a Moriori term that means "in peace". It is used as both a salutation and affirmation. The word '*rongo*', also embodies other vital ingredients for peaceful living since *rongo* also means "to listen". *Me Rongo* implies that, in order to be in peace, one must also listen deeply and respectfully. This listening is not just amongst people, but also incorporates a deeper level of listening, to the rhythms and sounds of the living systems to which we are connected.

The ceremony of renewing the covenant honours the vision of our ancestors and makes a small, but important, contribution to the global efforts of peoples and organisations around the world, to make our planet a more peaceful and sustainable place in which to live. In renewing this ancient covenant of peace, we are conscious that peace is as precious and much needed today in the modern world, as it was for our ancestors. The challenge left to us by our *karāpuna*, is whether we can learn to live together peacefully and share what we have, respecting each other, and the environment that we live in. We are researching and rejuvenating the *kaupapa* or culture of non-killing, and are seeking to identify more Moriori descendants and to continue the teaching of peace.

We are convinced that the Moriori message of peace is something to be proud of and is worthy of sharing with the rest of the world, as an unbroken commitment over countless generations to peacekeeping, and as a beacon of hope. Moriori history on Rēkohu, demonstrates that it is possible to consciously and successfully change from a culture that accepted occasional warfare and killing, to one of peace, and the outlawing of killing (Me Rongo Congress Declaration 2011).

5.4 Waitaha, Peace Marches 1877 and 2012: Kelli Te Maihāroa

This section highlights the peaceful traditions of Waitaha, an *iwi* (tribe) from Te Waipounamu (South Island) Aotearoa New Zealand. Waitaha set out from the Pacific homeland of Te Patu-nui-o-Aio (also known as Hawaiki), some 67 generations ago, maintaining uninterrupted occupation of Te Waipounamu for over a millennium. The founding *tīpuna* (ancestor) of Waitaha is Rākaihautū, who captained the Uruao *waka* (canoe) and carved out the South Island's majestic interior lakes and mountains.

Rākaihautū established the occupational rights for Waitaha through *ahi kā* (ancestral fires), the ignition of sacred fire lighting ceremonies throughout Te Waipounamu. Waitaha are the "*kaitiaki o Roko*" (the caretakers of the Peace God, Rokomaraeroa) and have been also been described as the "carriers of ancient *wairua* (spirit)" (Te Maihāroa 2013). The Waitaha people originate from a peaceful tribal history, rejecting warfare, as evidenced by the absence of war artifacts from this period of occupation.

My Pōua (Great Grandfather) Te Maihāroa, was born near the end of the eighteenth century in a small village named Te Waiateruati, South Canterbury. He followed the ancient wisdoms of his mother's people, the sacred *ariki* (high born) Waitaha line. He practised Māori *tikaka* (Māori customs and protocols) and as a young man acquired the skill of *matakite* (prophesy). Te Maihāroa was known as the last *tohuka* (expert priest) in Te Waipounamu, which involved upholding the role of spiritual protection of the southern tribes of Waitaha, Kāti Mamoe and Kāi Tahu (Mikaere 1997) during the nineteenth century, the period of early colonisation. His spiritual expertise was vast, and after being witnessed publicly, his mystical accomplishments were recorded in local newspapers by reporters and historians (Beattie Collection 1939–1945).

Aotearoa became a British colony in 1840, through the signing of Te Tiriti o Waitangi (The Treaty of Waitangi), which Māori assumed would provide a more peaceful settlement period. In 1848 Southern Māori sold eight million hectares to the Crown for a farthing per hectare (Mikaere 1997). The signing Kāi Tahu tribe, soon realised that the Crown would not fulfill the tribe's expectations of sufficient native reserves, schools, hospitals, access to *mahikakai* (traditional food sources), nor would it stop the Europeans from encroaching on Māori land (Mikaere 1997).

Whilst the Crown believed that the land purchase included the majority of Te Waipounamu, Te Maihāroa held the position that land sold by Kāi Tahu only encompassed the land from the East Coast to the base of Southern Alps (Mikaere 1997). He strongly held the view that as kaitiaki (guardians) of Papatūānuku (Earth Mother), tribal land was a resource to be nourished and cared for, not sold off in exchange for money, which he deemed "blood money" (Te Maihāroa 2013). Te Maihāroa championed Māori as the legal owners of the land from the Alps to the West Coast, concluding that physical occupation of the island's interior would provide cultural isolation and uphold *tino rakatiratak*a (absolute sovereignty) to retain tribal land (Mikaere 1997; Beattie Collection 1939–1945).

The spiritual teachings of Te Maihāroa (as with other Māori prophets) provided a counter narrative to the newcomers' God, who seemed to deliver bountiful benefits to Europeans (Elsmore 1999). Te Maihāroa's vision for his people was to create a new home where they could preserve Māoritaka (Māori values), living away from European influence and missionary interference (King 2000). In June 1877 Te Maihāroa led 150 of his people on *Te-Heke-Te Ao Mārama* (The Migration to Enlightenment) from Temuka to the 'Promised Land' of Te Ao Mārama, the World of Light, (commonly known today as Ōmārama), a trek of 181 km. But as "Te Heke" (the migration) moved inland, the group soon realised that European settlers

had established themselves throughout the landscape, often without Māori permission (Mikaere 1997).

Despite disillusionment with their "Promised Land", Te Maihāroa established a peaceful, somewhat isolated, Māori community, near Ōmārama, complete with sod cottages, a *whare runaka* (council house), gardens and employment on local farms. Within one year, European landholders surrounding the Māori village started complaining to the police that Māori had weapons, their dogs were worrying sheep and that Māori were ploughing European land for crops. Te Maihāroa and his people denied these claims as 'false', rebuffing them in Parliament through the local Member of Parliament, Horomona Pohio (Mikaere 1997).

The Native Affairs Minister stated that Te Maihāroa's claim was illegitimate, issuing an ultimatum that they must vacate the Māori village at Ōmārama, by the end of 1879. Somewhat prematurely, a build up of militia outside the village began earlier and on the 11th of August 1879, some five months before the original deadline of departure, Te Maihāroa was informed that the people of his community were trespassing, and were to be evicted immediately. Te Maihāroa commanded that his people maintain peace at all cost, and that they vacate the village, returning to Korotuaheka, an ancient Waitaha village at the mouth of the Waitaki River (Mikaere 1997; Beattie Collection 1939–1945). As they left their "promised Land", the people witnessed the destruction of their houses and crops by the militia, who employed "scorched earth tactics" to ensure that nothing was left.

The situation engaged national attention, with parallels being drawn with Parihaka tribal leaders, Te Whiti-o-Rongomai and Tohu Kākahi, who had previously adopted the passive resistance stance of peaceful protests against illegally confiscated land by ploughing the fields (Binney 1995; Elsmore 1999; Riseborough 1989; Mikaere 1997). The political domain of European rules, laws and enforcement were foreign concepts to Māori and heavily weighted against them (Elsmore 1999).

To this day, Te Maihāroa remains in our hearts as our spiritual guide, prophet and peaceful leader. His prophecy was for our people to return to Ōmārama, his vision of the "Promised Land", to fulfil "Judaic Law of Return" (Ruka 2012). Through Te Heke 1877, the migration for peace, Te Maihāroa kept alive *ahi kā roa* (the eternal sacred fires) of Waitaha, and asserted moral ownership within the interior hinterland. To celebrate 135 years since the original Te Heke, the Te Maihāroa whānui (family and friends) retraced much of the original route from the mouth of the Waitaki Valley to Ōmārama in December 2012. This journey named "Te Heke Ōmāramataka" followed the sacred footsteps of our ancestors to remember their strength, courage, and motivation for undertaking the peaceful migration.

We walked 135 km over four days, from the sea to return to the mountains, each kilometre corresponding to a year that had passed since the original trek. The experience of retracing the social, cultural, spiritual, and physical steps of our *tīpuna* (ancestors) is one that cannot be erased from our bodies, memory or consciousness. The time spent in preparation, the journey itself and reflection, has provided us with bountiful gifts from this significant occasion. Te Heke will be

re-enacted regularly as a peace march to preserve the memory of our *tipuna*, but also to remember our own heart, spirit and dream of a brighter future. This experience reminds us, that when we are moved by spirit, anything is possible.

I te ohok̲a ake I aku moemoeā, ko te puawaitak̲a, ko te whakaaro (when I awoke from my dream, my aspirations were realised).

5.5 Parihaka, the Home of Passive Resistance: Maata Wharehoka

Parihaka: a place of peace, a place of conflict, a place of justice, freedom of the oppressed.

War between the British and Taranaki Māori at Te Kohia in Te Ika-a-Maui (New Zealand's North Island) began in 1860. The Settlement Act 1863 permitted the confiscation of land without compensation. Many tribes had been displaced by invasions of Māori land, for the purpose of meeting the needs of settlers who, in many cases, had been promised land by the government for their participation in regimental activity. When the warship Niger bombarded their pā site on the Taranaki coast in 1864, Te Whiti o Rongomai and Tohu Kākahi, two respected Māori leaders, moved their *whānau* (families) to Parihaka, a place of safety in the hinterland at the base of the sacred mountain of Taranaki. A pan-tribal refugee community strengthened the numbers at Parihaka, and it became the largest sustainable community in Aotearoa at the time.

Houses at Parihaka were built in close proximity to each other. Small in size, and of ancient native style, they were constructed from the resources readily available on the land. The community of approximately 3000 people depended upon the discipline and the resolute organisation that were provided by Te Whiti and Tohu. The growing population at Parihaka generated a strong environment inspired by the Christian philosophy of faith and goodwill to all mankind. However, the government was persistent in confiscating land owned by Taranaki Iwi, and under the administration of Parihaka. By 1880, the government began building a road to Parihaka. Telegraph lines were installed to aid communications and a lighthouse was erected on the coast directly in line with Parihaka. This completed an opportunity for invasion. Altercations occurred when armed constabulary pulled down Parihaka's fences during construction and Māori crops were exposed to wandering stock and horses.

Te Whiti and Tohu debated and argued their position over land, with their masterful minds, and familiarity with the English language, Christianity and the spirituality of their ancient *atua* (Gods) of the Māori and cosmology. Te Whiti and Tohu had been able to move between the different traditions with great ease and without conflict. Their knowledge of the Bible is attributed to Minirapa Rangihauake, who was released by the northern tribe of Nga Puhi. Minirapa

became a Wesleyan Minister, returning to Taranaki in 1842, where he taught Te Whiti and Tohu the bible and how to read and write in English.

However, discussion with Pākehā leaders was to no avail. Te Whiti and Tohu launched a protest campaign that became the lasting symbol of Parihaka. This required the men to lay down their weapons of war, instead sending them to repair fences and to plough the land that was taken by the government for settlers. When surveyors plotted out the land for settlement, men were sent to remove the survey pegs and when fences were erected, men were sent to pull them down.

The passive resistance campaign was a threat to the government and resembled activities that had been undertaken by the Pakakohi people of South Taranaki, for which they were imprisoned in 1868. In 1878, the first group of prisoners taken from Parihaka was sent to Dunedin, far off in the South Island, where they experienced forced labour in extreme weather and bitterly cold conditions.

Over a period of twenty years, more than five hundred men were incarcerated for removing survey pegs, pulling down fences, and ploughing their own land. The men of Parihaka continued to display courage with wisdom, and followed instructions, knowing that they would be replaced when they were arrested. They were imprisoned, often without trial, and if there was a trial, they were subjected to further harsh treatment, either in transit to prison, whilst in prison, or on work placement.

The invasion of Parihaka by a force of 1600 British militia of the 5th of November 1881, tells of the courage and resilience of the two great leaders. Te Whiti relied upon his uncle, Tohu, to translate visions and dreams, to make sense of events, and one dream was interpreted as prophesising that a canon would not be fired against Parihaka. Te Whiti said "*Patu te hoa riri kite rangimarie*", fight the enemy with peace. On the day of the invasion, the women sat in silence, confronting the three canons aimed at the village. The children were sent to the fore, making the enemy feel welcome to Parihaka by providing *manaakitanga* (hospitality). They fed their enemy, and gave them something to drink. In response, the armed troops arrested Tohu and Te Whiti and other men, laid to waste the village, and forcibly removed more than 1,500 occupants to other parts of Taranaki (Riseborough 1989; Smith 2001).

On their return from prison in 1883, Te Whiti and Tohu continued to rebuild their community. The infrastructure was well suited to the cultural needs of Māori, with modifications that included its own banking system, economic base, health and welfare system. Justice was an element within the community that was dealt with by a council of elders who made the decisions regarding punishment and admonishment.

After again being incarcerated, a joint decision was made in 1886 for Te Whiti to return to Parihaka, and for Tohu to remain in Dunedin with the prisoners. However, opposition occurred from those who favoured Tohu, dividing the people of Parihaka. The symbolic wearing of three feathers by Te Whiti's followers, and those of Te Atiawa tribe, represented the philosophy of the Holy Trinity, and reflected peace and harmony. The people who followed Tohu, rejected this symbol in protest, choosing to follow Te Pore, represented without feathers. The followers

of the two leaders began to gather on separate days: Te Whiti on the 18th and Tohu on the 19th of each month. So whilst the two leaders continued, and Parihaka remained loyal to their philosophy, there were divisions amongst the followers.

Some 128 years passed without reconciliation, however a very young movement named Toopu Tikanga, has vested two years into healing Parihaka, and both fractions now meet together again. Regular dialogue and face-to-face meetings are held to rebuild a peaceful settlement, and a process of reconciliation with the families of the invading soldiers has begun, to demonstrate the power of working for and by peace. The people of Parihaka are working to ensure that their history is told, and that their philosophy of peaceful living is continued. The history of Parihaka's passive resistance is starting to be recognised as a lesson throughout the world.

Kororia ki te atua, I runga rawa
Maungarongo ki runga I te mata o te whenua
Whakaaro pai ki te tangata katoa.
Glory to God in the highest
Peace on earth
Goodwill to mankind
Rirerire Hau Pai Marire

5.6 Conclusion

The peace traditions of Aotearoa New Zealand have been largely invisible to the world of academic research and in public awareness. In the past, knowledge about the indigenous people of Aotearoa has been concentrated on Māori warrior traditions. This chapter has not attempted to investigate or challenge that research but focuses on what is coming to light about various unique peace traditions in Aotearoa. Three very different peace traditions in different regions of Aotearoa have been revealed in narratives about Moriori on Rēkohu, Waitaha in Te Wai Pounamu and Parihaka in Te Ika-a-Maui.

Maui Solomon tells of a peace tradition going back to the Leader and Tohuku, Nunuku Whenua, who determined that the Moriori people of Rēkohu would never kill another human. The Moriori maintained this tradition and principle even in the face of an invasion, an occupation, slavery and slaughter. The peace covenant continues to be reaffirmed. Research is being undertaken by descendants of the original Moriori to trace those whose identities have been lost and continue the teaching of peaceful interaction.

Kelli Te Maihāroa tells of the Waitaha peace march, Te Heke 1877, which was a non-violent protest, aimed at bringing attention to land issues for Waitaha and other Māori. Her own research focuses on gathering narratives from the elders to ensure that knowledge contained within this peaceful tradition can be passed on to future generations.

Maata Wharehoka relates the story of Aoteroa's (and possibly the world's) first recorded passive resistance at Parihaka against the armed forces of government. The settlement of this pan-iwi group was torched and almost destroyed when the

men of the village were arrested and imprisoned for their actions. The current generation of the people of Parihaka engages in dialogue for reconciliation both within their own community and with the descendants of the military who invaded their village as they rebuild the community on a model of non-violence.

All three traditions have arisen out of the events that have caused pain and loss to their communities, and in contrast to the dominant war-like character of other communities in Aotearoa, both Māori and Pākehā. The peaceful teachings of all three traditions relate back to teachings, philosophy, knowledge and cosmology of indigenous peoples, both in Aotearoa and elsewhere.

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Chapter 6
Peace like a Red River: Indigenous Human Rights for Decolonising Reconciliation

Jeffrey Ansloos

Abstract One of the great ethical complexities of peacebuilding in postcolonial contexts is the meaning of reconciliation for Indigenous people. Historically in Canada, supposed 'peace' has been brokered with Indigenous people in ways that ultimately have increased colonial oppression. Critical Indigenous scholarship is therefore concerned with the ethics that guide peacebuilding. The United Nations (UN) Declaration on the Rights of Indigenous People serves as leverage for promoting Indigenous paradigms, frameworks, and ways of being as the normative ethical sphere for building peace. In this chapter the author will demonstrate that when Indigenous frames of reference are treated as the normative ethical sphere for building peace in colonial contexts, the moral vision of human rights is thickened. The author explores how, by elevating the unique values of a First Nation peace perspective, Indigenous ways of being can simultaneously promote Indigenous cultural reconciliation and nonviolent activism for transformative justice. Finally, in this chapter, the author presents the implications of Indigenous psychologies of nonviolence for policy and practice.

Keywords Indigenous human rights · Critical indigenous ethics · Decolonising · Reconciliation · Canada

6.1 Narrative Introduction

My name is Jeffrey Ansloos. I am the son of Sherry and Paul Ansloos. I am Nehiyaw (Cree) from Fisher River Cree Nation, and grew up in Treaty 1 territory near the fork of the Assiniboine and Red River in Winnipeg. My mother is a survivor of the

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_6

1960s Scoop,[1] *and my Grandmother is a survivor of the Canadian residential school system.*

In my early years, I felt that I had to hide that I was Indigenous. I struggled with shame for the intergenerational legacies of racism in my own family. I recognised my own survival of colonial abuses, as well as how many of the people I loved, like family, church members, and even, friends, were perpetrators of colonial violence. I struggled to reconcile what it means to hold the many realities of the intergenerational legacies of residential schools and the 1960s scoop. I sensed my disconnection from Indigenous traditions and languages, and the simultaneous marginalisation of my indigeneity in colonial and Christian traditions.

Things began to shift for me in my early teens as I began to re-establish connections to my Indigenous roots. Through a process of reconciliation, my mother and I were reunited with my Indigenous Grandmother. I began volunteering in Indigenous community programmes focused on Indigenous youth. I eventually began to study Indigenous perspectives on violence, colonisation, our language, and our spirituality. Over the years, I have learned that as I participate in ceremonies, honour my relations, and live our stories, my healing has continued.

Currently there are many issues facing Indigenous people, as we continue to face neo-colonial aggression in Canadian society. Every year across Canada, we fish the bodies of missing murdered Indigenous women out of our rivers. We have more Indigenous children in foster care then ever before in history. Our youth are more likely to go to jail than finish school. In almost every social sphere, we find indicators of ongoing colonial oppression. And while peacebuilding is entirely relevant to a discussion of Indigenous human rights, it is a notion that also needs critical attention and also needs to be articulated from an Indigenous lens.

There is a song the Christians have taught me which has the lyrics, "I've got peace like a river in my soul." While I do believe that the time for a new relationship characterised by the dignity of human rights is needed in Canada, I believe that the river of peace must be red. We need peace like a red river. We need to understand what peace means from our perspective as an oppressed people, and, how our Indigenous traditions inform our engagement in this work.

6.2 Peace for Whom? The Challenge of Indigenous-Settler Reconciliation in Canada

In 2008, following decades of political advocacy by Indigenous community members and the Assembly of First Nations (AFN), the federal Government of Canada issued a formal apology to First Nations people for sanctioning the

[1]The 1960s Scoop is a period of Canadian assimilationist child welfare policy, which disproportionately relocated indigenous children to nonindigenous families throughout Canada and abroad (Sinclair 2007).

administration of Indian residential schools. Prime Minister Stephen Harper called for a national truth and reconciliation commission (TRC) to establish public understanding of the experience of the residential schools, as a first step towards a new relationship of truth and respect between First Nations people and Canadians.

Within one year of this apology and the initiation of the commission, this same prime minister during a G20 event in the United States said, “Canada has no history of colonisation. So we have all of the things that many people admire about the great powers but none of the things that threaten or bother them” (*Reuters* 2009). In 2012, while the government continued its financial cuts and denied critical residential school records to the TRC, a movement of Indigenous activism referred to as #IDLENOMORE began. Led by a group of Indigenous women, #IDLENOMORE organised events across the country, including a hunger strike by Chief Teresa Spence, drawing national attention to the obligations of Indigenous treaties and raising alarm around the worsening conditions of her Indigenous community. This movement was largely characterised as an “Indian question” by national media (*Toronto Sun* 2014).

In 2013, the UN Special Rapporteur to Canada regarding the status of Indigenous people also documented the deteriorating conditions and broken relationship between the federal government and Indigenous people. The report reads:

> Canada faces a continuing crisis when it comes to the situation of Indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, Indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among Indigenous peoples towards government at both the federal and provincial levels (United Nations 2014: 20).

In 2015, during the release of the formal report of the truth and reconciliation commission, which heard thousands of hours of survivor testimony confirming the participation of the Canadian government in actions tantamount to cultural genocide, the Minister of Aboriginal Affairs refused to acknowledge the recommendation by Chief Justice Sinclair, for a national inquiry into the issue of missing and murdered Aboriginal women (*Macleans* 2015).

The government believes that Canada is in the era of reconciliation. While the peaceable flourishing of all Indigenous people and Canadians is a laudable goal, critical Indigenous scholarship is actively deconstructing the contemporary political discourse of reconciliation in Canada. The political rhetoric of a peaceable relationship with the government appears to be simply that, all talk and no action. It appears that reconciliation has been abstracted for the purposes of national assimilation and to pacify socio-political resistance.

Paulette Regan, Director of Research for the TRC, provides a critical analysis of reconciliation politics, challenging what she refers to as “the peacemaker myth that goes to the heart of settler identity” in Canadian politics. Regan (2010: 14) suggests that a number of the historical frameworks of settlement and peacemaking in Canada are present in the renewed emphasis on reconciliation, and “despite talk of healing and reconciliation, [they] remain rooted in patterns of colonial violence”.

She writes that, "reconciliation must profoundly disturb a dominant cultural history and mindset that misrecognises and disrespects the oral histories, cultures, and legal traditions of Indigenous peoples, including their histories of peace making" (Regan 2010: 14).

Indigenous paradigms need to be elevated. The ethical lens that guides "building peace" needs to be an Indigenous one for the just actualisation of reconciliation within Indigenous-Settler relations. The TRC (2015: 259) similarly affirms that "Reconciliation will be difficult to achieve until Indigenous Peoples' traditions for uncovering truth and enhancing reconciliation are embraced as an essential part of the ongoing process of truth determination, dispute resolution, and reconciliation".

6.3 Indigenous Human Rights and Indigenous Resurgence

The ethical discourse of peace and conflict transformation has frequently been situated in the framework of human rights. While there are many peace traditions, in the contemporary age, human rights have become the '*common phrase'* for various diverse traditions. Ideologically, many invested in building peace believe that human rights enshrine the inherent dignity of persons that are undermined by all forms violence. The popularity of this paradigm is also in part due to its appeal as a legal framework. Human rights in international law have been effective as a legal mechanism for promoting issues of social justice throughout the world.

While civil rights often fail to be guaranteed in federal courts, human rights violations have a context for justice in International Courts. Additionally, human rights are valuable to peace-builders in part for their educative function on the nature of social conflict. In a context of colonial or gender based oppression, human rights law is a framework which brings about awareness of this lapse in justice. It also serves a teleological function by providing a social vision of human relations, albeit a thin one. In the context of peacebuilding, this thin moral framework is able to translate transnationally the ethical domain of nonviolence. Human rights, therefore, function in the contemporary age as a public discourse to promote flourishing in a shared future of particular social identities.

Human rights continue to be critiqued as idealist and not able to fully articulate the particular struggles of populations that are subjugated around the globe. In regards to Indigenous people, this gave rise to the almost unanimously affirmed United Nations Declaration of the Rights of Indigenous People (UNDRIP). Indigenous Rights are frequently misrepresented as a new set of rights special to Indigenous Peoples. Métis and legal scholar, Brenda Gunn clarifies that "the UNDRIP did not create new rights for Indigenous Peoples. It expanded upon and clarified the application of existing human rights standards to protect Indigenous peoples' inherent rights. As a declaration the UNDRIP represents the dynamic development of international legal norms and reflects the commitment of states to move in certain directions, abiding by certain principles." (Gunn 2015: 199). It is notable, that the four last countries to become signatories of the UNDRIP, Australia,

New Zealand, the United States and Canada, have some of the most widely documented violations of Indigenous Rights. Canada was the last signatory of the UNDRIP in 2010, and framed its affirmation as aspirational. Gunn points out that:

> The UNDRIP sets the floor for Indigenous people's rights, the minimum international human rights standards, not a ceiling…Because of the ongoing violation of Indigenous people's rights by colonial governments and other non-state actors, the starting point for the UNDRIP is the principles of equality and non-discrimination articulated in Article 1. The UNDRIP celebrates the distinctiveness of Indigenous peoples and provides protection for these differences, ensuring Indigenous peoples and their cultures the international legal framework to thrive (Gunn 2015: 199).

Fundamental to the UNDRIP is self-determination of Indigenous groups. This serves as a strategy for legally promoting the normative function of Indigenous ways of being. While the ongoing neo-colonialist realities continue to exclude, undermine, and marginalise Indigenous groups, the UNDRIP provides a mechanism for a legal challenge. The affirmation of the Indigenous human right to self-determination, while not inherently necessary, has helped to catalyse de-colonial Indigenous awakenings around the world and, in Canada, Indigenous governance scholar Alfred (2009a, b) refers to this as Indigenous Resurgence. Central to Alfred's approach is an emphasis on decolonisation through the assertion of Indigenous identity. Alfred (2009b) writes:

> The challenge for us seeking to move beyond mere survival, to engender social and political movements taking us to a place beyond colonialism is to convince Onkwehonwe to draw on our inherent and internal resources of strength and to channel them into forms of energy that are capable of engaging the forces that keep us tied to a colonial mentality and reality (179).

It is not simply enough to ask a colonialist government to back away or to reform such a society. This does not liberate Indigenous people, but maintains the status quo of colonial power structures. For Alfred, Indigenous resurgence is caught up in an internal shift of Indigenous consciousness and the actions that follow.

The following section explores the notion of peacebuilding from this lens and how the self-determination assured in Indigenous human rights helps us to decolonise the vision of reconciliation in our case of Turtle Island.

6.4 Towards Peace like a Red River

If reconciliation is to occur in Indigenous and Settler relationships, the notion of building peace must be strengthened by Indigenous frames of reference that account for the political complexities of neo-colonialism evident in the Canadian context. This transforms ethical conversations regarding building peace, to reflect the thickness of Indigenous ethical traditions, and their authority in light of a commitment to self-determination. The Indigenous peace psychologies explored here

articulate ways of being Indigenous that promote restored relationship with Settler Canadians by actively seeking justice for Indigenous people.

Canada Research Chair of Indigenous Social Work and Indigenous Knowledges, Hart (2002), explores medicine wheel teachings of *wholeness, balance, harmony* and *healing* as an Indigenous approach to helping in the psychosocial sphere. While Hart applies these teachings to the social work field, I have applied these teachings to the field of peace psychology (Ansloos 2014), suggesting that they constitute an Indigenous pacifism for contemporary Indigenous youth.

In the teaching of *wholeness*, Hart (2002) indicates "wholeness is the incorporation of all aspects of life and the giving of attention and energy in each aspect within ourselves and the universe around us" (40–41). As an Indigenous philosophy, wholeness emphasises the interconnectedness of all aspects of life. This is exactly what is eroded in the wake of colonial violence. In Hart's work, the suffering or symptoms of colonial violence cannot be isolated from their social or relational context. Hart's perspective can be taken further in that it incorporates a broader scope or context by which healing must emerge and occur.

Indigenous approaches to reconciliation between Settler and Indigenous people must be engaged in a way that strengthens the quality of relationships of communities. Wallace (2013) highlights that:

> In contrast to neoliberal peacebuilding models, which attach primary importance to state-centered processes, actors and institutions, grassroots social movements and local knowledges become that central focus and active agents in a conceptualisation of social transformation (29).

In decolonising reconciliation in Canada, we must evaluate how the rhetoric of federal apologies serves the promotion of *wholeness* for Indigenous people. For Hart, wholeness of a person both internally and in relationship to the broader context is the goal and, therefore, peacebuilding efforts on the part of Canadians must be committed to the holistic healing of Indigenous people. Political apologies may have some effect in terms of societal acknowledgement, but acknowledgement means very little to the health of Indigenous communities if the conditions of oppression remain the same within our communities. Wallace (2013) writes of:

> a worrisome lack of attention to referencing and grounding our peacebuilding theories and discourses to grassroots community-based locations and practices. As a consequence, the relationship between lived experience and theory formation becomes increasingly tenuous and decontextualised when, in fact, it needs to be firmly grounded in people's lives (196).

Reconciliation must flow from the whole of our communities. The whole of Indigenous life includes that which touches the *spiritual*, *emotional*, and *communal* (Ansloos 2014: 128). Within this framework the goal of making peace, or resolving a complex social conflict, requires that our conception of identity advance beyond simple individual renderings towards something that engages the whole—the dynamic and communal lives of all involved in the complex social conflict. As such, in as much as reconciliation includes the political discourse of apology, that

apology ought to engage settler Canadians in an awakening of consciousness around their identity as colonisers. For the teaching of *balance*, Hart (2002) emphasises:

> each part of the whole requires attention in a manner where one part is not focused upon to the detriment of the other parts… when a person is at peace within their physical, emotional, mental, and spiritual humanness; with others in their family, community, and the nation; and with all other living things, including the earth and the natural world (41).

From Hart's perspective, the moral vision of Indigenous identity is one in which the healing of colonial violence cannot support the splintering of an individual or group of individuals at the cost of the wellbeing of others, including the relations of our natural and spiritual environment. As a paradigm for peacebuilding, this promotes a radical relational obligation. In the face of fractured Indigenous and Settler interactions, reconciliation becomes about more than simply amending our relationship interpersonally and must also engage in peaceful balance with our broader relations. Reconciliation must be ecologically balancing.

Colonial violence is indicative of a loss of balance. Efforts to restore balance are essential for decolonial peacebuilding practice. In the context of a society that has oppressed Indigenous ways of being or understanding the dynamic relationality of Indigenous identity, Indigenous peacebuilders and allies of Indigenous decolonised reconciliation, must reconstruct these relational pathways. Wallace (2013) suggests:

> [f]or Indigenous communities, enacting *power with* non-Indigenous activists involved asserting Anishinaabe histories, knowledges, processes, and priorities. At its deepest level, establishing a relationship of power with involved reconstructing a relationship of trust and collaboration in ways that privileged previously marginalised paradigms and practices (25).

This includes our relationship with the earth, our ancestors, and the multiple domains of Indigenous ways of being. As such we must privilege those approaches to reconciliation that do no harm to all of our relations. A decolonial approach to reconciliation, understands that restoring balance is inherently non-violent.

> Rather, the imbalance of violence must be countered by a re-establishing of relations. This means both victims and perpetrators of violence…must be seen as inextricably connected as kin, with the restoration of our relationships as a sacred order (Ansloos 2014: 130–131).

If enemies and/or oppressors are seen as relatives or relations, healing must be inclusive of them. The third teaching on *harmony* reinforces this notion. Hart (2002) suggests that harmony is:

> a process involving the relationships of all the various powers, energies and beings of the cosmos and happen when everyone—human, animal, plant and planet—fulfills their obligations and goes about their proper business. It requires people to live within the natural cycles that move life and to find a fit between the components of life through collaboration, sharing of what is available, cooperation and respect for all elements of life (43).

Harmony is a correlate of respectful relationships. Hart points out "harmony includes respect for one's relationships with others and within oneself, as well as the give and take between entities" (2002: 43). Negotiating this give and take must be done in ways that honours, respects, and builds trust between Indigenous people

and Settlers. We continue to see in Canada the betrayal of trust and the failure of Settler governments to follow through on establishing a relationship characterised by a respect for Indigenous perspectives. This disharmony is bound to the degradation of relational ethics.

A decolonial vision of reconciliation in Canada begs Indigenous people and Settler Canadians to embody a moral imagination which envisions harmonious relationality. Much of the socio-political oppression of Indigenous people that continues in Canada is predicated on the presumption of an assimilationist nationalist vision. This is oppressive to First Nations because it undermines the fundamental rights of self-determination enshrined in our traditional relationship via Treaties, and contemporary international law enshrined in the UNDRIP. This Indigenous conception of harmony envisions peace as parallel and intertwining rivers, interactive yet distinct, honouring of that which we share in common as well as protecting our distinctiveness in a harmonious way:

> Resistance informed by the teaching of harmony plays out as an ethical vocation of non-violent activism characterised by obligations to all creation. As such, this is a radical deconstruction of the inferiority of colonial otherness, towards an Indigenous identity asserted in the causes of justice, healing, and restoration for all of our relations (Ansloos 2014: 131).

Finally, Hart's discussion on the healing teaching corrects the mechanistic nature of psychiatric language employed by many in the contemporary peacebuilding movement by establishing that "healing is not only seen as the process of recovering from an illness or problem…healing is viewed as a journey" (2002: 43). Reconciliation is not solely a moment in time where apology intervenes on the wounds of colonial violence. Reconciliation must recognise the intergenerational nature of decolonial healing and necessitates that healing be contextualised as an intergenerational journey (Ansloos 2014).

For Indigenous people, decolonised reconciliation is a journey that must transcend the limitations of a linear, limited, or discrete understanding of place, time, and history. It assumes the reality of an Indigenous ontological life, which nuances the intrapsychic, interpersonal, intergenerational, and ecological work of healing (Hart 2010). Indigenous people are not exclusively interested in the reduction of symptoms of violence in individuals or the singular temporal reality of acknowledgement of violence; rather, "it is something that people practice daily throughout their lives. It is a broad transitional process that restores the person, community and nation to wholeness, connectedness, and balance" (Hart 2002: 43). Similarly, Nishnaabekwe scholar, Leanne Simpson (2011) has said:

> To me, reconciliation must be grounded in cultural generation and political resurgence. It must support Indigenous nations in regenerating our language, our oral cultures, our traditions of governance and everything else residential schools attacked and attempted to obliterate. Reconciliation must move beyond individual abuse to come to mean a collective re-balancing of the playing field. This idea is captured in the Nishnaabed concept *Aanji Maajitaawin*: to start over, the art of starting over, to regenerate. Reconciliation is a process of regeneration that will take many years to accomplish. We have to regenerate our languages so we have communities of fluent speakers. We have to regenerate the conditions

> that promote leaders and political systems based on our collective Nishnaabeg values, political processes and our philosophies. Canada must engage in decolonisation and a re-education project that would enable its government and its citizens to engage with Indigenous Peoples in a just and honourable way (22–23).

Decolonising reconciliation situates the work of healing colonial violence in a long, dynamic process, which supports, regenerates, and ultimately dignifies the expression of Indigenous identity. The Settler Canadian needs to deconstruct the identity of coloniser and begin to see those they oppress as kin, and the Indigenous person needs to deconstruct the inferiority of colonial oppression and see themselves as equal and worthy of dignity and respect. Healing is embodied through growth of both parties towards this restorative vision of identity.

Indigenous philosophy provides a sharp contrast to the hegemony of the Western self, which casts a limited vision of reconciling colonial violence. These Indigenous conceptions of *wholeness, balance*, *harmony*, and *healing*, add depth both to the ways we understand the impact of suffering and violence, and the way by which we imagine going forward together.

An Indigenous decolonised rendering of reconciliation challenges the colonial violence of individualism. Indigenous understandings of reconciliation suggest that the whole society suffers in the wake of colonial realities. It is not solely the colonised or racially oppressed self that must be made whole again, but all aspects of the equation including those who have colonised. Healing complex social conflicts requires that we acknowledge our contextual embedded-ness with one another and our interdependent futures. With such a collective vision, balance and harmony emphasise the capacity to empathise and work towards pathways of reconciliation. The convergence of these teachings on wholeness, balance, harmony, and healing in relationality is our medicine of peace.

6.5 Implications for Further Research, Policy and Practice

This chapter serves as an introduction to the idea of decolonising reconciliation in the Canadian context, and provides useful content for peacebuilders to be critically engaged in future research, policy, and practice. This chapter has raised the importance of framing peacebuilding with Indigenous populations from within the self-determined perspectives of Indigenous nations. Indigenous research by Indigenous people must be undertaken throughout Canada in order to transform Indigenous paradigms of peacebuilding. In addition, Settler Canadians and the Western field of peace and conflict transformation need to recognise the self-determination of Indigenous Peoples on the road to reconciliation. In this regard the UNDRIP serves as a powerful educational tool which translates this imperative globally. Human rights educational policy needs to advance public education on the integral role of Indigenous human rights.

Policy and programming should also be developed that helps to support a broader civic education in Canada's contemporary and historic colonial history. In

many ways this necessitates interdisciplinary and intersectional Indigenous scholarship, and critically reflective Indigenous voices in the promotion of decolonial reconciliation. On another level of policy, increased funding and development ought to support Indigenous cultural literacy programmes, in particular those programmes which revitalise Indigenous traditions of restorative justice, conflict resolution, and peacebuilding.

6.6 Narrative Conclusion

As I come to the end of this chapter, and reflect on the future of reconciliation in Turtle Island, I want to offers prayers for my people. I pray for peace for the 1200 and counting missing and murdered Indigenous women in Canada and their many grieving families. On the day that I completed this chapter, I heard from home that a search for yet another missing Indigenous woman has been initiated near the banks of our red river in Winnipeg. May all of our relations protect her.

Indigenous people live in a world where the threat of violence is ever present. We live in sociopolitical contexts that continue to fail to promote justice for our people, where neocolonial oppression is the status quo. For us, peace is not yet our reality, but it remains our hope. Like the red river that carries water bringing life to its banks, as well as the bodies of our fallen sisters, mothers, and grandmothers, the work of building peace is full of possibility but also suffering.

We hope for peace like a red river because our red river is unstoppable. Our red river is alive. Flood seasons every year remind us that our river cannot be suppressed forever. Her waters surge beyond the embankments, overflowing like tears yearning for the healing of our people. Our red river is teaming with the vibrancy of our spirit, the wisdom of our mother earth and our ancestors, and carried forth by the love of our creator. We long for peace like our red river, resurgent with hope.

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Chapter 7
Right to Justice and Diversity of the Indigenous Peoples of Bolivia

Fabiola Vidaurre Belmonte

Abstract This chapter reviews the political upheavals in Bolivia and the responses of the Indigenous people to political change from the 1950s agrarian reforms to the current period. Since the fundamental transformation in the form of citizen participation, redistribution of the land, the control of the State over the natural resources and the economy, universal suffrage and agrarian reform, the Indigenous peoples have been making themselves 'visible' to the government and mobilising for their rights. However, their expectations have seldom been met. The chapter reviews this experience. It also presents an account of the principles of Indigenous conflict resolution pursued in Bolivia, focussing in particular on the Aymara people, as an alternative approach to engaging with the State. The chapter concludes with a discussion about multiculturalism and interculturalism for the Bolivian state.

Keywords Indigenous Peoples · Bolivia · Conflict resolution · Multiculturalism · Justice · Diversity

7.1 The Indigenous Peoples and Political Change in Bolivia

The 1952 agrarian reforms that were anticipated to provide property rights over land to Indigenous peoples ended up giving more rights and control to the non-indigenous established land-owners. As a consequence, Indigenous Peoples from all around Bolivia initiated demonstrations asking the government to follow the law and provide those groups with the land they deserved.

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_7

When General Banzer seized power in a military coup in 1972, one of the most significant changes was the introduction of a new Criminal Code, in which discrimination against Indigenous peoples was ‘legalised’. The law created two new categories of citizens that applied to Indigenous people: the class of ‘sylvatic Indigenous’ (*Indio Selvático*) and the class of ‘cultural misfits’ (*Inadaptado Cultural*). In the first case, a sylvatic Indigenous person—someone who lived in a traditional Indigenous natural state—was considered as a kind of primitive subject without mental development, regardless of the person’s cultural identity, values customs and habits. They were considered un-indictable, that is outside the applications of the normal legal process. In the second case, the category was applied to Indigenous people who lived within the mainstream society but who, because of their cultural dispositions, lack of education or their personal conditions, had not adapted or integrated to the general cultural environment of the country. These ‘cultural misfits’ were considered semi-indictable, that is subject to law in respect to obligations, but also liable to be excluded from legal protections (Choque 2005).

In 1990, the lowland Indigenous movement began demonstrations requesting recognition of Indigenous peoples, its authorities and territory as part of the State. Additionally, they asked for more inclusive participation in the decision-making over the natural resources in their territory (Gutierrez 2008). They also sought for the establishment of a Constituent Assembly where they could participate to ensure their recognition and guarantee their participation in all the spheres: economic, political, social, cultural and environmental (Rojas 2007).

The presence of Victor Hugo Cardenas, as an Indigenous person and Vice-President of Bolivia, opened the hope of a better crystallisation in the recognition and participation of Indigenous peoples in the political life of the country. However, the presence of Cárdenas became merely symbolic recognition. A new constitution was approved, which incorporated and recognised the Indigenous Peoples. However, this recognition was only in a socio-cultural sense, not in a political sense (Rojas 2007). The administrations of Gonzalo Sanchez de Lozada as President and Cardenas as Vice-President (1994–1998) introduced neoliberal policies with the promise that this system would improve and boost the economy of the country and reduce inequality. The most significant policy was the privatisation of strategic companies such as the national airline, the water companies, the electricity companies, telecommunications, and hydrocarbons. This allowed private companies to greatly increase their impact and exploitation of Indigenous peoples. Support for Indigenous people was side-lined in the rush to economic growth. In this context, Indigenous groups began a new campaign to achieve integral recognition.

By 2000, the Indigenous groups re-organised and demonstrations began again, demanding changes for the benefit of the Indigenous peoples. The first demand concerned water services that had been privatised. Water rates had been increased in the rural areas, without any improvement in the quality or extension of the service. Demonstrations, led by Indigenous man Felipe Quispe who was head of the Pachakuti Indigenous Movement and General Secretary of the United Union Confederation of Working Peasants of Bolivia, surrounded the city of La Paz,

leaving it without food for around fifteen days. At the same time, in Cochabamba, the Indigenous peoples were demanding that the water company "*Aguas del Tunari*" reduce the rates or leave the country (Rojas 2007).

On April 7, 2000 the then President Hugo Banzer Suárez decreed a State of Emergency in the region and the confinement of the peasant and Indigenous leaders that the authorities accused of causing the conflict. The next day the cities were militarised with the arrival of soldiers and many groups included Indigenous, peasants, and other social organisations fought in the streets against the military for the recovery of the companies that had been privatised. The new demand was to nationalise the strategic companies and the reconstitution of a new socialist state. In July of that year, the President and Felipe Quispe, known as "*El Mallku*" ("The Leader") decided to start a dialogue to end the conflict, but the President and the Ministers arrived late to the meeting and the conflicts continued (Rojas 2007).

Finally, in October the government and Felipe Quispe negotiated an agreement, with input from Evo Morales (who was to become President of Bolivia in 2006); atl: that time also one of the protesters. This agreement covered:

- Replacing the INRA law (Instituto Nacional de Reforma Agrarian—National Institute of Agrarian Reform)
- Filing no water use and water export laws
- Modification of forestry laws, environment and mining
- Shared management in protected areas
- Government intervention in fulfilment of the agreement with Transredes affected by oil spill
- Promoting integrated rural development plan
- No coca eradication in the Yungas traditional areas
- No installation barracks in areas used for farming coca
- Permission to cultivate a 'cato' of coca per family (the equivalent of a quarter of a hectare)
- Creating an agricultural university and markets for development alternative

However, despite the agreement and in the light of delays to its implementation, instability continued (Romero 1980).

Gonzalo Sanchez de Lozada was elected President, for the second time, in 2002, as Bolivia was going through a deep economic and social crisis. The new economic policies recommended by the International Monetary Fund (IMF) to increase the tax rate on salaries to reduce the fiscal deficit did not receive sufficient support in the Assembly and in February 2003 the community also demonstrated its objection by more protests throughout the country. Some days later, the President's initiative was reversed (Costas 2005).

The announcement of a gas project later in 2003 by President de Lozada, sparked more protests. The proposal was for the enterprise Pacific LNG to invest $US.5.000 million in Margarita camp (Tarija) to export gas to the United States and Mexico via a Chilean port. The project consisted of: a pipeline from Margarita to the Chilean port (700 km away), a liquefaction plant to be built in the Chilean port,

ships and a regasification plant to be built in California, United States (Observatori Del Deute En La Globalitzacio).

The announcement produced a spate of demonstrations all around Bolivia: Indigenous groups blocked the roads, conducted marches, engaged in strikes, and destroyed public offices. The measure was supposed to have been debated before its implementation, and due to the nationalist feeling against Chile because of the history of the Pacific War, the maritime claims, and the broken relations with Chile, Chilean ports were not considered an option by the social organisations.

Weak institutions, poor governance, an authoritarian leader and a misunderstanding of the civil reality inflamed the opposition and social groups. At this point, they (opposition and social organisations) were asking for a new system to control the gas: “Gas in exchange of access to the Sea”, and the resignation of the President, that finally came in October 17th, after two months of violent conflict. Gonzalo Sanchez de Lozada sent his resignation letter to the General Assembly and, the Vice-President, Carlos D. Mesa became the new President of Bolivia.

President Mesa, in consultation with social organisations, established a new political agenda based on rejecting the export of natural gas through a Chilean port, which would include a referendum about the gas export, new legislation regarding hydrocarbons, and a Constituent Assembly with a new way of including the participation of the people. In 2004, the new constitution was passed (Rojas 2007).

In 2005 President Eduardo Rodriguez Veltze, who had taken over from Mesa, passed the Law convoking for the Constituent Assembly. The subsequent Presidential elections were won by Evo Morales, backed by the Movimiento al Socialism (MAS) party, making him the first Indigenous president of Bolivia. Morales set in place the new Socialist State that Indigenous peoples had been seeking since 2000. The first action of Morales as president was the establishment of the Constituent Assembly that came with a new Constitution in 2009.

This Constitution spelt out traditional individual citizen rights and also explicitly acknowledged Indigenous worldviews and endorsed their application in such matters as the definition of the Bolivian nation-state as pluri-national. He also implemented Indigenous peoples’ demands for territorial autonomies for Indigenous peoples and the complementary administration of justice through communitarian justice (*justicia comunitaria*). Other reforms included a revision of the educational curriculum, changes in the economic sphere, such as fostering the idea of *buen vivir* (living well) instead of values of Western greed and expansion, and respect for Mother Earth. Other reforms extended to healthcare, including rehabilitation for traditional Indigenous practices and intellectual property rights on knowledge of medicinal plants (Salmon 2011).

Initially there were great expectations from the Indigenous peoples and Morales’ New Agrarian Reform Law was seen as a major step forward, but there has since been disappointment expressed by many of the landless regarding the policies of Morales (Fabricant 2012).

7.2 Indigenous Conflict Resolution in Bolivia

Indigenous groups have their own way of managing and solving their conflicts, which has traditionally been transmitted from generation to generation orally (Guaman Poma de Ayala 1990). In Bolivia, Indigenous groups share a common process of resolving conflicts and applying justice; however, the processes for each group have in addition its own particular characteristics. In this study, the author is going to focus on the Aymara group, located in the Andean region of Bolivia.

It is important to know that Indigenous groups make a distinction in their conflicts according to the seriousness of the act: minor and major (In Aymara: *jisk'a* and *jach'a*). Major conflicts are considered crimes, so for these the community itself goes before a judge (Guaman Poma de Ayala 1990). In case of those conflicts designated as minor, the communities work to resolve the conflict themselves. There are several basic concepts used in the traditional conflict resolution process of Indigenous communities in Bolivia, as follows:

(a) *Akullico.* In the Indigenous communities of Bolivia, especially those communities located in the Andean regions like Aymaras and Quechuas, chewing coca leaves (*akulliko*) is an important tradition. When the members of the community gather to solve the conflict, the "Holy Coca" has to be 'invited' to help them. According to Vicent et al. (2007) the coca leaves are 'holy' because it is a gift of Mother Earth and it helps the community to speak calmly, think deeply about the words, temper language and listen to others. There is a very simple, but crucial protocol to follow for receiving the coca leaves that the indigenous group adheres to strictly.

(b) *Pachamama* is the Aymara word that means "Mother Earth". The Indigenous Peoples believe that *Pachamama* and the people are one, therefore, in any discussion about a conflict, first they ask for forgiveness from the *Pachamama* because "She" is the one affected by the conflict.

(c) *Chikayaña* is an Aymara word representing the re-uniting of two or more things to be divided into portions. This is one of the most common ways of solving a dispute, and is based on the *chikat chikat* principle, that means 'half–half', but within a greater unity. It is important that, the authority leading the mediation should be neutral to build up a new and better relation between the parties to help make this division.

(d) *Aruskipasipxañani is* an Aymara word that means 'dialogue among people and parallel worlds'. The parallel world refers to the cosmos, *Pachamama*, death ancestors and everything that is alive, e.g., animals, plants, water and so on. When the community is discussing a conflict, everybody should participate and all these aspects should be considered.

(e) *Pasarus* and *Apus*. The *Pasarus* are the former authorities of the community while the *Apus* are the oldest members of the community. Therefore, their presence and advice during the sessions is crucial, because they have more experience, and their wisdom could be helpful for solving the conflict.

(f) The Agreement. In some communities, when they establish an agreement, they are able to have a written memorandum of understanding or an agreement. However, in communities where many of the members are illiterate, they just shake hands. Although, from a legal perspective, a handshake is not binding, within these communities the action involves the honour of the people in conflict, their families and the community.

(g) Witnesses and Documents. The attendance of witnesses and production of documents fulfils a triple function: Proof, guarantee and assurance of the truth of the facts. Personal witnesses guarantee that the parties will fulfil the agreement the best way possible. People who are named as witnesses are known for their unblemished reputation. Documents are required as proof, especially when it comes to land conflicts. They serve to avoid manipulation by any party, including state officials or literate people who want to take advantage of possibly uneducated participants in the conflict. When conflicts are related to land boundaries, maps are the main exhibits. However, the best forms of evidence are the rivers or hills, because they are considered to be "natural proof" (Fernandez et al. 2007).

Indigenous justice is conducted through a mediation process with particular cultural characteristics that include dialogue and participation. In Bolivia, because of the number of Indigenous groups and different cultural practices, this can produce difficulties. However, the fundamental principles are similar. Moreover, the regular justice system allows for the mediation of minor conflicts (Ministerio de Justica Y Derechos Humanos 1998).

7.3 Multiculturalism, Interculturalism and the Bolivian State

According to the 2009 Constitution, Bolivia has 36 cultural and ethnic groups and 36 traditional languages. I am arguing that this cultural mix should be considered an asset of the country and that the coexistence and engagement of different cultural groups should be encouraged, promoting a society that embraces cultural differences without losing their typical character. This is a key strategy for building a peaceful and sustainable society. Both multiculturalism and interculturalism address these issues. Multiculturalism reflects a cultural, linguistic and religious diversity within a single society, opening space to recognition of differences, based on the principles of equality and the right to difference. Interculturalism refers to the inter-ethnic, inter-religious and inter-language engagement of different societies; a dialogue that contributes to a peaceful and tolerant nation.

However, despite political changes, inequality, social fragmentation and disintegration, class domination, breakdown of social ties and increased poverty remain. Social exclusion characterised by the economic deprivation is obviously linked to the level of unemployment in the country. Cultural background is another source of

discrimination in Bolivia, even more pronounced than economic discrimination. People are commonly discriminated against due to their Indigenous identities.

Neutrality of the State thesis (Rudisill 2000) suggests that all cultural manifestations inside a country be part of the governance challenges. In this thesis the neutrality of the State is the only way to ensure equality for all the citizens but this implies that the State not recognise exclusive rights for cultural minorities. However, a multicultural state such as Bolivia has to recognise diversity or else social exclusion, injustice and discrimination will remain, affecting the development process of the country and giving Bolivia a reputation for a poor human rights record.

The right to access justice and diversity flows from the natural condition of the human being itself (Vidal-Beneyto 2006). These rights are individual, indivisible, and inalienable, as acknowledged in the Universal Declaration of Human Rights and the Universal Declaration of the Rights of Indigenous Peoples. The right to access to justice includes the opportunity of individuals to obtain a satisfactory response to their legal needs. This is means every person ought to be able to enjoy the benefits of justice and legal advice, by all natural and legal persons, without excessive cost or discrimination. Access to justice is the core of legal certainty to ensure the possibility of a decent life for all members of society in a sustainable manner over time.

The right to cultural diversity is an ethical imperative, inseparable from respect for human dignity, ensuring the free flow of ideas by word and image. All cultures should be able to express themselves. Freedom of expression, media pluralism, multi-lingualism, equal access to art and to scientific and technological knowledge (including in digital form) and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity (Ministerio de Justica Y Derechos Humanos 1998).

Incorporating Indigenous ways of solving conflicts and settling disputes as part of the legal system addresses both the rights to justice and cultural diversity. This would mean that resolutions arising from either the Indigenous justice or the ordinary courts would be equally valued, accepted and recognised. This contrasts with the current system whereby despite, all the legal changes that the Bolivian government has developed to protect and respect Indigenous' practices, the judicial system has remained the same: bureaucratic and discriminatory (Fernandez et al. 2007).

7.4 Conclusion

The recognition of the rights of Indigenous Peoples in Bolivia has been an on-going struggle and it is not over. This campaign has resulted in conflicts and deaths, causing instability and crisis, yet the violence and discrimination has continued. Despite all the changes that have been made in different laws, the implementation

remains complicated. Social exclusion, inequality, injustice, and human rights abuses continue.

The courts are overloaded with various cases, causing delays of justice. There is a provision for alternative approaches to conflict resolution within the Penal Code so that conflicts of lesser importance do not need to come to the courts. The Indigenous conflict resolution and justice processes as practised by communities have much that is compatible with the ordinary courts but without all the court formalities. The Indigenous justice system has worked and works within communities to maintain peace. However there is little accurate information about Indigenous conflict resolution and its approaches have not been taken up by the formal justice system.

Bolivia has a long way to go to guarantee the rights of its Indigenous peoples. The different governments need to promote peaceful relations between authorities and Indigenous groups, and among the groups themselves. So long as the mind-set of the authorities, especially in the justice administration system does not change the violent and unstable situation that has plagued Bolivia through recent decades will continue. History shows that it does not matter whether the government is socialist or capitalist, justice for Indigenous people is necessary to promote peace, stability and development in the country.

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Part III
Challenges and Barriers to the Implementation of the Rights of Indigenous Peoples

Dance for Peace, Women of Bodo tribe, Bengtol, Assam, 2015. *Source* Leban Serto (see Chap. 10)

Chapter 8
Confluence of the Rivers: Constitutional Recognition of Australia's First Peoples

Asmi Wood

Abstract Australia has progressed rapidly from a collection of British Colonies to an advanced first world economy with an enviable democratic system of governance. However, despite embracing modernity and supporting peace and justice initiatives elsewhere, Australia has struggled to come to terms with its own First Peoples. The Colonial story begins with English 'settler' claims to have settled an empty land in the late 1700s. The nation has, however, made progress in this area. It acknowledged that the common law recognised that Australia was indeed populated by civilised peoples, possessing a civilisation stretching back 60,000 years or more, when the British Crown first claimed sovereignty over the Continent. This is not however, the end of the story. There are still many milestones to be reached and passed. The next of these milestones, now that the law recognises its First People, is for Australia to recognise Indigenous People in its Constitution. This chapter will briefly examine the history of Indigenous recognition in Australia, including an analysis of the barriers and challenges to such recognition. The chapter concludes that such recognition is imperative if Australia wants to promote peace and to hold its head up high in among the States of the International Community. Today, the two rivers, black and white, run separately and unequally; perhaps tomorrow their waters will be equal and one.

Keywords Aboriginal · Australian Constitution · Indigenous · Post-colonial · Terra Nullius · Symbolic/substantive recognition · Torres Strait Islanders

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_8

8.1 Introduction

This chapter examines the prognosis for peacebuilding in the context of Australia's Indigenous people. The Indigenous people of Australia are variously described in the legislation[1] and in society in post-colonial terms as Aboriginal Peoples and Torres Strait Islander peoples who in turn are made up of several groups. For convenience, and while not ideal, they are collectively referred to here in the language of international law as Australia's Indigenous people.[2] My analysis in this chapter is primarily through the lens of the current process for recognising Australia's First People in the Australian Constitution.[3] Constitutional recognition in Australia requires a referendum. In anticipation of the referendum, Parliament commissioned the *Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* ("the Panel") to help it formulate appropriate referendum questions around the issue of Indigenous recognition and to gauge public readiness for such change. The referendum, originally scheduled for 2013, is now likely to be held in 2017, as Parliament has not been able to settle on a referendum question (Anderson 2014).[4]

After this basic history and debate to the lead-up of the referendum are examined, this chapter makes an argument for taking a step beyond purely symbolic recognition by adopting a mechanism that has helped referenda in the past. This chapter argues that symbolic recognition, coupled with *removing* Parliament's power to make special (race based) laws for the Indigenous people only, is a viable and practical option for progress. This change will bring Australia into line with other developed nations that do not require constitutional powers to regulate the affairs of small, disempowered segments of their populations: in Australia's case Indigenous people are the *only* ones who have been subjected to this power (French 2010). In doing this the chapter explores the normative question of recognition. The chapter also explores the importance of recognition for reconciliation and peacebuilding in the future.

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[1]In 1981 there were at least 67 classifications to determine who is an Aboriginal person: Department of Aboriginal Affairs, *Report on a Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islanders* (1981), Commonwealth of Australia, Canberra; See also J Gardiner-Garden, *The Definition of Aboriginality: Research Note 18, 2000–01* (2000) Parliament of Australia, 2.

[2]While there have been some 250 distinct Indigenous language groups recorded, from a possible 700 prior to colonialism, for ease of reading this chapter will refer them in the singular.

[3]Hereinafter referred to simply as the Constitution.

[4]Stephanie Anderson, 'Tony Abbott has floated a date for a referendum to recognise indigenous people in the constitution, but failed to commit to a timeline.' SBS News 11 December 2014. <imgsrc="http://www.sbs.com.au/news/sites/sbs.com.au.
news/files/styles/thumb_small/public/stepohanie_anderson_0.jpg?itok=GSsEqkqF&
mtime=1424987345" itemprop="image/> [Accessed 29 May 2015].

8.2 The Australian Constitution and Its History of Change

The reason why constitutional 'recognition' became a central political issue in Australia in 2015 is a consequence of history. According to Anglo-Australian versions of history,[5] English "settlement" in the 18th Century took place on *terra nullius*, a vacant tract of land, this being a prerequisite for its settlement under the international law of the time.[6] This myth of an empty land was always known and accepted by many as legal fiction; law (albeit in a different context) which Sir Neville Windeyer (1970), described as always "in the rear and limping a little"[7] as compared with societal values. Consequently, recognition was *ipso facto* impossible, until the existence of Indigenous people was acknowledged nearly two centuries later.[8]

As it currently stands, the Constitution and the jurisprudence explicitly provide for the continued denial and, paradoxically, detrimental treatment of Indigenous people (French 2010). In the original Constitution "aboriginal natives", as Indigenous people were referred to in the document, were not counted as part of the human population and a White Australia policy was in place.[9] The Constitution also entrenched inequality for "coloured or inferior races" (Sawer 1910) through what is known as the "races power" in the Constitution.[10] In Bartlett's view (2004), Indigenous people still are denied equality before the law (Bartlett 2004). In the *Stolen Generation Case*, the Court held that the Constitution did not support a doctrine of equality,[11] a defensible position given the explicit constitutional power to discriminate on the basis of race and the allusion to the permissibility of creating Nazi-like laws under this constitutional power.[12]

The process of recognition has, however, inched forward. In 1971, the Supreme Court of the Northern Territory[13] and, in 1992, the High Court of Australia (HCA), the highest court in the land, discovered in common law and hence acknowledged the existence of Indigenous people at the time of "settlement".[14] The Commonwealth Parliament codified the common law a few years later[15] and formal

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[5]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, 30–33 (Brennan J.).

[6]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, 31 (Brennan J.).

[7]*Mount Isa Mines Ltd v Pusey* (1970) 125 CLR 383, 395 (Windeyer J).

[8]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, 31 (Brennan J.).

[9]The Australian Constitution s 127 (Repealed in 1967).

[10]The Australian Constitution s 51(xxvi).

[11]*Kruger v Commonwealth* (1997) 190 CLR 1, 70.

[12]*Kartinyeri v Commonwealth* (1998) 195 CLR 337. Transcript of 5 February 1998. Grifith QC's response to Kirby J. Cited in Tony Blackshield and George Williams '*Australian constitutional Law and theory Commentary and Materials*' (Sydney, Federation Press 5th ed 2010), 985.

[13]*Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141.

[14]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1.

[15]*Native Title Act 1993* (Cth).

recognition through legislation was achieved in 2013.[16] Under Australia's federal constitutional system of parliamentary supremacy, however, parliamentary recognition is not entrenched and a future parliament can (in theory) rescind this recognition and this possibility is not remote (Gul 2015).[17] The next ethical and logical step of this process of recognition is for the majority to accept constitutional recognition. Without such recognition any peacebuilding efforts would be founded as if on quicksand. However, the fact that Australia is even contemplating constitutional recognition of Indigenous people is a significant step forward from the time of the promulgation of the Constitution at the turn of the 20th century.

Today the majority of Australians appear to oppose the notion of white supremacy as a contemporary Australian value, possibly because of the not-insignificant non-white migration since the mid-1970s but, on the other hand, the general populace appear to stop short of seeking *fully* to reconcile with Indigenous people, although there have been some steps forward. This process of full recognition will still take a few more years to complete because the continued existence of Indigenous people is a constant reminder of the unlawful usurpation of the continent. Thus, while recognising the existence of Indigenous people—a huge step forward—[18]the High Court nonetheless said that it would not examine the question of the lawfulness of the acquisition of the continent, as it was "not free to adopt contemporary notions of justice and human rights"[19] and reiterated its refusal "to fracture the skeleton of principle which gives the body of our law its shape and internal consistency".[20] There is also opposition from a sceptical population to any form of recognition that would also create "special" legal rights for Indigenous people (which can also be read as the return of stolen land) and this fear is a key impediment to peacebuilding.

As the founding document of the nation, the Constitution should; atl: a minimum, recognise the Indigenous people of the continent. However, in this current political environment the best one can hope to achieve is probably minimalist change. In attempting to identify what is possible Parliament commissioned a number of reports. As will be explored below, these are rich sources of information to help understand the impediments to recognition.

On the other hand, the political and legal difficulties of changing the Constitution are conceded. However, it is equally important not to waste this opportunity (to reduce the negative effects of 'race based' provisions of the Constitution) by putting forward unrealistic options, which are sure to fail. According to commentator Karvelas in the conservative newspaper *The Australian,* "the Panel's

[16]*The Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth).

[17]Jonathon Gul, '*Constitutional recognition of Indigenous people* '*racist*': *[Senator] David Leyonhjelm*', 5 March 2015, ABC (Australia) News.

[18]Mansell, M, '*The Court gives an inch but takes another mile*' *Aboriginal Law Bulletin* Vol 2, No. 57, August 1992.

[19]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, 29.

[20]*Mabo v State of Queensland (No 2)* (1992) 175 CLR 1, 29.

recommendations are almost certain to fail" (Karvelas 2012),[21] which was a statement equally applicable to the further substantive options suggested to date by the Parliament.[22]

The Constitution prescribes the means by which change must be effected.[23] Change to the Australian Constitution requires a referendum that must be passed by a majority of people in the majority of States ("double majority").[24] This is difficult to achieve in practice. Since federation, only eight out of 44 referenda have received the double majority (Blackshield/Williams 2002). There appears to be a consensus that; atl: minimum, a referendum will not be successful without multi-party support for a proposition. Further, this chapter notes that the most successful change to the Constitution (gaining over a 90 % 'yes' vote in 1967) was when text was *removed* from the Constitution and people found it relatively easy to understand the political message of treating Indigenous Peoples more humanely and equitably (Blackshield/Williams 2002).

However, that 1967 process was incomplete, as other race provisions still remain in the Constitution. This unfinished business can now be brought to completion by expunging the remaining race provisions from the Constitution, by following a similar approach to that taken in 1967, which is likely to have a reasonable chance of success and progress beyond the current impasse. It is not that the resultant process is likely to be cost free but that *not* doing so is unacceptable and that "our present constitutional order [which] contains explicit traces of a racist past" (Charlesworth/Durbach 2011: 64) is unbecoming for a modern otherwise socially and politically free country. Denying Parliament the power to treat Indigenous people detrimentally (by rescinding the races powers, may add some cold comfort that Indigenous People cannot lawfully be singled out for "legal" maltreatment, as is the case at present and is likely to continue to be the case if, as is discussed below, any of the parliamentary models published in the lead up to the referendum are adopted in practice.

The majority population is reasonably likely to be suspicious of convoluted or legalistic proposals for changes to the Constitution. On the other hand, as mentioned above, they appear to be comfortable with modest, straightforward change that does not create special rights. Therefore, the existence at present in the Australian Parliament of cross-party as well as popular support for constitutional recognition for equal treatment of Indigenous people in *principle* is promising (Gillard et al. 2010; Henderson 2015). This referendum provides a timely opportunity for simultaneously creating both formal constitutional recognition and removing entrenched racial inequality provisions that affect Indigenous Peoples.

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[21]Patricia Karvelas: *Historic Constitution vote over indigenous recognition facing hurdles,* The Australian, 20 January 2012.

[22]*Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (JSCATSI, 'the Committee') of June 2015 ('Final Report').

[23]The Australian Constitution s 128.

[24]The Australian Constitution s 128.

At present, the Constitution not only ignores the prior existence of Indigenous Australians. Further, it still has two sections, which explicitly allow Parliament to make race based laws.[25] The first is Section 25, which penalises a State for disqualifying people from voting on the basis of their race. It does this by potentially reducing the number of representatives from that State to the Federal Parliament. The second, more problematic, provision is Section 51(xxvi) which permits Parliament to make special laws with respect to people of a particular "race" but which in practice has *only* been used to make laws, including detrimental laws,[26] for Indigenous people (French 2010). While other non-Anglo-Saxon-Norman races have been 'safe' so far, it is possible that, if the Constitution is allowed to retain this race power, other races too may one day become adversely affected.

8.3 Importance of Recognition for Legal and Social Progress

Theoretically, reconciliation and a true peace, based on the equal dignity of all people, is impossible *ipso facto* while recognition is denied in the Constitution. The proposed referendum now allows the nation to consider constitutional recognition of Indigenous prior custodianship of the continent and to do so without contradiction by the Courts.

The argument in this chapter is that a presumption of racial equality in the Constitution can arguably be achieved by the rescission of the two "race" powers in the Constitution.[27] The presumption of formal social and legal equality of citizens of all races in the Constitution will make a significant practical difference to the everyday lives of Indigenous people and the prospect of true peace and security between equal citizens.[28] Constitutional change is also crucial if 'racial equality' is to be successfully defended when challenged at law.[29] Mere recognition, whilst racial inequality remains entrenched in the Constitution, would be a Pyrrhic victory and setback the prospect of meaningful peacebuilding in Australia.

Historical wrongs, which have compounded over the past two centuries inevitably, are likely to take some time to reverse. This chapter argues that, while change should not take *that* long, this referendum provides an opportunity to begin the proverbial 1000 mile journey by taking, in addition to symbolic recognition, this

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[25]The Australian Constitution ss 25, 51(xxvi).

[26]*Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.

[27]Ss 25 and 51(xxvi) *The Australian Constitution*.

[28]It is worth noting that there is a significant 'gap' in Australia between Indigenous people and others on most social and economic indicators, and much of this can arguably be linked to 200 years of unequal treatment.

[29]*Leeth v Commonwealth* (1992) 174 CLR 455: Here however, the case was not one specifically of racial equality but equality generally.

first necessary step towards *substantive* equality for Indigenous people. This must surely be a prerequisite before notions of peace, security and dignity can be expressed in practice. For the burden of history, the notion of equality for Indigenous people in the Constitution however, is not a simple process, an issue that will now be examined.

8.4 Impediments to Racial Equality and Recognition

The Constitution unambiguously entrenches racial inequality. The majority, (with few dissenting voices), participating in the Constitutional Convention debates in the 1800s, which led to the creation of the Constitution ensured that an “equality before the law” clause was not enshrined in the Constitution.[30] Instead, Section 51(xxvi) permits Parliament to make laws with respect to people of a particular “race”. Indigenous people were originally specifically exempt from this provision as they were perceived as “no more than the flora and fauna of the land” (Castan 1999: 4). According to Sawer (1966), “the original framers of the constitution *intended* to regulate the activities of people [merely] of a race different from the Anglo-Saxon-Scottish-Welsh-Cornish-Irish-Norman (etc.) mixture derived from the United Kingdom, which formed the main Australian stock” (Sawer 1966) Although the Constitution mentioned “aboriginal natives” , it was only to exempt them from the race power, and to exclude them from the census count of human persons (s 127), thus effectively denying their humanity.

Enshrining recognition, and racial equality, in the Constitution could be characterised as a fundamental constitutional change from the unambiguous position in 1901 of entrenching racial inequality. However, to freeze the Constitution with respect to race, in a way that it has not been frozen with respect to gender or sexuality, for example, appears anachronistic for an otherwise modern nation (although these human characteristics, while regulated by law, were not explicitly regulated under the Constitution).

As part of the slow evolution towards the recognition of Indigenous people, a referendum passed in 1967 provided for the inclusion of Indigenous Peoples in the general census, and extended the scope of the race power, thereby investing the federal Parliament with explicit jurisdiction over Indigenous people. Justice Gaudron (1998) of the High Court rightly noted that the 1967 amendments were ‘minimalist’.[31] The reasons for this characterisation of the 1967 changes are arguably twofold (a) firstly because lighter skinned Indigenous people were already deemed ‘European’, as racial categorisation of Indigenous people was based on

[30]*Official Report of the Debates of the Australian Federal Convention*, Melbourne 8 February 1898, 664.

[31]*Kartinyeri v Commonwealth* (1998) 195 CLR 337, 361 (Gaudron).

relative skin colour and blood quantum[32] and would, therefore, be counted in the general population (the effect of the rescission of s 127 of the Constitution) and (b) for other Indigenous people, the 1967 amendments did not diminish the power of States to make laws over Indigenous people but now allows the Commonwealth Parliament to *also* discriminate against them (a power the Constitution previously explicitly denied to the Commonwealth Parliament).

Further, there is a widespread popular misconception that the 1967 referendum resulted in formal legal equality for Indigenous people.[33] However, S 51(xxvi) as modified now allows Parliament to make detrimental laws for Indigenous citizens.[34] A century after Federation, when the six Colonies (Queensland, Western Australia, New South Wales, South Australia, Victoria and Tasmania) formally became the Commonwealth under the present Constitution, Indigenous people, their languages, cultures and law still do not have formal (including constitutional) recognition.

8.5 The Expert Panel's Report

The Panel produced an excellent, informative and comprehensive report.[35] However, it also developed complex recommendations. While this complexity is appropriate given the difficult nature of the issues involved, the Panel's proposals unfortunately do not appear to translate into easily understood referendum questions. The two subsequent Parliamentary Reports, the Interim Report[36] and the Final Report,[37] while endorsing and advancing the concept of constitutional recognition in *principle*, have reformulated the Panel's recommendations arguably *because* their recommendations were too complex or impractical.

In turn, Parliament has also been unable to identify suitable referendum questions that are likely to gain the requisite double majority for constitutional change and has recommended yet another process, possibly to further narrow the options.[38] Failure by the several committees to arrive at a suitable question supports the notion that the approach to the date has been impractical. This referendum originally

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[32] John Gardiner-Garden, The 1967 referendum: history and myths, Research brief (Australia. Parliamentary Library); 2006–7, no. 11), 7.

[33] John Gardiner-Garden, The 1967 referendum: history and myths, Research brief (Australia. Parliamentary Library); 2006–7, no. 11), 4.

[34] *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

[35] The Report of the Expert Panel, 'Recognising Aboriginal and Torres Strait Islander People in the Constitution', January 2012.

[36] *Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (JSCATSI, 'the Committee') of July 2014 ('Interim Report').

[37] *Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (JSCATSI, 'the Committee') of June 2015 ('Final Report').

[38] Final Report, 88 (Recommendation 10).

scheduled for September 2013[39] was postponed.[40] It will be now held on a new date,[41] possibly in 2017, the 50th anniversary of the landmark 1967 constitutional referendum.

The Panel recommended the conditional rescission of the races' power, subject to the substitution of a new Section 51A which contains both symbolic and substantive elements,[42] and will provide a (new) head of power for Parliament to make laws with respect to Indigenous people only.[43] However, given Parliament's record and history, Indigenous people would be unwise to entrust Parliament with a power such as the proposed Section 51A, or even the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (JSCATSI), subsequent proposed variations as a beneficial power, re-formulated in the Interim and Final Reports. What is beneficial is quite subjective and the High Court is likely to defer to Parliament on this issue as it has done in the past.[44]

Indigenous leader Professor Patrick Dodson (2012), a co-chair of the Expert Panel, admitted that "legislation such as that establishing the Northern Territory Intervention [NTI] which was characterised by many Indigenous People as being detrimental, would not be affected [by the new Sections 51A and 116A]".[45] The NTI, which involved the use of the Armed Forces, was described by UN Special Rapporteur, Professor James Anaya (2009) as "racist".[46] The Hindmarsh Island Bridge legislation[47] and the Northern Territory Intervention legislation (NTI)[48] are arguably also recent examples of the phenomenon of apparently, "neutrally framed laws" that work to the detriment of Indigenous people. In the Hindmarsh Bridge case, laws acted to the detriment of the *Ngarrindjeri* people.[49] Chesterman and Galligan describe such laws as "undignified protectionist regimes" (Chesterman/Galligan 1997: 122).

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[39] J Gillard, B Brown & others, [Agreement to Form Government], the Australian Greens and the Australian Labor Party ('the Parties')—agreement signed on 1 September 2010, 2.

[40] Kirsty Magarey & John Gardiner-Garden, Aboriginal and Torres Strait Islander Recognition Bill 2012, Bills Digest No 74 2012–2013, 11 February 2013, 10.

[41] *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (Cth) Section 4(1). ('2013 Recognition Act').

[42] The Panel Report, 117.

[43] The Panel Report, 173: The Panel also recommended a close nexus between 51A and the proposed new Section 116A, particularly s 116A(2).

[44] *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

[45] Patricia Karvelas, "Historic Constitution vote over indigenous recognition facing hurdles," *The Australian*, 20 January 2012. http://www.theaustralian.com.au/national-affairs/policy/historic-constitution-vote-over-indigenous-recognition-facing-hurdles/story-fn9hm1pm-1226248879375.

[46] 'UN human rights envoy James Anaya: NT intervention is racist', *The Australian* 28 August, 2009. http://www.theaustralian.com.au/news/un-human-rights-envoy-james-anaya-nt-intervention-is-racist/story-e6frg6n6-1225767082240.

[47] *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

[48] *Wurridjal v Commonwealth* (2009) 237 CLR 309. ('*Wurridjal Case*'.).

[49] *Kartinyeri v Commonwealth* (1998) 195 CLR 337.

The Panel also proposed the inclusion of Section 116A, a substantive general rights-creating provision which prohibits discrimination on the bases of "race, colour or ethnic or national origin". The Prime Minister Mr Abbott referred to the provision as a "one clause Bill of Rights" and did not support its inclusion in the Constitution.[50] This provision, therefore, does not enjoy the necessary multi-party support.

The Panel's recommendation on languages, s127A, provides broad mention of Indigenous languages in aspirational terms but entrenches the preeminent position of, and privileges, the *English* language only, therefore not substantially remedying the present situation. The Parliamentary reports have wisely dropped the possible inclusion of this recommendation as a separate provision.[51]

The Parliamentary Committee[52] examining the outcome of the Panel's Report has abandoned the panel's proposed s 116A and s 127A,[53] thus responding to popular concerns. The JSCATSI also significantly modified the Panel's proposed s 51A by suggesting five new and substantially even more complex options.[54]

Whilst the Final Report has reduced the number of options to three[55] the complexity remains problematic as it does not aid their comprehensibility. Further, and in order to avoid repeating the 'mistake' of creating laws that are quite different to the popular understanding of the referendum as occurred in 1967, there should be sufficient clarity and confluence, between the voters' aspirations, the proposed and resulting constitutional changes.

8.6 Referenda in Australia

In order to proceed with a referendum, the form and substance of proposed referendum questions must first be authorised by the Parliament. This is also an opportunity for reasonable community concerns about the scope and content of the proposed recommendations to be addressed.[56] In a free society, debate should be encouraged, not stifled.[57] However, the Panel's referendum questions are not likely

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[50]http://www.abc.net.au/pm/content/2012/s3411592.htm.

[51]Final Report 4.

[52]*Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (JCATSI, 'the Committee') of July 2014.

[53]The Panel Report 131, 133.

[54]See Parliamentary Submissions 18 and 18.1 (particularly) by this author at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Submissions.

[55]Final Report 42–45.

[56]A view confirmed by Panel member Professor Davis: M Davis, 'Where to next for constitutional recognition, ABC Radio National, Big Ideas Programme 14 January 2013. http://www.abc.net.au/radionational/programs/bigideas/2013-01-14/4420912.

[57]*Patricia Karvelas, 'Panels' racist card stifles debate: Mundine*', The Australian, 23 January 2012.

to be easily understood by the voters and arguably for this reason have been developed by the subsequent parliamentary committees. In addition, the fact that the majority of Australian voters are non-Indigenous means that it is primarily non-Indigenous sensibilities that will determine the scope of the recognition (if any) that is afforded. Therefore, pragmatically, the proposed referendum question should appeal to mainstream values. The next section proposes change that will appeal to mainstream values in a manner that is likely to win majority approval and also deliver some tangible benefits to the Indigenous people.

8.7 A Proposal for a Referendum Question

In practice, formal constitutional racial equality could be achieved by denying the Parliament the power to make laws with respect to people of a particular race, that is, by rescinding s 25 and s 51(xxvi) of the Constitution. These proposed changes are not uncontroversial. Thus, expunging of the word from the Constitution while not reintroducing the word or the concept of 'race' in new provisions, must analogically remove all traces of such meanings for prospective constitutional interpretation with respect to any subset of Australian citizens.[58] However, removing 'race'-related text from the Constitution, as was the case in 1967, will prove much more effective as most people will support the reduction of the power for Parliament to intervene in the rights or obligations of citizens based purely on the discredited notion of race.

However, the real or often manufactured objections, frequently based on an aggressive dogmatism, to the removal of these racist powers, should not be allowed to frustrate removal of Parliament's power to make racist laws. No other industrial first world country, since the time of the Nazis, provides in its laws or constitutions powers for its Parliaments to make laws based on race alone. It is clearly an opportunity for Australia's Constitution to accord with this contemporary international norm.

The argument is sometimes made that the rescission of s 51(xxvi) will prevent Parliament from making beneficial laws for Indigenous people. This is not entirely true, because if necessary Section 8(1) the *Racial Discrimination Act* 1975 (RDA), allows for the passing of special measures, including measures commonly referred to as "positive discrimination", differentially to help adversely affected racial groups.

Nevertheless, the removal of the word 'race' from the Constitution does not mean that the concept of race is going to magically disappear from the vernacular or in practical use in Australia. Race is a deeply entrenched concept in Australia, and is found not only in ordinary use, but in legislation as well (Chalmers 2014). Most of the legislation containing the word "race", (in its many forms), will continue to

[58]Scholars such as Professor George Williams oppose the complete rescission of the race (without the introduction of a new power) albeit for a different reason: The panel Report, 138.

be in force, even if "race" is expunged from the Constitution. Governments in Australia have been said to have an addiction to the use, or misuse of "race", for social control of Indigenous Peoples (Chalmers 2014).

On the issue of 'race', therefore it is suggested that a simpler referendum question could be to 'remove the word and concept of "race" from the Constitution; and [thereby, henceforth to] presume all citizens racially equally before the law and under the Constitution. This or a similar question may prove simple and clear enough to garner the public support necessary for constitutional change without creating perceived rights for Indigenous People that are not currently enjoyed by the majority. Such a question should be accompanied by some form of generously worded constitutional recognition of Indigenous people as the First Nations of this Continent. For the practical purposes of gaining the requisite majorities for constitutional change, the successful form of "recognition" will probably not have any positive legal effect and be non-justiciable. This is probably as far as this Parliament is likely to be willing to take this issue at this time, and substantive recognition of Indigenous laws, identity, language, and culture, would have to be achieved at a different, much later point along this 1000 mile journey.

8.8 Conclusion

Parliament is committed in principle to achieving constitutional recognition of Indigenous people.[59] What is missing is a means for achieving this in practice. This chapter argues that removing racial inequality in the Constitution requires a much less convoluted question to be put to the people than what is contained in the Panel's recommendations. A "yes" case for: "*Delete the 'race' provisions (Sections 25 and 51(xxvi)) from the Constitution, and (thereby) create formal constitutional racial equality for <u>all</u> citizens*" would not be a difficult case to make and for the vast majority of Australians to support. The majority of the mainstream, now appear to oppose the notion of white supremacy as a contemporary Australian value.

The vast majority of voters are open to change (Henderson 2015).[60] The voters can make this constitutional change happen by generating sufficient public pressure on Parliament to modernise and remove the anachronistic concept of "racial separation" of Australian citizens. Positive and affirmative cross-party support from the major political parties for a "racial equality proposition" will help gain the requisite double majority that is required by the Constitution to remove this historical blot from the face of an otherwise progressive nation, thereby allowing peacebuilding to be extended to Indigenous people as equal partners. The notion of a peace between

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[59]Final Report 88.

[60]Anna Henderson, 'Constitutional recognition of Aboriginal and Torres Strait Islander people referendum has majority support, Recognise poll finds', 18 May 2015, ABC News; at: http://www.abc.net.au/news/2015-05-18/majority-support-indigenous-recognition-in-constitution-poll/6476538.

groups of peoples who do not recognise each other is likely to fail but building peace will benefit through formal mutual recognition of the humanity and the civilisations of the "other". Only with true recognition, will the long night for Indigenous people on the continent end and this recognition will promote true peacebuilding efforts between equal human beings.

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Chapter 9
Empowering Tribal Communities Towards Sustainable Food Security: A Case Study of the Purumunda Community Media Lab in India

Mousumi De

Abstract This chapter reviews a development project in 2008 for Indigenous people in the Purumunda community in the state of Odisha in India that aimed to assist marginalised Indigenous communities by helping them gain control over their lives from oppressive practices and achieve individual and community control and social justice. In particular, the project aimed to alleviate the problem of food insecurity by increasing access to employment rights through the establishment of a community media lab. The chapter describes the implementation, impact and set-backs of the project, and finally analyses the challenges in the voluntary development sector that influence the success or failure of such initiatives, with implications for the future.

Keywords Participatory communication · Community media · International non-governmental organisation · Non-governmental organisation · Community-based organisation · Food insecurity · NREGA · Odisha

9.1 Introduction

This chapter reviews a development project in Purumunda in the state of Odisha in India. The purpose of the project was to assist marginalised Indigenous communities to overcome oppressive practices, achieve social justice and improve their quality of life. In particular, the project aimed to alleviate the problem of food insecurity in the region by increasing access to employment rights through the establishment of a community media lab. The funding for the project was routed

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_9

through a local NGO partner and implemented by a community-based organisation. This study is pertinent given that massive amounts of foreign aid are channelled through NGOs for the development of scheduled tribes in Odisha (Kapoor 2005: 210), yet sustainable food security remains elusive as episodes of hunger and starvation deaths continue to occur (*Hindustan Times* 2010; *Indiatogether* 2008).

The Gram Panchayat of Purumunda (Purumunda) is located in the Ghatagaon Block of Keonjhar district in Odisha. This block has 65 % tribal population and is one of the most underdeveloped blocks reflecting high levels of poverty, illiteracy, under-nutrition, morbidity and mortality rates. The project targeted 6 villages in the northwestern part of the Block that include: Gayalmunda, Purumunda, Pattabari, Chandaposi, Nischintpur and Asanbahali. The target population included 863 households with 3,971 people as direct beneficiaries; of which, 79 % are scheduled tribes including *Bathudi*, *Bhuiya*, *Munda*, *Juanga* and *Saunti* tribes, 4 % are scheduled castes, and 17 % are non-tribal community. The *Munda* tribe has some of the poorest households in this region.

9.2 Food Insecurity: The Problem Domain

There are several problems in this region, with food insecurity being a critical one (see e.g. De Haan/Dubey 2005; Mishra 2009; Das/Bose 2012). According to the World Food Summit (1996) food security exists when "all people at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life" (World Health Organisation). Several factors collectively contribute to food insecurity in the region. These include food scarcity, limited livelihood options, in particular, rain-fed agriculture in non-fertile up-lands and collection of non-timber forest produce; poverty, lack of assets and lack of access to rights and entitlements. The targeted region covers 7,154.59 acres of land, of which 15.32 % is recorded as forestland and only 32 % as cultivable land. People largely depend on the forest for subsistence, but deforestation has depleted the yield of minor forest produce. In the absence of irrigation facilities, traditional rain-fed agriculture yields some crops only for 3–4 months. With increasing deforestation, there is increased incidence of elephants damaging crops because of which villagers harvest crops prematurely. This yields lower prices than the market value. Although villagers are entitled to government compensation for damaged crops, they have limited access to benefits.

Consequently, people must move away for industrial labour opportunities but prolonged absence from the village results in loss of property and land rights. The result is that people become pitted against what Synott (1996) called the "ideological apparatuses of the legal system" (1996: 84–85), as lack of assets adversely affects entitled benefits to government schemes—which ultimately lead to persistent loss of food security.

Apart from these factors, there are other problems that aggravate the situation. People in this community are divided along lines of inter-tribal differences often

leading to inter-tribal conflicts. Also, inter-caste and hierarchical socio-economic differences demarcate community elites from the poorest of the poor. The most pernicious of all, however, are differences between the government officials and the tribal community. Rew and Khan's (2006) study of people in Keonjhar provides a stark portrayal of the government officials' prejudice against the tribal community. Officials deeply resent the tribes for sharing their stories of hunger and starvation deaths with the news media, as publication of these stories tarnishes the government's prestige (2006: 102–107).

Several scholars have documented the local and state government's response to episodes of hunger and starvation deaths, which point to a strong culture of denial about its existent and any responsibility of it (e.g. Currie 2000; Jayal 1999). In some conciliatory efforts, sometimes to censure such stories, development initiatives and government schemes are released (Rew/Khan 2006: 107) but these have largely failed to reach the beneficiary communities. In 2005, the national government launched a massive employment generation act as a poverty termination program—the *Mahatma Gandhi National Rural Employment Guarantee Act* (NREGA). There are however several problems that impede the tribal community's access to NREGA.

9.3 NREGA and Employment Rights

The act has a constitutional mandate to provide 100 days labour employment to each deserving household by creating investment opportunities for rural infrastructure development. Job seekers apply for job cards, then apply for jobs at the Panchayat, which is liable to provide jobs in 15 days, failing which applicants can claim unemployment benefits from the state government. Wages are based on measurement of work done that is approved by a state authority and paid through the bank or post offices.

Despite having such an articulated plan, NREGA has failed to impact a large majority of beneficiaries such as in Purumunda. There are several reasons for this failure in Odisha, such as, lack of accountability of government officials, little pressure to deliver, lack of funds, internal politics at the local and village governance level and systemic corruption (Nayak 2009); Apart from these factors, there are other problems at the community level that limit people's access to NREGA.

People are largely ignorant about their rights and highly vulnerable to exploitative practices. While some households received job cards, the scheme failed to reach the majority. People with job cards were unaware that they needed to apply for jobs at the Panchayat. Officers-in-charge falsely convinced people about lack of jobs, and Panchayat leaders collected job cards, and posted more working days than actual days. Due to poor record maintenance and wide-scale manipulation of muster rolls, siphoning of funds was common practice. Despite a provision in the act, people are unable to conduct a "social audit" at community level or report such malpractices, since the vigilance committee is practically dysfunctional.

Furthermore, in 16 out of 26 GPs, including Purumunda, the work allotted was 3 km away, which was a demotivating factor given the lack of transportation infrastructure. While the Ghatagaon Block officials are aware of these problems, these have not been redressed. With repeated failure of these schemes, the tribal communities increasingly feel sceptical and mistrust the governance (see e.g. Rew/Khan 2006). Lack of trust further leads to a lack of will to gain awareness about rights and entitlements. All of these problems collectively leave the community 'passive' and 'disempowered' (see e.g. Jayal 1999). The project in Purumunda therefore aimed to not only increase the tribal community's access to NREGA but also empower them through the establishment of a community media lab.

9.4 Community Media Lab: A Development Project

The project was conceived and designed by Biren Das (hereafter Das), a communication strategist and founder-director of Gramnet, a community-based organisation that provides research-based communication and media solutions for social and development projects in rural and tribal communities. In the past, Granmet has worked for the state government, national organisations such as the National Bank for Agriculture and Rural Development and international organisations such as UNICEF and CARE. For funding the project Das approached the international NGO Concern Worldwide and they routed the funds through a partner NGO in Odisha, the Women's Organization for Socio-Cultural Awareness (WOSCA), since Gramnet cannot receive direct foreign aid. The project was implemented from September 2007 to March 2008 with an informal assurance of extension, depending on its impact. The author was involved as an external evaluator during mid-term evaluation and as a researcher on this project.

9.5 Conceptual Framework of the Project

According to Das, a major part of the problem in Purumunda is its social exclusion from the outside world due to geographical remoteness, lack of communication and mass media, lack of information combined with low literacy, and lack of confidence to challenge local and state level bureaucracies. Purumunda gets only two newspapers, which arrive one day late; one person reads and four people listen. Out of six villages, only two have electricity, making television unviable, especially in the hilly terrains with no television signal. Although people have access to radio, they receive music and entertainment programmes with little information content, which is pitiably not in their dialect.

Deprivation of knowledge and communication is an important factor of poverty (UNDP 1997: iii). Thus, one approach to alleviating poverty in the region, Das

contended, is by increasing access to information, especially using a rights-based approach (Eyben 2003; Nyamu-Musembi/Cornwall 2004), such as exercising the Right to Information Act (RTI Act) (Sathe 1997), which can lead to information power. Apart from increased access to information, information power also includes community participation, such as confronting officials to obtain state-held documents and organising social audits (Jenkins/Goetz 1999: 618). This can be achieved through a community mobilisation process, i.e. a capacity-building process enabling members and organisations to identify their own needs and rights; plan, execute, and evaluate activities in a participatory and sustained basis, either on their own or when stimulated by others (Howard-Grabman and Snetro 2003: 3).

Das postulated that these can be achieved through participatory communication, in particular participatory media, which has been found to be effective in mobilising excluded communities not only in India but several other countries (e.g. Servaes 1996; White et al. 1994). The community media lab was thus established to help the community gain control over their lives and freedom from oppressive practices (Hamelink 1999; UNDP 1991), as well as to "broaden their worldview through social, mental and cultural growth" (Melkote/Steeves 2001: 332). The lab had three components: community radio, community television and outdoor media, such as graffiti paintings to maximise impact. Funding from Concern was received only for the radio component and Das used external funds for the rest.

9.6 Establishment of the Community Media Lab

The lab was established in four phases along with the mobilisation process and community volunteers played an active role in both these processes under Gramnet's management. In the *initialising phase*, a participant observer was recruited who developed a rapport with the community and built a consensus on NREGA issues. Community volunteers were identified and trained to work as media reporters, editors and technicians for the lab. Volunteers ranged from undergraduate students from neighbouring districts to school dropouts in Purumunda, with equal participation from both genders. They were educated on NREGA issues, following which they produced media content on information and best practices of NREGA, and also familiarised the community with the Right to Information Act.

In the *strengthening phase*, volunteers were trained with advanced media skills such as collection and validation of news stories and media ethics, planning, and production. They produced news stories, talks, group discussions and entertainment-education scripts on NREGA and other priority issues, such as women's rights, emergency and natural disaster preparedness and environmental protection. These programmes utilised the community's traditional channels of communication such as folklore, folk theatre, poetry, comic performances and storytelling. During this phase, radio programmes and news bulletins were relayed

throughout the day, television news was narrow-cast twice a day and informative video films were screened at the village square once every other day.

Additionally, community-volunteers conducted workshops and sensitisation programmes using audio-visual aids that aimed to strengthen women's position in the community and increase their participation in community decision-making processes, strengthen Self-Help Groups, and audit NREGA processes such as opening muster rolls and mock public-hearings. Volunteers educated youth and adolescents in schools about these processes so they could acquire activist roles and help their parents become vigilant about rights.

In the *consolidating phase*, a leadership team was identified and trained with the responsibility of producing media, repairing equipment, and managing the lab. In this phase the handholding process ended and community members completely took over the lab under Gramnet's managerial support. In the *withdrawal phase*, asset handover by-laws were prepared and the Panchayat was given joint responsibility of the lab. At this point, plans for extending the project in the periphery villages also were conceptualised.

9.7 Impact of the Community Media Lab

The impact of the lab was assessed at various points of the project through methods that include day-to-day monitoring reports, monthly reviews, a mid-term and a final evaluation. Evaluation was based on impact indicators set at the beginning of the project that can be broadly summarised as: *One*, continuous exposure to media would dispel fear of media in the community and enable them to use media as an advocacy tool; *two*, awareness and appreciation of NREGA best practices would increase access to NREGA rights and opportunities; *three,* a systematic exposure to exploitative practices would raise critical awareness and help the community identify different layers of exploitation; and *four*, information power would empower the community to access rights and entitlements on their own and contribute to sustainable food security in the region.

In the context of this project, empowerment is understood as a social-action process promoting individual and community control, social justice and improved quality of life (Wallerstein 1992), which can exist at an individual, small group and community levels (Zimmerman 1999).

At an individual level, the community-volunteers were enthusiastic about the opportunity to address social issues they were concerned about. One of the leading female volunteers, *Sushma*, "wanted to spend the rest of her life working in the lab" and felt that the "camera gave them a sense of power, as it served as a medium to question government officials and hold them accountable, which was not possible before". She learned management and leadership skills through the project and became a leader with the *Gram Rojgar Sevaks*, a state body that helps implementation of NREGA in villages. Through this role she helped the community

assert their rights whilst also she pursued higher education from a nearby village with the aim of becoming a teacher.

Community-volunteers learned new skills such as using computer and media equipment that they had only heard about but not seen before. They learned to use media not only as an advocacy tool but also as an alternate livelihood, since media coverage of peripheral villages generated local employment opportunities. A male community-volunteer *Ranjan* was trained in photography and videography. He later bought a still camera and printer and makes a living through media assignments. He hired a video camera from a nearby village for video assignments, although he plans to buy one himself. "He and his parents could never dream of doing anything other than work as a labourer or a farmer". Another male volunteer *Padana*, who was trained with communication and art skills to paint graffiti wall paintings on NREGA, now makes a living by painting and has a monopoly as a signboard painter in the region.

Community volunteers and members also learned different livelihood skills through workshops and video screenings. For example, after a screening on women from other villages, who were earning livelihoods through different means, a female community-volunteer *Kamala* became a self-employed tailor. She stitches clothes with a sewing machine that was donated by Gramnet, which also benefits the community, as it is more economical than getting clothes from outside the village.

The community-volunteers as a group engendered a collective communitarian identity as opposed to individual tribal identities. They worked and ate food together in the *same space* (the media lab) despite belonging to different castes and tribes, which was unprecedented in the history of the community. They set an example for the entire community by reflecting gender equality sustained by mutually supportive relations. They also transferred skills learned through the project to others in the community. For example, *Sushma's* brothers acquired a growth momentum and set up a small unit for making puffed rice (*Mudhi*). Inspired by *Ranjan*, another male volunteer *Girdhari*, bought a still camera and uses photography as an additional income. *Padana* transferred his skills to his wife *Rebati*, who started a small-scale business. Thus, community volunteers' success stories had a ripple effect on others in the community, motivating them to initiate new livelihood options.

People in the community addressed issues of access to NREGA and other concerns. Since the project promoted an *equal opportunity and participation* of people in all community activities, such as viewing community television together and voicing individual opinions at public hearings, it subverted the traditional tribal and socio-economic hierarchies. This reduced marginalisation and social discrimination, and helped extremely poor people cast away their fears of raising their voices and generated a *unified* community voice. Community members opened muster rolls and conducted social audits, which increased transparency in NREGA processes. Youth and adolescents became vigilant about developmental work in the region and were able to spot incidents of exploitation. This helped the community identify different layers of exploitation, as well as initiate debates on possible means to curb them.

Pertinent information disseminated through the lab and workshops helped the community members increase their livelihood and income opportunities. For example, after a video screening on leaf-plate making, some women got together and created a Self-Help Group for making leaf-plates as a livelihood option. Information on market prices enabled a Self-Help Group selling hundred leaf-plates for Rupees Eight to sell the same for Rupees Twenty-five, thereby increasing their income. In one of the most compelling examples, after a video screening on vegetable cultivation in two neighbouring villages, almost 50 % of community members started backyard vegetable cultivation.

Further, women's participation in community activities, especially on rights-based issues boosted their social image and strengthened their position in the community. Community youth who had never travelled beyond the district headquarters 28 km away from Purumunda were motivated to travel to far off cosmopolitan cities such as Bengaluru and Chennai in search of jobs. The project not only increased access to information for the community but also broadened their worldview, thereby contributing to increased access to employment rights and opportunities.

9.8 Setbacks to the Media Lab

Despite these positive changes, the project was not extended in Purumunda or the peripheral villages. Disputes over financial and management issues developed between Granmet and Concern with the outcome that the Concern regional office took over the lab and handed the project to WOSCA's management. Under WOSCA's management, there was a drop in the performance of the lab. After WOSCA's failed attempt to manage the lab, it was shut down.

The closure of the lab adversely affected the community in many ways. The most visible impact was that many households discontinued backyard vegetable cultivation in the absence of pertinent information such as seeds and cultivation techniques. Lack of news on developmental works in the region reduced their access to NREGA jobs, which was critical to sustainable food security in the region. It disintegrated the unified community voice that emerged in the first phase of the lab that had been important for participation in social audits of NREGA and accessing rights and benefits. Furthermore, under Gramnet's management, the lab functioned as the village's knowledge management centre, which not only disseminated information but also imparted soft skills and informal training on various vocation and adult education programmes. The closure of the lab stopped the catalytic change in the community in terms of mobilising the community towards sustainable development.

The demise of the project should however not be attributed to the stand-alone functional failure of the lab or WOSCA's inept management. It can be better

understood through a wider analysis of the complex linkages between all stakeholders of the project and the challenges that come with it. A critical scrutiny of these challenges can help mitigate threats to sustainability of similar projects in future.

9.9 Challenges and Considerations

There are several things that could have been done differently in this project. There were a range of specific instances in the relation between WOSCA and Granmet that demonstrated misunderstandings between managers and leaders, personality conflicts and miscommunication over matters of financial operation and accountability and the implementation practices of the lab. My research indicated that there were several process problems that arose in the implementation of the project and that the controlling power that resided with WOSCA was wielded at times, in consolidating its position without due consideration being given to important work of Granmet as it endeavoured to achieve the primary goals of the Purumunda lab project. Certainly, the leaders of the grass-roots organisation Granmet contended that their work was undermined by a range of interventionist and control actions by WOSCA and at the regional office of Concern.

In a dialectical analysis of accountability, motivation and practices of NGOs in the developed and developing countries, Townsend/Townsend (2004) questioned if academics should expose NGO weaknesses or endeavour to depict them as we see them? This critique is not intended to inflict any form of damage but to be constructively critical of the existing system(s) of international and national NGOs that are inextricably intertwined and have implications for the sustainability of development projects such as those in Purumunda.

Kapoor (2005) explains the process whereby international NGOs channel support for development projects by funding national/state level NGOs, and the projects are often subcontracted to village-level NGOs or community-based organisations (CBOs). The latter relationship is fraught with problems such as petty corruption and outright domination. If CBOs pose a threat to the dominant NGO's they risk discontinuation of funds or being branded as engaging in mismanagement of funds. Although NGO corruption in Odisha and several other developing countries is a well-known problem and has been addressed by several scholars (e.g. Holloway 1997; Kapoor 2005; Townsend/Townsend 2004), corruption at regional offices of international NGOs is less discussed.

Corruption is only a part of a much larger nexus of challenges that threaten the sustainability of development projects. Gramnet's low-budget/high-impact intervention model that mobilised the tribal community in just six months threated the Concern regional office and WOSCA in several ways. Firstly, it set a precedent by using a low level of funds for impactful interventions, which has consequences for future budget allotment of similar projects, and therefore poses limitations on how much funds can be siphoned through such projects. Secondly, NGOs often feel

pressured to demonstrate efficacy based on legitimised impact indicators, to compete for foreign aid that is necessary for their survival. WOSCA had been implementing strategies for sustainable development, capacity building, community participation and empowerment in Keonjhar since 2004 (WOSCA n.d). While some of their interventions had mobilised the community to some extent, problems of food insecurity and exploitative practices continued to persist. Gramnet's effective intervention thus exposed WOSCA's inefficacy. Gramnet's subsequent exit served to secure WOSCA's legitimacy in the region.

Thirdly, many NGOs are widely acknowledged to work as 'businesses' (Tvedt 1998: 215). Kapoor (2005: 214) wrote that in Odisha NGOs go to great lengths to maintain their development markets—their fiefdoms and zones of control—because "they cannot keep opening new shops everyday". If the Purumunda community becomes self-sustaining needing no further development, it would not only create a dent in WOSCA's future funding opportunities needed for developmental work, but also risk closure. For regional offices of international NGO's it might necessitate relocation. Thus, sustainable development of the underdeveloped might serve to threaten the development and sustainability of the developer (Kapoor 2005).

Even though, in this case, individual officers were later replaced as certain questionable practices of the NGO came to light, thus restoring a degree of accountability within the organisation, it made little difference to the problems of the Indigenous community. In sum, the Purumundu experience highlighted the fragility of efforts by Indigenous communities to realise peace, justice and development rights when they can only be pursued through the funding mechanisms and implementation processes of outsider NGOs, particularly those that are part of the international development system. This is not to ignore or dismiss the governmental and international responsibility to promote the rights of Indigenous People, as in the UN Declaration of the Rights of Indigenous Peoples but to ensure that the achievements of those rights are facilitated by appropriate resources and processes as well as supportive values and good intentions. The Purumunda example demonstrated that the best ways to achieve these outcomes are through strong local community participation and decision-making.

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Chapter 10
Indigenous People's Struggles for Dignity and Peacebuilding in Northeast India

Leban Serto and Mhonyamo Lotha

Abstract Northeast India (NEI) is inhabited by a large number of tribes. It remained isolated during the British colonial era beginning in 1826 until India achieved independence in 1947. In the exercise of parliamentary democracy, the Indian Constitution provided special provisions and status for the tribes. Struggle for self-determination, including armed struggles, has been asserted by ethno-nationalist movements such as the Nagas, Mizos, Meiteis, Garos and Assamese. This paper will give a brief history of these movements along with the narratives and uniqueness of the indigenous people of NEI. It will focus on the Indian constitution and International concerns regarding the situation of Indigenous people of NEI. The historic peacebuilding processes and outcomes will be outlined, whilst also highlighting the women's movements within the peace process. This chapter will conclude with proposals on building sustainable peace in the region.

Keywords Northeast India (NEI) · Labour Corps · Insurgency · Armed Forces Special Power Act (AFSPA) 1958 · Scheduled Tribes · Peace Counts · Indigenous women · Parliamentary democracy · Sixth Schedule · Autonomous District Council (ADC)

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_10

10.1 Introduction

This chapter charts the often contradictory processes that have been pursued in Northeast India (NEI) by the significant population of Indigenous People, defined in India as Scheduled Tribes (ST), towards the maintenance of political and cultural independence. Greatly impacted by British colonialism, and later events of World War II, since Indian independence in 1947, the Indigenous groups of the region have been forced into on-going struggles against twin pressures: the Indian National Government and the predatory forces of modernisation and development. This chapter outlines the historical context, focused on both the agencies of peaceful strategies and armed struggles employed by Indigenous peoples in this tumultuous region. Our analysis shows that this region has been established as a governmental system of structural violence against Indigenous Peoples and presents a complex challenge without easy solutions. However, the influence of nonviolent campaigns has been a persistent presence, which continues to expand and pave the way towards recognition of the rights of Indigenous Peoples and the establishment of legal and political frameworks to secure those rights.

10.2 Indigenous Population in NEI

With over a hundred million people belonging to the so-called Scheduled Tribes (ST), India has the largest indigenous population of nations in the world. Over ten million of these people reside within the central belt of NEI, making it the most concentrated region of Indigenous People in the nation. The history and cultural practices in the region have been recorded in numerous accounts such as colonial reports and ethnographic monographs, diaries, (Barpujari 2003; Ellen et al. 2012), accounts of World Wars I and II (Chetri 2014), narratives from the insurgent movements, reports of human rights perspectives like Naga Peoples Movement for Human Rights (NPMHR 1978), Asia Indigenous Peoples Pact (AIPP 2015) and contributions of women's movements (Bhuyan 2006; Mukhim 2009; Subhram 2009). There are also materials from nonviolent Peace Movements and Peace Counts approaches, using posters and multimedia for peacebuilding in Northeast India (Buttry 2005; Serto 2013; Jager et al. 2015) and reports from international Indigenous support organisations such as International Working Group on Indigenous Affairs (IGWIA 2015).

The NEI covers an area of about 262,230 km^2 and comprises eight states, within the Republic of India. Arunachal Pradesh, Meghalaya, Mizoram and Nagaland are among the States with highest ST population. NEI has over 220 ethnic groups and an equal number of dialects. The hill states in the regions like *Arunachal Pradesh,*

Meghalaya, Mizoram and Nagaland are predominantly inhabited by diverse tribal people groups. The Indigenous Peoples include people from *Tibet, Burma, Thailand, West Bengal and Bangladesh* who have migrated into the region at various periods of history (Walter et al. 2008).

The ST in India are accorded special status in the Indian Constitution under Article 366(25) and have come to be treated as Indigenous peoples for legal, constitutional and administrative purposes. They are the tribes that have been declared by the President under Article 342 of the Constitution of India through a public official gazette notification. They each have distinct characteristics which are well accepted and widely used in academic discourses, and for administrative purposes and policy-making. These characteristics include geographical isolation, distinct cultures, cautious contacts with communities at large, and economically regressive. These characteristic find roots in the 1931 Census and in the Report of the first Backward Classes Commission (Kalelkar Commission 1955), the Advisory Committee on Revision of the Scheduled Castes and Scheduled Tribes lists (Lokur Committee 1965), the Joint Committee of Parliament on the Scheduled Castes and Schedule Tribes Orders Amendment Bill (1967), and the Chanda Committee (1969). The Scheduled Areas and Scheduled Tribes Commission (1960), also known as the Dhebar Committee, referred to the tribes as "indigenous" (Asia Indigenous Peoples Pact 2015) (Fig. 10.1).

10.3 Historical Background

The British rule ushered in an era of cultural, economic and political changes in Northeast India. In the words of Haolai (2006: 124–125):

Until the coming of the British the polity in the hill areas consisted of village states that recognised no sovereign power at the higher level. The isolation of the cultures of the region was broken by the advent of the British in 1826. For the first time, they were brought under the authority of an alien political power and old village polity was undermined. A money economy was introduced with new material options such as mill cloth, and kerosene lanterns and tea which replaced the largely self-sufficient traditional economy. The process of modernisation, of cultural change had begun, and the old isolated cultures began a slow process of disintegration.

After Indian independence from British rule in 1947, the NEI region consisted of Assam and the two states of Manipur and Tripura. Eventually other states were also formed: Nagaland in 1963, Meghalaya in 1972, Arunachal Pradesh in 1975 (but legally formed on 20th Feb, 1987), and Mizoram in 1987. Manipur and Tripura remained as Union Territories of India between 1956 until 1972, when they attained a fully-fledged statehood. Sikkim was integrated as a member of the Northeast Council (NEC) as recently as 2012.

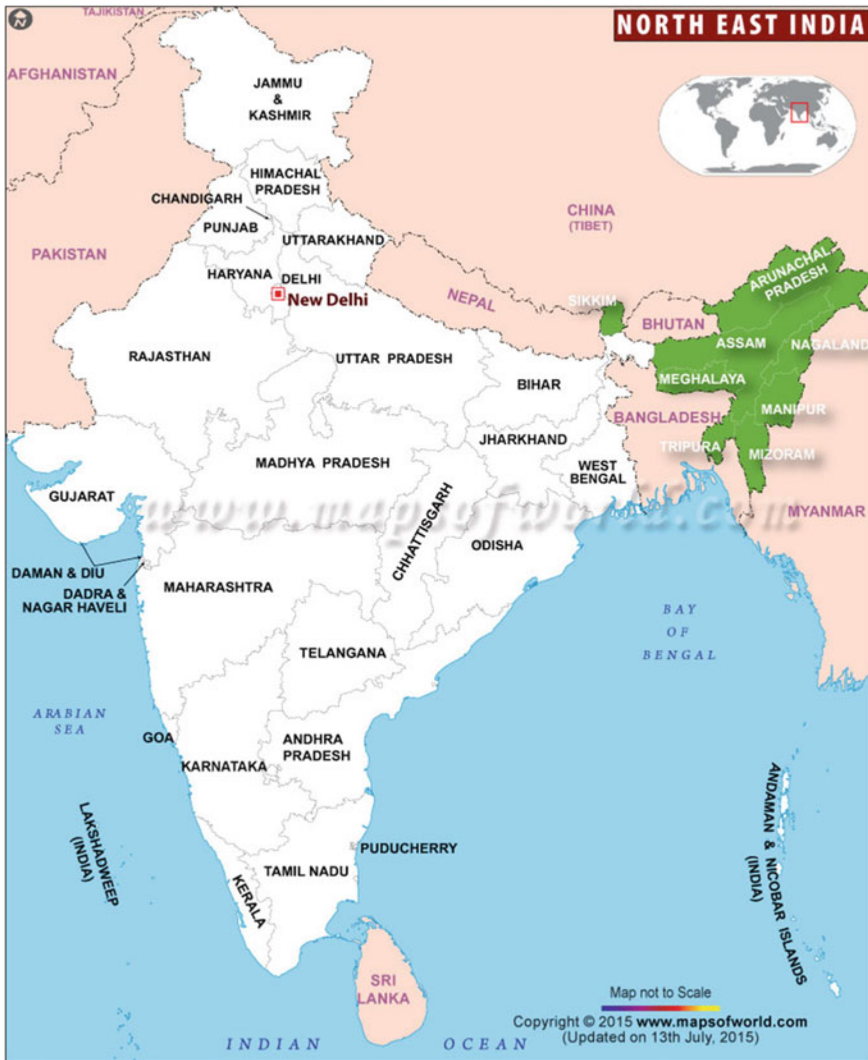

Fig. 10.1 Map showing Northeast India. *Source* www.mapofworld.com. This map is in the public domain

10.4 The Impacts of Two World Wars

The year 2014 marked the centennial year of the start of World War I (WWI). Chetri (2014: 45) writes about the contributions of the North-eastern Indigenous people to the war effort:

The thousands of men who went to serve as paid volunteer labourers as part of the Indian Labour Corps during 1917–18 in France on the Western Front. These

Labour Corps were christened from the regions that they came from Garo Labour Corps, Khasis Labour Corps, Lushai Labour Corps, Manipuri Labour Corps, Naga Labour Corps and even the Chin Labour Corps from today's Chin state of Myanmar, which was then still a part of British India. Each of the Labour Corps had a number of units, roughly made of 500 men commanded by British officers and even sometimes by British missionaries who performed an important role that of interpreters, as these men would not have understood English, and also acted as their chaplains.

After WWI, the Nagas were the first community to realise the need to organise and unite, subsequently forming a socio-political association called the Naga Club. In 1928, the Naga Club sent a representation to the Simon Commission, to consider the rights of the Naga for when the British left India (Jamir 1993: 21–22). However, nothing productive came from this. In 1944, the Japanese attacked India through the Northeast region. They travelled through Burma but were stopped at Kohima and Imphal by British troops. This marked the furthest western expansion of the Japanese Empire and presaged the Allied victory. World War II had a great impact in the whole of Manipur hills and valley and displaced almost the entire population during the months that followed in 1944.

10.5 On-Going Armed Struggles

The Indigenous movement in NEI is marked by a long history of armed conflict, violence and militarisation. Following India's Independence in 1947, the Naga tribes commenced the first armed movement in the NEI, and this continues. Presently, almost all communities in the NEI have armed movements against the state. These conflicts are a by-product of Indigenous communities struggling for their rights for sovereignty, autonomy, and control of natural resources to be recognised. Recently the Ministry of Home Affairs limited the tag of terrorist to only two organisations in NEI, the Kamtapur Liberation Organisation (KLO), and the Garo National Liberation Army (GNLA) (Ministry of Home Affairs 2015).

10.6 Non-armed Actions for Peace

After the initial post-independence conflicts, peace efforts were taken up in 1964 in Nagaland. This began a new era within the human rights movement, initially started by the Naga Peoples Movement for Human Rights (NPMHR) in the 1990s. Women's movements for peace became more prominent in the 1990s, along with pacifist writings and assertions for nonviolence becoming visible. One outcome of this movement has been the Peace Counts actions, adopted since 2009, for teaching and learning for Peacebuilding (Peace Counts 2015). These initiatives underscore Goswami's analysis that the peace process in the NEI is very complex, due to the

multiple narratives, and ethnic compositions, requiring a framework of "transformational peace building" that addresses the "structural issues" underlying the conflict (Goswami 2014).

10.7 Constitutional Provisions for Northeast India

The legal status for Indigenous people in NEI is complex and contradictory. Some Northeastern states have special provisions in the national constitution, intended to provide additional security to the people. There are such provisions for Nagaland, Manipur, Sikkim, Mizoram and Arunachal Pradesh, as well as the general provisions for scheduled tribes under Articles 244(2) and 275(1) of the Constitution. These protections relate to land and resources, as well as customary practices of communities in these states. For instance, Article 371–F:4 which incorporates Sikkim as a state of India, includes the vesting of discretionary powers to the Governor to facilitate peace and for an equitable arrangement for ensuring social and economic advancement of different sections of the population. However, these national provisions will not apply in these states, unless they are specifically extended to the Indigenous People by the concerned State Assembly.

The Indian Constitution under Article 244 provides for the administration of Scheduled Areas and Tribal Areas. The so-called Sixth Schedule provides partial autonomy to certain Tribal Areas in the four Northeastern states of Assam, Meghalaya, Mizoram and Tripura. It provides for the creation of the Autonomous District Councils (ADC), Regional Councils, and accords certain legislative, executive and judicial powers to these autonomous bodies. The Sixth Schedule further provides that no Act of the state legislature shall apply to any Autonomous District unless approved by the Autonomous District Council.

However the Governor of these states can decide to either apply, or not apply, any Act of Parliament or the Legislature in these autonomous areas. At the same time, the Governor has the power to annul or suspend any act or resolution of ADC's deemed likely to endanger the safety of India, or to be prejudiced to public order. The Governor has the power to monitor, order commission inquiries, suspend, and to dissolve ADCs. Thus the legal framework allows for specific provisions of autonomy, but in every case, the implementation (or withdrawal), of these provisions is at the discretion of the state Governors.

10.8 Indigenous Women's Issues in NEI

A research report conducted by the Asian Indigenous Peoples Pact (AIPP 2015) stated that the Indian Constitution asserts that all citizens are equal, but the research showed that Indigenous women are discriminated against because of their ethnicity and gender in Indian society. In India, as per the 2011 census, women account for

586 million and represent 48.46 % of the total population. In NEI, women represent 48.86 % of the total population.

Historically, this region has witnessed a strong women's movement, and this has given rise to local groups that have successfully changed policies of the past, and spoken for the rights and roles of women in strife-torn areas. Some of these groups are the Assam Bodo Women's Justice Forum (Assam), Naga Mothers Association (Nagaland), Naga Women's Union (Manipur), Hmar Women's Association, R.K Monsang Memorial Society (Arunachal Pradesh), Borok Women's Forum of Tripura (Tripura), Dimasa Women's Society, (Assam) Zomi Mother's Association (Manipur), All Tiwa Women's Association (Assam), Rabha Women Council, MizoHmeichheTangrual, and KaSynjukKynthei.

These women's groups have assisted women to deal with the on-going trauma and agony arising from armed conflicts and their economic disempowerment (Bhuyan 2006). Reducing violence is a common issue that the women's groups work on. They have collectively appealed to the Indian Government for the withdrawal of the AFSPA (1958). Other issues are political empowerment, requesting educational facilities for girls and a campaign to stop Violence against Women (VAW). In recent times, there has also been an advocacy appeal to the Government, to abide by the United Nations Security Council Resolution (1325).

Since its first State election in 1967, the Nagaland Legislative Assembly has never had a single woman legislator. With the exception of a few tribes structured around matrilineal descent (such as the Garos, Pnar and Khasis tribes) most of the 139 officially recognised tribes, have patriarchal structures, indicating that women have minimal roles in the decision-making process and have no rights to inheritance or hereditary property. Women are also vulnerable to direct assault. With sweeping powers to search and destroy houses, to detain people on suspicion and to kill with impunity, military personnel have been perpetrators of violence against women in the NEI (MangyangImsong 2000).

10.9 Insurgency, Interlocutors, Dialogues and Peace Processes in Northeast India

Since India's independence, the earliest and longest lasting armed insurgency has been present in Nagaland, where separatist violence commenced in 1952 under AngamiZapuPhizo. Conflicts leading to loss of innocent lives, and the burning of villages, have proliferated since the late 1970s (Imliyangerjamir 1993). Every State in the region is currently affected by insurgency and violence and four of these—Assam, Manipur, Nagaland and Tripura, have witnessed intense conflicts. Even with several governmental peace initiatives, multi-track diplomacy and non-governmental organisations (NGO), peace activities are at an incipient stage. Government policies do not encourage international interventions in any Indian NEI conflict resolution processes, though mediated developmental interventions are sanctioned.

Most of the conflicts have been waged to assert distinctive ethnicity, culture, identity, political empowerment, optimal utilisation of resources and to ensure protection of ethnic minority rights. The political goals of the armed conflicts have differed, ranging from demands for greater political autonomy, more transparent political rights, and institutional structures, to outright secession from India. Over the years, the state has dabbled within the framework of negotiations, with the Nagaland Peace Mission established in 1964, after the appeal made by the Nagaland Baptist Church Council (NBCC) in Wokha, which was one of the most serious and visible efforts to peacefully resolve issues. Negotiations were also utilised with the Mizo National Front (MNF) of Mizoram State, after twenty years of bloody conflict, that witnessed painful displacement and grouping of villages, uprooting the local Mizos from traditional villages, and creating memories of deep social hurt with no apologies offered.

The longest continuous negotiation has been between the Indian state and the National Socialist Council of NagalimIsak-Muivah, (NSCN-IM), regarding demands for territorial unification of the Naga inhabited areas in Assam, Manipur and Nagaland as well as Naga sovereignty. The Indian state is willing to offer greater political rights, but only within the Indian Union. Moreover, uniting Naga inhabitants areas across Assam, Manipur and Nagaland, is politically risky due to the deep-resistance of the Assamese, the Meities and smaller ethnic communities like the Dimasa or the Kukis.

The use of Interlocutors for the Peace Process in India has become a rule more than an exception. The Chief Minister of Meghalaya, Mukul Sangma, endorsed the appointments of Interlocutors, who act as peace mediators between the government and Indigenous insurgents. Terming the militancy as complex, he stated, “all north-eastern states should come together to resolve the issue with co-ordinated and comprehensive approach designed to understand the root cause of the problem” (*Telegraph India* 2014). The occasion of the speech was a disbanding day, of weapons being surrendered by insurgents on condition that the peace and development process can proceed, with promises of short and long-term benefits to the people of the Garo Hills region. While the Chief Minister’s promises are positive, including special programmes for education and opportunities for youth in the Garo Hills, they must be followed with changes to historic and structural conditions that caused the violence. As Namrata Goswami remarked in an article for The Hindu Centre for Politics and Public Policy, “in a multi-cultural and multi-ethnic NEI, talking peace requires to be more transformational than mere negotiatory. Conflicts as longstanding as these will not get resolved unless the conditions that gave rise to them are dealt with” (Goswami 2014). She also signalled the importance of addressing the “collective narratives”, and that a peace process can lead to both empowerment and disorientation.

Within the many ethno nationalist movements in the Northeast region, the initial aim should be to deeply understand and study the narratives that led to the conflicts. This should be followed by engagement with major issues. Firstly among these is engaging with the preferences of the Indigenous communities. Also important is devising appropriate exit strategies for combatants. It is important to acknowledge

that these preferences and frameworks might neither be optimal nor the only way through which the conflict situation can be understood.

Goswami (2014) is of the opinion that it is a shallow proposition for the Indian state to assume that once it signs a ceasefire, or Suspension of Operations (SoOs), with armed groups, that everything else will fall in place. In reality, dealing with divisive issues, establishing solid institutional mechanisms that promote a level playing field, and promoting liberal education at the school level are policy choices that will herald a more hopeful future for states like Assam, Manipur and Nagaland.

In the first Universal Periodic Review (UPR) National Report the government of India recognised the need to empower the ST and established committees to tackle discrimination against them (AIPP 2015). On 3rd August, 2015 the NSCN-IM represented by Thuingaleng Muivah, and the Government of India representative R.N. Ravi, signed a new Peace Accord in the presence of the Prime Minister Narendra Modi, and Home Minister Rajnath, to move ahead with some framework agreement. The final outcome is still awaited, and this will mark a new dawn in the peace processes in the NEI. The challenge now remains as to how they will carry forward the essence of this new Peace Accord with the other groups in the region.

10.10 The Way Forward

Indigenous Peoples in NEI are confronted with the issue of militarisation, alongside confining constitutional regulations such as the AFSPA. Legal concessions for extractive industries to exploit natural resources remain a constant threat to indigenous communities, increasing on-going resource conflicts between Indigenous Peoples and immigrants in the Assam area. Added pressures are the condoned encroachment into Indigenous Peoples' lands and resources, by settler communities in Tripura, and grand development schemes in Arunachal Pradesh, Manipur and most of the seven sister states. These demands will continue to have an impact on the personal lives, land, resources and food security of Indigenous Peoples.

Crime and violence against women, and human trafficking in the NEI, is expected to increase sharply, with development activities such as the Trans Asian Railways, and the Asian Highways, both of which are part of India's current "Look East" Policy. Patriarchal traditions, and gender inequity in India, have resulted in the feminisation of poverty, exacerbating women's vulnerability to labour and sexual exploitation. Thus, without improvements in women's socio-economic conditions, and their effective participation, peaceful development of the region cannot proceed effectively. Women's empowerment should be coordinated with the social sectors, such as the male gentry, religious heads, and political leaders who must surrender their personal interests, to re-order men and women as equal citizens in a civil society. Peacebuilding, along with components of mediation, and conflict transformation training, must become important curricula within the formal and non-formal educational sectors among the Indigenous population in NEI.

The provisions ensured in the Indian Constitution for the ST's population, must be implemented in its true spirit, inclusive of the ideals of participatory democratic process. The Indigenous Peoples of NEI must develop a shared future in the region whilst at the same time be able to reach out and engage with the world around them. "Only then will this diverse population, be able to transcend into a more egalitarian society, versus remaining in isolation". These comments of journalist Victoria Corpus Tauli writing in the *International Herald Tribune* (2007: 4) in respect to the Declaration of the Rights of Indigenous Peoples apply exactly to the Indigenous Peoples of NEI.

The Declaration (UNDRI 2007) set the minimum international standards for the protection and promotion of the rights of the Indigenous Peoples, providing for the survival, respect for distinct identity, well-being and rights of the Indigenous Peoples.

The Declaration has occasioned the need for redesigning and reshaping existing and future laws, policies and programmes on Indigenous Peoples on the basis of the set standards. Most of the provisions of the Declaration, though existing in other Human Rights, instruments could not be availed of by the Indigenous Peoples. Now that the Declaration has been adopted, these rights have come to be specifically recognised as their basic Human Rights. These important principles will continue to provide guidelines and aspirations for the Indigenous people of Northeast India in their peacebuilding efforts for equality and justice in the nation-state of India.

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Part IV
Concepts and Practices Related to the 21st Century Achievement of Indigenous Peoples' Rights within the Context of Sustainable Peace

Community-based reporters video-record news content at community events. Training of the tribal community volunteers, Purumunda Village, Odisha, India, 2008. *Source* Mousumi De (see Chap. 9)

Chapter 11
Indigenous East-Timorese Practices of Building and Sustaining Peace

Sophia Close

Abstract Indigenous East Timorese peacebuilding practices, known as *tarabandu*, *nahe biti*, *juramentu*, *matak-malarin*, and *halerik*, are critical to transforming violence in Timor-Leste. These Indigenous peacebuilding practices are usually cheaper, more readily available and more flexible than liberal peacebuilding practices. The prioritisation of liberal peacebuilding over Indigenous peacebuilding systems by the Government and many international actors perpetuates cultural and structural violence in Indigenous communities in Timor-Leste. Despite these challenges, ordinary East Timorese continue to use and assert the importance of Indigenous peacebuilding practices to transform community violence, build relationships and maintain cultural rituals to bring the cosmos and the secular world into balance.

Keywords Timor-Leste · Indigenous · Self-determination · Peacebuilding · Cultural concepts

11.1 Introduction

After decades of international activism by Indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples (the Declaration) was endorsed by the United Nations General Assembly in 2007. The Declaration affirms the Indigenous right to self-determination and promotes the use of Indigenous knowledge and practices to sustainably implement this right.

In this chapter, against a background of historical violence in Timor-Leste, I draw on the work of East Timorese academics Trindade (2013), da Silva (2012)

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_11

and Babo-Soares (2004) to examine ways that Indigenous East Timorese peacebuilding practices seek to achieve peace and self-determination. In the discussion I explain how the liberal peacebuilding model is fundamentally different from Indigenous peacebuilding, and subsequently assess the effectiveness of liberal peacebuilding in Timor-Leste.

The source material for this analysis was collected during my Ph.D research in Timor-Leste between 2009 and 2013. I used a 'listening' methodology to undertake my research with around 90 East Timorese and international development and peacebuilding practitioners. By citing my research participants, I provide space for my reader to more directly engage with the challenges East Timorese peoples are experiencing in transforming the ongoing complex violence in Timor-Leste. East Timorese peacebuilding practices are described using *tetum*, a hybrid language used as the vernacular in Timor-Leste. However there are many local language equivalents of each term that have specific applications.

11.2 History of Violence in Timor-Leste

Timor-Leste is a small territory in the Indonesian archipelago, approximately 19,000 km^2 in area, with a rich history of over 42,000 years of continuous human occupation and inter-island migration (O'Connor 2007; O'Connor et al. 2013). With a current population of 1.1 million, Timor-Leste has at least 16 distinct ethno-linguistic groups who share a common ancestry and distinct cultural, economic and political systems (Hull 1998; UNDP 2013). East Timorese believe land is sacred and anthropomorphised, and ritual and mythological sites interconnect nature and culture in indivisible relationships (Fox 2000; McWilliam 2007; Traube 1986).

For Indigenous East Timorese people the impacts of contact with colonial powers began in the 15-century. From 1511, the Portuguese attempted to distort Indigenous knowledge, governance and power systems in Timor-Leste (Ospina/Hohe 2002). More recently Timor-Leste has experienced 24 years of violent foreign occupation by Indonesia from 1975 onwards. In 1999 East Timorese people exercised their right to self-determination in the UN-sponsored ballot and Timor-Leste became a sovereign state in 2002.

Portuguese colonialists used derogatory language and class hierarchies to subjugate and separate ethno-linguistic groups. However, the greatest repression of Indigenous knowledge systems, culture and governance occurred between 1975 and 1999, during the Indonesian occupation. At least 100,000 East Timorese were killed or died of famine, disease and malnutrition due to forced resettlement and arbitrary detention (Commission for Reception 2005; Cribb 2001). Massacres were systematically carried out by the Indonesian military, women were subjected to forced sterilisation, sex slavery and gang rape; and children were removed and relocated to Indonesian families (de Oliviera 2002; Rawnsley 2004; Martin 2001).

Since 1999, health, education, infrastructure and governance indicators have slowly improved but at least half of the population remain in severe poverty

(United Nations Development Program 2013). Dewhurst (2008) categorises Timor-Leste as experiencing "violent peace"; where continuing inequality and cultural violence create low-level actual and structural violence in communities and broader intra-state violence. Violent peace aligns with Colliers (2003) findings that around half of all post-conflict states have reoccurring violence within the ten years after the initial conflict ceases. Chand/Coffman (2008) and the World Bank (2011) also found that on average post-conflict countries take 15 and 30 years to transition out of fragility.

Pervasive internal asymmetries of power, nurtured by Portuguese colonialism and Indonesian occupation, are at the root of ongoing violence in Timor-Leste. These root causes of violence include: land, property and resource disputes; weak or corrupt governance and justice systems; elite democratisation; gendered power imbalances; poverty; food insecurity; limited access to education; economic insecurity; reliance on the resource sector; and inadequate infrastructure. Ongoing violence underscores the need to prioritise peacebuilding to achieve self-determination.

11.3 Differences Between Indigenous and Liberal Peacebuilding in Timor-Leste

I follow Lederach (1995), Brigg/Bleiker (2011), Macginty (2008), Richmond/Mitchell (2011) and Richmond (2011, 2015) in their criticisms of liberal peacebuilding. Liberal peacebuilding is grounded in modernism and neo-liberalism, and focuses on economic interdependence and elite democratisation through democratic development, rule of law, market-based economic reforms and state security. As a theory and praxis it is secular, top-down and externally driven.

In Timor-Leste, liberal peacebuilding prioritises building formal state institutions and a formal justice system using police and courts, and top-down mediation of violence between elite powerbrokers (Newman et al. 2009: 4). It is promoted by the United Nations (UN) and many international bilateral, multilateral and non-government organisations including: the UN Development Programme (UNDP), the World Bank and the International Monetary Fund, the Australian, United States and New Zealand aid programmes.

In the past 20 years, liberal peace research and practice has increasingly acknowledged the importance of Indigenous approaches to peacebuilding and the role of culture in conflict transformation (Hunt 2008; Avruch 1991; Brigg 2008). However, Indigenous researchers Turner (2006) and Alfred (1999) agree that liberal peacebuilding has not truly engaged with or incorporated Indigenous knowledge systems, which are grounded in *both* secular and cosmological dimensions.

Indigenous scholars assert that the theoretical frameworks and tools of liberal peacebuilding processes are inadequate for transforming complex conflicts in Indigenous communities. The structural power of liberal peacebuilding limits the space for Indigenous approaches and reiterates colonial epistemologies that

perpetuate cultural and structural violence, and the dominance of non-Indigenous peacebuilding practices. These processes often idealise or co-opt Indigenous knowledge systems, placing Indigenous systems under extreme pressure to modernise (Turner 2006; Alfred/Wilmer 1997; Brigg 2008).

11.4 Links Between Indigenous Self-determination and East Timorese Peacebuilding

East Timorese peacebuilding processes are deeply ingrained in Indigenous East Timorese knowledge systems and have been practised in Timor-Leste for centuries to actively manage community violence (Babo-Soares 2004). East Timorese scholars such as Babo-Soares (2003, 2004), Trindade (2007, 2008, 2013), Cabral (2002), da Silva (2012), and international researchers including Brown (2009, 2012), Fitzpatrick/McWilliam (2013), Nixon (2013), Ospina/Hohe (2002), Tobias (2011) and Traube (1986) note that while Indigenous systems were oppressed and distorted under Portuguese colonialism and Indonesian occupation they are firmly in place, sanctioned by strong political and kinship systems, a self-sustaining subsistence economy, cultural practices and rituals. Seventy per cent of East Timorese people live in rural communities, where these practices continue to be prioritised.

Indigeneity in Timor-Leste is reflected in these strong, vibrant Indigenous knowledge systems, deeply linked to land, place and kinship networks. East Timorese peacebuilding is both a metaphysical and practical process aimed at bringing the cosmos and the secular world into balance. Babo-Soares (2003) describes the East Timorese concept of *tempu rai-diak* (Tetum: "the tranquil time") or *tempu beiala* (Tetum: "time of the ancestors") when the Indigenous social, political and economic systems were in place (generally prior to Portuguese colonialism). Trindade (2013) explains that *tempu rai-diak* refers to a time of balance and dualism between the secular (physical and material) and cosmological (the world of the spirits and ancestors) worlds where people are connected to *hun* (Tetum: "the roots of the tree; source"), meaning their ancestors, origins and history, and *rohan* (Tetum: "tips of the tree branches"), meaning the present or the future.

These complex peacebuilding systems are continuous, non-linear and multidimensional and connect multiple generations, lineages and clans, land, customary houses, the future, and the ancestors (Babo-Soares 2013). This cycle of balancing is also a process of reconciliation, where throughout a lifetime an individual aims to heal past mistakes and move to *tempu rai-diak* (McWilliam 2007). People and society become out of balance if the correct rituals and processes are not followed. Breaching these systems or creating imbalance can cause disaster, illness, violence, retribution or death and can only be rectified by following the correct ritual processes (McWilliam 2007; Trindade/Castro 2007: 24; Trindade 2013: 2–3). If the imbalance between the secular and cosmos is not addressed, violence will continue (Babo-Soares 2004).

The ultimate goal of Indigenous East Timorese peacebuilding is to achieve *tempu rai-diak* or *dame* and *hakmatek* (Tetum: “stability or quiet, a situation where conflict and disorder are absent”) (Trindade/Castro 2007). These ideals are associated with *ukun rasik a’an* (Tetum: ‘self-determination’), which is an East Timorese concept that holistically encompasses self-determination and concepts of sovereignty, self-sufficiency and independence (Babo-Soares 2004; Hunt 2008). *Ukun rasik a’an* is closely paralleled with *tempu rai-diak*, *dame* and *hakmatek* because it is also grounded in ethical concepts of balance and fairness. *Ukun rasik a’an* is also closely associated with empowerment and endorses holistic and integrated forms of governance that are responsive and inclusive. As one East Timorese academic explained: “We struggled very hard for independence; we want people to live in harmony, peace and prosperity” (TL).

11.5 Indigenous East Timorese Peacebuilding Practices

The following section details some of the most widely observed Indigenous East-Timorese peacebuilding practices used today. Separately they demonstrate tangible alternatives to liberal peacebuilding practices, together they contribute to building an understanding of Indigenous East Timorese knowledge systems, and their deep connection to land, place and kinship networks. Colonialism, Christianity, violent occupation and modernisation have significantly impacted how these practices take place. As a result, there are differences between and within communities of how these peacebuilding practices take place, the actors involved, and the level or types of violence to which they are applied.

11.5.1 Tarabandu

Indigenous ancestors set rules and prohibitions known as *tarabandu* (Tetum: “to hang up or suspend”; often a piece of cloth; prohibition; customary law or morals). If *tarabandu* are transgressed, the ancestors in the spiritual world will be angry, resulting in implications for the physical world including conflict, starvation, disease or war (Trindade/Castro 2007: 17–18). An East Timorese researcher described this living system to me in these words: “We believe that trees, they are not just trees, but that they are something, and that there are spirits that have been living there for ages. So we are not allowed to just cut them” (TJ).

Tarabandu is a customary legal process of agreement-making within the community to regulate behaviour and relationships between people, and between people, natural resources and economic decisions. *Tarabandu* are used today to place limitations on shifting agriculture, controlling natural resource harvest, determining fencing boundaries and maintenance or deterring theft, prohibitions on pre-marital sex or killing of particular animals (Meitzner Yoder 2007; McWilliam

et al. 2014; Palmer 2007). *Tarabandu* are authorised by the *lia-nain* (Tetum: "owner of words, spokesperson, responsible for ritual authority"), who pronounces the prohibition to the community, animal sacrifice and a shared feast. The agreement is usually symbolised by placing a distinctive cloth or sign in a prominent place to inform and remind the community of the decision and punishment for transgression and now, by creating a written document held by state authorities (Meitzner Yoder 2007). An East Timorese peacebuilder described how the *tarabandu* process works to create harmony and balance.

All the good people in this community have to follow this *tarabandu* process.

For example, all the community, especially the youth and men, they cannot fight each other. If youth fight, they have a penalty, they have to pay $1000, or $100, or give pigs or buffaloes. People do not want to pay a penalty, so when people are angry with each other, they think, "We have to stop it". If you have a paddy field, and my buffalo comes and eats something in your paddy field, then I have to pay you a penalty. You have to take care of your buffalo, so that it does not starve. Sometimes they write them down, but mostly people do not know how to write, so they just remember everything (TTG).

Brown/Gusmão (2009: 67) describe *tarabandu* as "dynamic and adaptable" empowering communities to "resolve problems and meet needs". *Tarabandu* work best in remote rural locations, with older and uneducated citizens, where local government and authorities enforce the decision, and when communities are not economically pressured to transgress the prohibition. For example, in Oecusse, supported by the Government, by 2004 there were 402 *tarabandu* in place across 12 *sukus* (Tetum: "local level government areas"), ranging from small areas encompassing sacred rocks and water to entire mountainsides (Meitzner Yoder 2007: 45–46).

11.5.2 Nahe Biti

An important cultural practice of seeking peace, resolving differences and creating a stable social order is called *nahe biti* (Tetum: "stretching or laying down the mat as a means to facilitate consensus, truth-telling or reconciliation"). *Nahe biti* is a series of complex ideas and processes that can be used for both wider kinship matters and smaller family-group conflict management, distinguished by *biti bo'ot* (Tetum: "large mat") and *biti kiik* (Tetum: "small mat"). Minor disagreements between members of the same family are usually resolved by the head of the family unit within their *uma lulik* (Tetum: "sacred house"), and larger or violent conflicts involving multiple families, such as divorce, theft or land disputes may need to involve leaders from outside the *uma lulik* especially the *Xefe de Aldeia* and *Xefe de Suco* (Tetum: "Chief of the Aldeia sub-village or Suco village") (The Asia Foundation 2004; Trindade 2006: 12).

Using a customary *heda* (Tetum: dried palm leaf) woven mat to sit on while the discussion takes place as a venue, is only one part of a much more complex process where each step must be fulfilled for a successful outcome (Babo-Soares 2004). The

process is grounded in community participation, including extensive preparation, willingness on both sides to commit to the process, voluntary acceptance of culpability for past wrongs, and compromise to achieve a harmonious solution. Babo-Soares (2004: 24) explains that the five stages in weaving a *biti* are linked to the process of *nahe biti*: the first stage, preparing to plait the *biti* is likened to the process of contacting all the key parties to the conflict; the second, selection of the *heda*, translates to seeking agreement and willingness from all parties to meet and arranging the logistics; the third step is ensuring the *heda* matches each other, akin to the process of setting the parameters of the process including the recommendations for legal prosecution; the fourth step is the plaiting of the *heda*, which is the complex process of mediating compromise and consensus, creating a balanced or win-win solution; the final step is the completion of the *biti*, which is accomplished by ritual ceremonies such as *juramentu* (described below).

Nahe biti is an active peacebuilding process grounded in Indigenous authority that facilitates participants to resolve their fear and intolerance. It creates a safe space, geographically defined by the mat, where conflicting parties can seek common ground and talk through complex conflicts, achieved reintegration and acceptance of wrongdoers and seek shared outcomes. While each *uma lulik* has slight differences in this process according to their differing customs, *nahe biti* is a Timor-Leste-wide conflict management tool.

11.5.3 Juramentu

The practise of *nahe biti* includes a ritual ceremony to conclude and legitimate the process, usually before the *uma lulik* where a *juramentu* (Tetum: "binding oath, blood oath or oath of loyalty") is used to seal the agreement and bind all parties to the agreement (Babo-Soares 2004: 21–28; Trindade/Castro 2007: 23–26). The *juramentu* ritual is a symbolic 'death' of conflict and exchange of blood to bind the conflicting parties together as 'blood brothers'. It is usually carried out by mixing the blood of a sacrificed animal with local palm wine and the mixture is drunk by both parties. Often *juramentu* is concluded by chewing of *mamah buah malus* (Tetum: "betel nut") that has been sanctified during the ceremony to symbolise the normalising of relationships (Ospina/Hohe 2002: 46; Wallis 2014: 123). These physical ritual connections parallel the new spiritual relationships created concurrently where the ancestors of each party are also engaged to maintain the peace to ensure a *juramentu* can be enforced inter-generationally (Trindade 2006; Trindade/Castro 2007: 20, 25). An East Timorese development practitioner explained.

Sacrifice has been made for a purpose to gain independence. Whenever sacrifices must be made they must be paid back. You make a sacrifice to the ancestor spirits in order to retain their help. It is not a passive expectation, it has been written in terms of exchange and reciprocity. It is a two-way process (TTI).

11.5.4 Matak-malirin *and* Halerik

At the conclusion of Indigenous peacebuilding rituals participants hope to be provided with *matak-malirin* (Tetum-terik: newly green or sprouting; cool"), dualistic symbols of good health and productive life force (Kehi/Palmer 2012: 447). *Matak-malirin* can be physically represented with harvested food and water in a pot that is called *matak inan malirin inan* (Tetum: "mother of greenness and coolness"). The food and water received in these rituals are a metaphysical representation of peace, prosperity and protection from bad luck and are exchanged during ceremonies to signal the harmonious and inter-connected relationships between visible and invisible life forces (Trindade 2013).

Trindade (2013: 3–4) explains that when East Timorese do not have *tempu rai-diak* or *matak-malirin* they will undertake *halerik* (Tetum: "the singing or chanting of the suffering"). *Halerik* represents *ema kbi'it laek* (Tetum: "the voice of the powerless"), where those who are experiencing suffering express their problems to *ema bo'ot* (Tetum: "the powerful"]. The act of *halerik* is a non-violent form of protest; through articulating their experiences, the sufferer gains strength and purpose. *Halerik* has numerous practical applications; it was used during Indonesian occupation by the resistance and clandestine networks to express desires for independence and self-determination, and is now used by civil society to protest and draw Government attention to socio-economic disparities.

11.6 Indigenous East Timorese Peacebuilding in Practice

Evidence from Babo-Soares (2004), Brown (2009), da Silva (2012), Hohe/Nixon (2003), Meitzer Yoder (2007), McWilliam (2007), and Palmer (2015) demonstrate that Indigenous peacebuilding practices such as *tarabandu*, *nahe biti*, *juramentu*, *matak-malarin*, and *halerik* have been used to create consensus to facilitate the balance between *hun* and *rohan* and transform community-level violence into peaceful social relations in Timor-Leste over thousands of years.

Many East Timorese are critical of liberal peacebuilding processes. For example, Trindade/Castro (2007: 2) noted that: "Recent government-sponsored dialogue and peace-making initiatives by international actors present in East Timor have shown little impact on the sentiments and root causes underlying the eruption of violence". A senior East Timorese peacebuilder gave an example of how ineffective liberal peacebuilding had been during the intra-state conflict in 2006–08. She emphasised the need for slower, more contextual, localised peacebuilding.

During the crisis [in 2006] they tried to do the traditional conflict resolution. It is called *nahe biti bo'ot*, where you put down the mat; everyone sits down together to find a solution. I think it [*nahe biti bo'ot*] was more of a spectacle; it did not really address the underlying issues. I don't think it could have. I think we need a much

longer time to do it, logistically, the money and the time. Patience. There are still a lot of unresolved disagreements (TTK).

An East Timorese peacebuilder further elaborated that *nahe biti* practised at a national level, without the correct rituals and participants for each local context, was not perceived to have the requisite cultural meanings or correct balance between secular and cosmological power.

International experiences and the elite Timorese interests, they ignore our culture. One example, in 2006…we wanted *nahe biti bo'ot*, but they completely used *malae* (Tetum: 'foreigner') way, very international way, and ignored local ownership. So in that way it was not working (TTR).

The use of a modernised version of *nahe biti* to resolve the violence in 2006–08 is an example of how Indigenous peacebuilding practices can be co-opted by elites, Governments or international actors. In Timor-Leste many communities rejected this distorted version of *nahe biti*, which mirrored liberal peacebuilding practices focused on elite-level mediation that excluded important conflict actors, and did not aim to transform the root causes of violence.

While recognising their importance at a community level, McWilliam et al. (2014) and Grenfell et al. (2009) question the effectiveness of East Timorese peacebuilding practices. They argue that it is less clear whether Indigenous peacebuilding can be used to transform the current more widespread and deep-rooted peace and security challenges. They note that significant gaps in knowledge and procedural steps used may cause the overall process to be ineffective. This is an important critique but should not diminish the effectiveness of Indigenous peacebuilding methods at a community or inter-group level.

In turn, liberal peacebuilding efforts have also not been well understood or supported by communities, which have limited their effectiveness. For example, a senior East Timorese peacebuilder stated that communities were not accepting the outcomes of the formal justice system as retribution for past crimes: "They [people who had fought in militias] went to jail for five years and the community still would not accept them, so they had to go back to the refugee camp" (TTK). An East Timorese development practitioner elaborated thus.

People were coming in here to teach conflict resolution. But we already have conflict resolution methods in place that we have used for maybe thousands of years, to resolve issues between individuals and families or between tribes. It's just confusing. All this new conflict resolution methods from outside are not always working because people don't believe in it. They are not familiar with the process. The result is very very minimal (TG).

11.7 Conclusion

The post-1999 resurgence of *tarabandu*, *nahe biti*, *juramentu*, *matak-malarin*, and *halerik* practices has become critical to the resilience of Indigenous knowledge systems in Timor-Leste and for reducing violence. Use of these Indigenous

peacebuilding processes is also fundamental to building and sustaining Indigenous East Timorese self-determination or *ukun rasik a'an*. While Indigenous peacebuilding is supported by the majority of East Timorese people, the liberal peacebuilding model focused on state formation, democracy, market-based economic reforms and state security is endorsed by East Timorese elites and international development and peacebuilding organisations.

However, ongoing and significant intra-state violence indicates that the current prioritisation of liberal peacebuilding is failing to transform the root causes of violence in Timor-Leste because these practices do not appropriately value or empower Indigenous knowledge systems. Elite co-option of Indigenous peacebuilding practices has also been unsuccessful. Despite significant asymmetries of power, ordinary East Timorese continue to use and assert the importance of Indigenous peacebuilding practices to transform community violence, build relationships and maintain cultural rituals to bring the cosmos and the secular world into balance.

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Chapter 12
Who Is Sami? A Case Study on the Implementation of Indigenous Rights in Sweden

Guðrún Rós Árnadóttir

Abstract This chapter focuses on the complications that arise in implementing Indigenous rights in Sweden, in particular in deciding who belongs to Indigenous groups and as such to whom Indigenous rights are accorded. I discuss the political mobilisation of the Indigenous population of Sweden, the Sami, and introduce a case study based on interviews conducted with parliamentarians in the Sami parliament, a governmental institution, as well as Sami rights activists and scholars. My interest in "Who is Indigenous", or rather "Who is a Sami", is based on the impact this has on the workings of an Indigenous rights movement and its leaders, and the possibilities of achieving the rights they claim.

Keywords Sweden · Sami · Sami Parliament · Indigenous Peoples Rights · Arctic · Identity

12.1 Introduction

The inherently generic manner in which the international Indigenous legal system is written allows opportunities for states and Indigenous groups to interpret their accorded rights in a number of ways. While theoretical discussions on the international legal nature of Indigenous rights have been useful in defining the legal parameters of terms integral to Indigenous rights, such as self-determination and self-identification, they cannot capture the diversity of domestic laws concerning Indigenous peoples. Therefore, analysis of specific cases is arguably the best way of understanding the contemporary legal and political position of Indigenous peoples.

This chapter is built around a case study of the Indigenous population in Sweden, the Sami. Interviews were conducted with Sami politicians in the Sami

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_12

parliament, a governmental institution in Kiruna, as well as Sami rights activists and scholars during the months of April and May in 2014. During the research the identity question of "Who is Sami?" was a focal point, which allowed me to delve into several aspects of cultural revitalization, legal implications of setting boundaries for self-identification, and political manoeuvres within the Sami parliament.

12.2 Who Are the Indigenous Peoples?

Du Gay argues identity becomes a question of power and contestation when a group seeks to realize its identity in a political form, to ensure the survival of one's own culture, to gain the right to utilise natural resources or to take over a territory (Du Gay/Hall 2011). One of the main issues pertaining to Indigenous rights is the question of who is Indigenous? When rights are tied to a culture or identity it is pivotal to define who belongs to the said culture (Åhrén et al. 2007).

A working definition of indigeneity, from the United Nations, refers to descendants of populations which inhabited the country, or geographical region to which the country belongs; atl: the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Furthermore, the definition states that social, cultural and economic conditions distinguish Indigenous peoples from other sections of the national community, and their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. They are *peoples* to the extent that they have retained a continuity of existence and identity that links them to the communities, tribes or nations of their past (Anaya 2004). Most importantly, self-identification as Indigenous has been regarded as the fundamental criterion for determining the groups to which the legal protection scheme applies (Office of the High Commissioner for Human Rights 2013). This "subjective" criterion has been widely accepted but it is not clear whether or not it would be sufficient if other "objective" criteria (i.e. ancestry) were not also present (Hannum 1996).

While the self-identification criteria is given most importance it can lead to controversy, with both state authorities refusing to acknowledge a group as Indigenous despite their self-identification as such and people who have no features of the Indigenous claiming indigeneity in order to benefit from their rights.

12.3 The Sami People

The Sami people traditionally inhabit a territory known as Sapmi, which spans the northernmost parts of Norway, Sweden and Finland, and the Russian Kola Peninsula. The Sami have inhabited the area much longer than the Nordic/Russian people. They have the oldest languages and cultures of these countries, long

pre-dating the present-day states, and today several language groups are divided across the national borders of the Nordic and Russian states. The Sami people have traditionally relied on hunting, fishing, gathering and trapping. Reindeer herding, in particular, is of central importance to the Sami people. Many Sami communities historically practised a semi-nomadic lifestyle, moving reindeer between the mountain areas and coastal areas according to the season (Lantto 2010; The Sami Parliament 2004).

The Sami population is estimated to be between 70,000 and 100,000 people in total, with 40,000–60,000 in Norway, 15,000–20,000 in Sweden, about 9,000 in Finland and around 2,000 in Russia. Sami people constitute a numerical minority in most of the Sami region, except in the interior of Finnmark County in Norway and in the Utsjoki municipality in Finland (Anaya 2011).

12.4 The Sami in Sweden

In order to analyse the conflict in contemporary Sami politics in Sweden it is necessary to understand the history of Sami in Sweden, as the system of Sami rights has throughout the years been legitimised and shaped by evolving ideas and public opinion.

Sweden's Sami policy by the end of the 19th century was heavily influenced by racial biology, to the extent that it permeated all interactions between the Sami and the Swedish authorities. In particular, nomads were considered culturally inferior to farmers and other people who practised stationary lifestyles. The Sami were forced to give up large areas of their traditional lands and herding areas to Swedish farmers. The Swedish authorities awarded substantial sums as aid to farmers settling in the Northern territories, with hardly any of it going to Sami farmers, as the official stand of the Board of Agriculture was that they were not suited to farming (The Sami Parliament 2004).

The Sami were also considered to be born with certain "racial characteristics" that made them unfit to take part in civilised society. In 1922, the Swedish Institute of Racial Biology was established with the official aim of "safeguarding the high quality of the Swedish race". While it began as a general study into the different 'races' living within Sweden, after a few years all of the Institute's resources were spent on studying the Sami, for example by measuring their skulls. These practices went on for over a decade (Spektorowski/Mizrachi 2004).

In 1928, the Swedish Parliament passed the Reindeer Herding Act, which distinguished the reindeer herding Sami from the rest of the Sami population, and restricted land use in most of the traditional Sapmi area in Sweden to the reindeer herders. The Reindeer Herding Act was a part of a wider governmental paternalistic policy toward the Sami named "The Lapps shall be Lapps" (Lapps was the preferred way of referring to the Sami but has since been considered derogatory), the intent of which was to protect the traditional culture of reindeer herding Sami, while disregarding those outside of the reindeer husbandry who were not seen as real

Sami and therefore in no need of cultural or economic protection. Those Sami outside of reindeer husbandry were expected to assimilate into the wider Swedish society. While the Reindeer Herding Act did provide the reindeer herders with rights to land usage it placed several restrictions on them, for example a ban on setting up permanent houses, as this was considered outside of their traditional culture (Lantto/Mörkenstam 2008).

12.5 The Political Mobilisation of the Sami People in Sweden

Indigenous peoples respond to colonialism and oppression in ways that reflect their individual circumstances, particularities in history and governmental structures. The Sami in Sweden began by focusing their activism on cultural rights and freedom of movement rather than land claim agreements. The primary goal was to ensure that the Sami could enjoy their collective rights as a people. Later, the self-determination principle became the focus of the Sami political movement. The peaceful political strategies adopted by the Sami reflect the fact that they are working within a democratic state. The Sami have focused on good relations with the Swedish government, strong cooperation with Sami in neighbouring states as well as other Indigenous groups in the Arctic, and building democratic organizations within the Sami community (Plaut 2012).

The Second World War brought about both a change in public opinion in Sweden towards the Sami and the political mobilisation of the Sami. An educated and politically active class of Sami leaders began to mobilise and a new self-understanding of the Sami slowly developed (Harald 1997). In 1950, the first national Sami organisation in Sweden was formed, The National Union of the Swedish Sami. The Union was in large part based on the organisational structure of the reindeer herding administrative entities, the Sami Villages, firmly establishing the reindeer herding Sami as the focus of the Sami movement in Sweden. The Sami were recognised as a minority or ethnic group with a unique culture during the 1960s. Again, reindeer herding was considered to be the 'real' Sami culture, reinforcing the previous categorisation and demarcations (Lantto/Mörkenstam 2008).

In the second half of the 20th century the political rhetoric on Sami rights in Sweden followed the international trend of increasing recognition and placed importance on minority and Indigenous rights. Sweden, along with the other Scandinavian states, became one of the leading states in this respect, creating an international image as global "good citizens", peace loving and conflict-resolution oriented. In the 1970s and 1980s Sweden also actively engaged in anti-racist and anti-imperial activities, without questioning its own involvement in colonial and racist activities (Petterson 2012).

It is in this context that the Sami rights movement works today. While both the international community, as well as the Swedish general public, see the state as

exemplary when it comes to human rights, the Sami have not fully enjoyed the rewards. Sweden has not ratified the ILO Convention nr.169, one of the most important international documents concerning Indigenous rights, and the UN has several times reported on the situation of the Sami in Sweden, concluding that the state is not providing them with the rights accorded to them by the UNDRIP convention of 2007. There is, therefore, a contradiction between the image of Sweden and the actual situation of its Indigenous population (Anaya 2011).

12.6 The Sami Parliament in Kiruna

The Sami Parliament in Kiruna was established in 1993 by Act of Parliament in recognition of the fact that the Sami are a separate, Indigenous people. The Parliament acts as an institution of cultural autonomy for the Indigenous Sami people but has very weak political influence. It is formally a public authority, ruled and funded by the Swedish government, but has 31 democratically elected parliamentarians, whose mission is to work for the Sami people and culture in Sweden. More than 8000 Sami are now registered on the Sami Parliament electoral register (around 15–20,000 Sami are estimated to live in Sweden in total). The Parliament's main job is to support the Sami people and raise awareness of their cultural heritage and unique situation (Åhrén et al. 2007).

12.7 The Research

Seven people were interviewed for the research: four parliamentarians, the Sami Parliament's communications officer, one former parliamentarian and current international activist, and the president of the Sami council. The interviews took place in the months of April–May in 2014, both in person at the Sami Parliament and over the phone (Table 12.1).[1]

12.8 Who Is Sami?

The Sami have had great difficulty defining the characteristic features of members of their group, or what it means to be Sami. As has been discussed earlier, the Sami have faced centuries of systematic cultural repression by the Swedish state. This has led to their languages being nearly extinct, and their culture and traditional way of

[1]The interviews were conducted as part of my Masters thesis. All interviewees were aware that the interviews would be used and published.

Table 12.1 List of interviewees

Name	Profession	Political party
Marie Enoksson	Communications officer for the Sami parliament	X
Matti Berg	Ecotourism organiser and leader of a reindeer herding district	Representative for "Samilandspartiet" political party in parliament
Ol-Johan Sikku	Economist and vice president of the Sami Parliament	Representative for "Min Geaidnu" political party
Lars-Paul Kroik	Began as a reindeer herder but worked as a firefighter for most his life	Representative for Albmut political party in parliament
Josefina Skerk	Law student	Representative for "Jakt-och Fiskesamerna" (Hunting and fishing Sami) in parliament
Lars-Anders Baers	A lawyer and former president of the Sami Parliament for two terms. Currently a member of the Sami Council (a non-governmental Sami organisation with members from Finland, Russia, Norway and Sweden)	X
Mattias Ahren	A lawyer and legal scholar focusing on Indigenous People's rights. Has been the president of the Sami Council and a member of the expert group that drafted the Nordic Saami Convention	X

Source The author

living practised actively by only a small percentage of those with Sami heritage in Sweden. The Sami Parliament has since its creation struggled with finding appropriate criteria for those who wish to sign up for the voting register, finally settling on a language criterion requiring people to prove that one of their parents or grandparents spoke/speak a Sami language. Lars-Anders Baer discussed how the Parliament needs the criteria "in order to consider it legitimate as a Sami institute". Before the language criterion was in place there was concern that people with no real connection to the Sami culture would register to vote. Ol-Johan Sikku explains:

> It's hard to make an exact definition. The language definition is quite good because every Sami now today can have someone two generations back, and all the Sami could speak Sami. But then there is also that you *feel* Sami…so you can choose if you want to be Sami or not. Because if you have another competing culture, some people will simply feel Swedish rather than Sami.

Not all groups in the parliament agree on this language criterion. Lars-Paul Kroik is of the opinion that anyone who self-identifies as Sami should be able to participate in the Sami Parliament, without restrictions, as this is in line with international law on Indigenous Peoples that stresses self-identification as the most important factor. In his view, the large majority of the Sami in Sweden today have no access to their traditional way of life or lands, and he feels the Sami Parliament

supports this development of a voting criterion. Josefina Skerk echoed this sentiment: "We should be less worried about those who want to be Sami than those who do not feel Sami at all but have Sami heritage." Matti Berg, however, described it from his point of view as the leader of one of the reindeer herding villages:

> Who is Sami and who is not? If you look at the political part of the Sami Parliament you have two factions. One that is close to the reindeer herding, traditional, and then the part that is not. And many of the people that vote for the other side, from my point of view, they live in the south in big city areas. And they are not too close to the reindeer herding and the Sami communities. So they have, how shall I put it? They have lost the connection to the land.

While Marie Enoksson understood Matti Berg's concerns, she also spoke of the responsibility of the Parliament to those who want to reconnect with their Sami heritage. Due to the negative connotations of the Sami culture up until the 1980s, when the Sami rights movement really developed, many people raised their children without any mention of their heritage:

> In the southern part of the Sami area you have the older generation that says "We aren't Sami, I don´t think about that anymore" but their grandchildren say, "I want to be Sami, we are Sami, why didn't you tell us?" They have discovered as grown-ups that their relatives are actually Sami. So it's also a struggle to take back the culture and the identity when you realise where you come from…They need tools in order to reconnect to the culture.

It was clear from the interviews that the question of who is Sami is a major issue for the parliamentarians. It is both very personal to them as well as highly politicised. Thus one of the problems the Sami Parliament faces is navigating between the Sami people's right to self-identification—that is, not denying people access to the Sami Parliament—and the need for people to support their claims to indigenous identity status with some cultural specificity or proof of earlier repression.

12.9 Getting Sami Messages Across to the Public

All interviewees agreed that the Sami have struggled to get recognition from the Swedish society, not only as a distinct people, but also for recognition of the colonising that took place against them. Lars-Paul Kroik spoke of this struggle:

> Sweden has not been interested in acknowledging that there is a Sami population. But the Sami are stubborn and so now they have been forced to accept that we do exist and that we are here. Because we have survived throughout the ages.

Josefina Kroik attributed this ignorance in large part to the lack of information about the Sami in the Swedish school system. She wrote that the "problem is with the education system. No one learns about the Sami…I may sound like I have some conspiracy theories now, but the government really does seem to be strategic about this".

When asked about the lack of knowledge about the Sami in Sweden, Ol-Johan Sikku expressed his view that "I think it's still the same frame of mind from the beginning of the 19th century. They don't want to see the Sami culture…they don't see the problem at all, because they are educated to not see that."

Matti Berg agreed that by keeping people in the dark about the situation of the Sami in Sweden, the state gets away with doing very little for them. He asserted that, “It’s a way to deny us; they have done it from the colonizing start. Denying it is part of the assimilation process. If you are not seen or heard you don’t exist.”

Lars-Anders Baer emphasised how the lack of education about the Sami has led to stereotypical ideas about them:

> I once showed up to a meeting in Sweden years ago as a representative of the Sami and was told, “Oh you can’t be Sami, you’re blonde and blue eyed and they are dark and short”. So there is this racism, but you can’t really call it that. It’s more a lack of knowledge, and instead of knowledge there are these strange stories and stereotypes that people hear.

While many of the issues discussed during the interviews were on political topics and showed a clear divide within the Sami Parliament, the lack of support and understanding from the Swedish authorities was one topic they unanimously agreed on. Finding ways to introduce the situation of the Sami to the Swedish people is therefore an important project the Parliament works on, with support from all parliamentary groups.

12.10 Representing the Sami Abroad

Some of the politicians interviewed also spoke of the paradox of Sweden’s international reputation as democratic, liberal, and respectful of human rights, and their treatment of the Sami, which is not in line with this. Both Lars-Anders Baer and Ol-Johan Sikku described some hesitation on behalf of other Indigenous leaders at international conferences when they show up. Lars-Anders Baer said you first need to, “prove that we are in fact also ‘non-white’ and ‘non-European’ just like the other participants at the conference.”

Ol-Johan agreed and described his experience with participating at international conferences in this way:

> I speak of land grabbing and the same things as are happening in South America or Africa, the only difference is they (the Swedish) don’t shoot us. But the others don’t believe me, because it’s Sweden, the perfect land. Because Sweden has been so good in marketing themselves as the perfect country, with democracy and everything, but democracy isn’t for us, it’s only for the Swedish society.

12.11 Divisions Within the Sami Communities in Sweden

During the interviews it became apparent that there is a clear divide between those close to the reindeer herding and traditional way of life and the others. The parliamentarians see it as by far the largest political cleavage in the Sami Parliament and the wider Sami society in Sweden.

The Sami politicians interviewed believe this friction among the Sami in Sweden stems from the Swedish reindeer pasture law of 1928, which limited reindeer ownership and membership in any Sami village to nomadic herders and their families. Historically, many Sami had practised mixed husbandry, involving keeping both farms and reindeer. The law of 1928, according to the Sami politicians I spoke to, divided the Sami population and gave the reindeer herders a monopoly over the reindeer business as well as creating a legal definition of who is Sami, which excluded most of the population. This had, in Ol-Johan Sikku's view, widespread repercussions, which are still seen today:

> The Swedish state created those laws about reindeer herding and divided the Sami: the reindeer herders as the real Sami and the others are not. And still today it is like that because it has been such a long time, so it is in the society and also in the Sami society. You know if you colonise the mind for a hundred years, then you colonise also the minds of the Sami, so we start to create exactly what the state wanted from us.

Josefina Skerk described her understanding of the situation as someone from outside of the reindeer herding business:

> The herders believe they protected the culture during hard times and were the ones that kept the language going and therefore they should have more rights than the others. But us, my group, we see it in another way, we believe that we never gave up, that we kept on being Sami even without any rights and being told by the state that we are not.

Mattias Åhren, however, disagrees with the point of view of the Sami parliamentarians:

> This divide is, to a large extent, the result of people rewriting history as they wish it to be. A transition occurred, and this came from inside the Sami society, this is not anything that came from Sweden. The Sami realized that a more efficient way of using the land was to either practise a stationary lifestyle of farming or devote themselves fully to nomadic reindeer herding. That choice was completely free for all Sami at that time. But now there is a wish to rewrite history and say that they were forced out by Swedish legislation and that the Swedish legislation gave all these rights to reindeer herders when that is simply not the case. The reindeer herders won their rights by going to courts and claiming they established rights through traditional rights, an option that is open to every Sami, also outside the reindeer herding. But I can accept the argument that the legislation that came after the Reindeer Herding Act was biased.

Whether or not the 1928 legislation restricted reindeer herding to the nomadic Sami or came after a spontaneous societal change, it is clear that it was a part of a larger approach the Swedish state had to the Sami. This is the "Lapps shall be Lapps" policy, referred to earlier that identified the "real Sami" as those who are obviously different from the wider Swedish population, and protected that distinct Sami culture of nomadic reindeer herding.

Some say remnants of this can still be seen today. For example, the Sami villages, or reindeer herding districts, are the legally "affected party" in Sweden regarding possible projects on their lands that might disturb their traditional way of life and reindeer herding. Members of the Sami villages are also the only ones allowed to hunt and fish on their traditional lands. Matti Berg defended this position:

> When they [people outside of the reindeer villages] try to come back they just try to grab it, the land. And if people do it in that way it is natural behaviour that you must defend yourself. And then you have conflict. And that's the biggest problem at the moment for the Sami Parliament.

Josefina Skerk, a member of the hunting and fishing Sami political party in Parliament, felt it was important to emphasize the part her people played in preserving the Sami area:

> Many of the lands that the reindeer herders now use are areas we fought for, fishing and hunting…the reindeer herders are not the only ones that are affected by mining so they should not be the only ones to have a say. But there is a lack of trust, the reindeer herders are very protective of their rights, they are facing difficult times.

Marie Enoksson reiterated how different these two perspectives are:

> Today from the Sami villages' perspective, it is so tough to pursue reindeer herding, it does not fit into the Swedish system, and you don't get rich by doing it. You have to fight to protect yourself and to carry on the culture. You have the exploration from mines and water power plants, tourists, and roads. And so those people are fighting and they are fighting each other as well, because those who are outside the villages think that the people inside have all the privileges. So it's like these people come from two completely different environments.

On the other hand, Lars-Paul Kroik and his party Albmut would like to completely remove the restrictions to reindeer herding and land use in Sapmi.

> They [the reindeer herders] are in no way better equipped to practise or protect the Sami culture than other Sami are. They are not protecting the culture but the right to use the land in general, and restricting others to do so. Other groups in the Parliament that do not have direct access to the land are fighting for their right to it, not so everyone can enjoy it but based on some ancestry or history. This is not right. All Sami should have access to our lands.

This topic proved the most controversial of the ones tackled in the interviews. The Sami Parliament is essentially split in two on the topic of land rights, which is highly problematic as land rights are arguably the most important topic for the parliament. Finding an agreeable compromise all political parties in Parliament could stand behind is of high importance but not achieved at this stage.

12.12 Conclusion

Since its foundation the Sami Parliament has struggled with finding appropriate criteria for those who wish to sign up for the voting register, finally settling with a language criteria requiring people to prove that one of their parents or grandparents spoke/speak a Sami language. The groups in parliament have not unanimously accepted this criterion, and there are constant discussions on modifying or removing it altogether. So, while there is a practical working definition for who belongs to the Sami community, there has so far been no definition all groups can agree on. Who is Sami therefore in part depends on the context. In reindeer herding it is based on

ancestry, in the Sami Parliament on proof of language capabilities of your relatives, while for enrolling children in a Sami school today no criteria is needed, and in day to day life it seems most of the interviewees agree self-identification is highly important.

Another problem the Sami Parliament faces is navigating between the Sami people's right to self-identification, a criterion that does not deny people access to the Sami Parliament, and the need to support the claim to indigineity with some cultural specificity or proof of earlier repression. This is in line with international discussions on Indigenous rights, which stress the importance of self-identification, while also admitting some "objective" criteria (ancestry) is most likely needed in order to gain access to Indigenous rights.

Another specific issue the Sami in Sweden are faced with is gaining legitimisation for their claims within a society that conceives of itself, and is seen by the international community, to be highly human rights and minority rights oriented. The Sami Indigenous people have fought to have their presence, history, and circumstances within Swedish society told in Swedish schoolbooks but so far have had little success. The relationship between Sweden as the coloniser and the Sami as the colonised is not well known among the Swedish population, and leads to little support and interest in the Sami cause. The Sami politicians all agree that this is a major concern for them, with some suggesting this is a strategic policy by the Swedish state. To acknowledge racism as part of Swedish history would mean that it has to be dealt with seriously in the present time.

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Chapter 13
Regime of Marginalisation and Sites of Protest: Understanding the Adivasi Movement in Odisha, India

Jagannath Ambagudia

Abstract The era of liberalisation, privatisation and globalisation has been experienced differently by the various parties concerned. This brings hope for the state and corporate sector and despair for the Indigenous people of India, commonly referred to as Adivasis and formally identified as "Scheduled Tribes" by the Indian government. The state of Odisha signed 42 memoranda of understandings with multinational companies between 2002 and 2005, allowing the latter to exploit the natural resources of the Adivasis regions in that state. This has not only challenged an important means of their livelihood but is also leading to the erosion of the Adivasi culture, values and traditions in Odisha. The intrusion has created resentment and disenchantment among the vulnerable Adivasis communities. As a consequence, the Adivasis of the scheduled areas in Odisha have launched forms of resistance in their struggle to retain their ancestral rights over *jal* (jungle) and *jamin* (land, water and forests). Within this backdrop, this chapter explores the Adivasis movement in scheduled areas of Odisha.

Keywords Adivasis/Indigenous communities · Natural resources · Marginalisation · Struggle · Protest · India · Odisha · Scheduled areas

13.1 Introduction

Since the formation of modern India in 1948 the history of Indigenous Peoples, known in India as Adivasis, has been one of marginalisation, deprivation and subjugation. This is essentially because of the continuous erosion of Adivasis rights

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_13

over natural resources, such as land, water and forests. This condition of Adivasis society is not just the product of the post-colonial state but has continued since time immemorial. The process of land alienation has, however, accelerated in the post-colonial period. With the enactment of neoliberal policies in the 1990s, the state is allowing multinational companies (MNCs) to extract and exploit natural resources from the Adivasis regions. This has not only challenged their important means of livelihood but also has led to the incremental erosion of the Adivasis way of life, culture, values and tradition in India. So, the Adivasis are protesting against their marginalised position and struggling for their freedom and rights. This is most visible in scheduled areas.

This chapter aims to explore the interplay between the Adivasis and natural resources in scheduled areas of Odisha. Firstly, the chapter discusses the constitutional provisions of scheduled areas. Secondly, it examines the land question within the broader framework of developmental and mining projects and its ramification for Adivasis. Thirdly, it explores different dimensions of the Adivasi movement to reinstate and protect their rights over natural resources. I argue that the failure of existing legislative measures to protect Adivasi rights in scheduled areas has created discontent among the Adivasis communities, thereby leading to the emergence of different forms of protest and resistance against the erosion of Adivasi rights over natural resources.

13.2 Scheduled Areas

The origin of scheduled areas has a colonial legacy. The British first coined the phrase "scheduled areas" in the 19th century (Government of India 2004: 5). By introducing constitutional reforms in 1919, the British partially or totally excluded certain areas from the civil administration. Following the British precedents, the post-colonial Indian state adopted scheduled areas under the fifth and the sixth schedules to the Constitution. Scheduled areas are autonomous areas within a state that are administered federally and are usually populated by a predominant Adivasi population. The fifth schedule is enacted to cover the partially excluded areas, whereas the sixth schedule covers the totally excluded areas. The fifth schedule covers the states of Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Odisha, Rajasthan, Jharkhand Madhya Pradesh and Chhattisgarh. The sixth schedule refers to the northeastern states of Assam, Meghalaya, Mizoram and Tripura with a provision of the establishment of Autonomous or Regional District Councils. These Councils have been granted administrative, legislative and judicial powers. Article 244 (1) of the Constitution empowers the President to declare a particular area as a scheduled area by a notified order after consultation with the Governor of that state. Under Clause (2) of Paragraph 6 of the fifth schedule, after consultation with the Governor, the President can also increase, decrease, alter the scheduled areas or repeal any Orders relating to scheduled areas. The criteria for declaring any area as a scheduled area under the fifth schedule are: preponderance

of Adivasis population, compactness and reasonable size of the area; a viable administrative entity such as a district, block or taluk;[1] and economic backwardness of the area as compared to the neighbouring areas.

The scheduled areas are designed to protect and promote the interest of the Adivasis people. The fifth schedule empowers the Governor to prohibit or restrict the transfer of Adivasis land in scheduled areas. Paragraph 5 (1) of the fifth schedule states that all laws, central or state, shall be applied to the scheduled areas unless the Governor, by public notification, directs that they shall not apply in part or full to such areas. It is worthwhile mentioning that during the colonial period, the Governor decided which civil laws were to be applied to the partially and totally excluded areas. In the post-independent India, however, enacted laws of the federal government and the state are automatically applied to scheduled areas unless the Governor uses his power to restrict such application, which is unlikely because the Governor acts as the agent of the federal government. The Governors show little interest in the administration of scheduled areas in contemporary India (Centre for Policy Research 2013). The Tribes Advisory Councils (TAC) are established in states with scheduled areas, and consists of not more than twenty members of whom, as nearly as may be, three-quarters should be from the representatives of Adivasis in the Legislative Assembly of the state. The role of the TAC is to advise the State Government on matters pertaining to the welfare and advancement of the Adivasis in the state, as may be referred to it by the Governor. As the agendas of the TAC are fixed by the government and the Chief Minister presides over the meeting, s/he may include or exclude any item or approve or disapprove anything (Centre for Policy Research 2013).

13.3 Scheduled Areas of Odisha

The scheduled areas of Odisha[2] constitute more than 44 % of the total state land area. Out of 30 districts in Odisha, 12 districts have been declared as fully or partially scheduled areas. The six districts of Koraput, Malkangiri, Mayurbhanj, Nabarangpur, Rayagada and Sundergarh, are declared as fully/totally scheduled areas and the remaining six districts, Balasore, Gajapati, Kalahandi, Kandhamal, Keonjhar and Sambalpur as partially scheduled areas (Singh 2005: 290). The 2011

[1]Taluk is a sub-district level administrative unit in India, which is mainly created for economic administration in terms of regulating land relations as well as collecting land revenues. Taluk is also known as Mandal and Tahasil in different parts of India.

[2]The scheduled areas in the State of Odisha were originally specified by the Scheduled Areas (Part A States) Order, 1950 (Constitution Order, 9) dated 23.1.1950 and the Scheduled Areas (Part B States) Order, 1950, (Constitution Order, 26) dated 7.12.1950 and have been re-specified as above by the Scheduled Areas (States of Bihar Gujarat, Madhya Pradesh and Orissa) Order, 1977, (Constitution Order, 109) dated 31.12.1977 after rescinding the Orders cited earlier in so far as they related to the state of Odisha (Government of India 2004: 194).

census shows that the Adivasis people make up more than half of the population of the fully declared scheduled area districts, although some districts with more than 50 % Adivasis population, such as Gajapati (54.3 %) and Kandhamal (53.6 %) have been declared as only partial scheduled areas. In short, a high concentration of Adivasi population is not the only criterion to determine a scheduled area. It also has to be a viable administrative entity with evidence of economic deprivation.

13.4 Land Alienation and Displacement in Scheduled Areas of Odisha

Despite the existence of protective legislative frameworks, such as the Orissa (Odisha) Scheduled Area Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 (amended in 2002 and 2008) and the Panchayat[3] Extension to Scheduled Areas (PESA) Act, 1996,[4] Adivasis lands are subject to continued erosion through such practices as the institution of moneylenders, collusive title suits, illegal permissive or forcible possession, unredeemed mortgages, fraudulent transfers, abandonment and the making of incorrect entries in the records-of-rights (Government of India 2009: iii). Through such practices there has been a massive alienation of Adivasis lands in Odisha. However legal processes have also restored land to the Indigenous Peoples. A total of 105,491 cases alleging alienation of 104,742 acres of land have been filed in the court in Odisha. An estimated 104,644 cases were disposed of by the court. Of these, 61,431 cases were disposed of in favour of Adivasis and 56,854 acres of land were restored to Adivasis groups (Government of India 2008: 276), as detailed in Table 13.1.

Odisha is one of the mineral resource-rich states of India. In Odisha the districts located in the scheduled areas are rich in coal, iron ore and bauxite, making them vulnerable to rapid development. Table 13.2 exhibits the availability of mineral resources in scheduled areas of Odisha. Table 13.3 shows the annual extraction of mineral reserves. There is a positive relationship between the availability of mineral resources and land alienation among the Adivasi communities in the scheduled areas of Odisha (Tables 13.1, 13.2 and 13.3).

The availability of mineral resources has extended the opportunities for the multinational companies to sign memoranda of understandings (MoUs) with the state government of Odisha. Between 2002 and 2005, 40 MoUs have been signed by the state government in the steel sector, and two in the aluminium sector. Out of these 12 MoUs have been signed in scheduled areas of Odisha with a capacity of producing 9.08 million tons per annum (MTPA) of steel and one producing one

[3]Panchayat is an administrative unit at the grass root level, which has been created to ensure active people's participation in the process of governance.

[4]PESA empowers the *Gram Sabha* (village council) to enforce prohibition, ownership of minor forest produce, power to prevent alienation of land and restore unlawfully alienated land.

Table 13.1 Adivasi land alienation and restored in scheduled areas of Odisha in acres (As on December 1999)

Districts	Land alienation	Land restored	% of land restored
Balasore	41.76	18.49	44.27
Gajapati	4724.62	479.93	10.15
Kalahandi	815.57	491.31	60.24
Kandhamal	15864.55	6729.46	42.41
Keonjhar	1347.10	408.22	30.30
Koraput	28901.96	17112.48	59.20
Malkangiri	3156.31	1205.52	38.19
Mayurbhanj	7097.97	1005.17	14.16
Nawarangpur	7396.76	3750.71	50.70
Rayagada	11092.53	5997.51	54.06
Sambalpur	267.88	51.86	19.35
Sundergarh	4177.09	1473.88	35.28
Odisha	84884.1	38724.54	45.62

Source Government of Orissa (2001), *Tribes in Orissa: A Data Sheet* (Bhubaneswar: Scheduled Castes and Scheduled Tribes Research and Training Institute)

Table 13.2 Mineral resources in scheduled areas of Odisha

District	Mineral resources
Balesore	–
Gajapati	–
Kalahandi	Graphite, Gemstone, Quartz
Kandhamal	Graphite
Kendujhar	Chromite, Iron ores, Manganese ore, Pyrophyelite, Quartzite
Koraput	Bauxite, Lime stone, Mica, Quartzite, China clay
Malkangiri	Quartz
Mayurbhanj	Asbestos, China clay, Fire clay, Iron ores, Manganese ore, Kyanite, Quartzite, Soap stone, Silica sand
Nabarangapur	–
Rayagada	Graphite, Manganese ore
Sambalpur	China clay, Quartz, Soap stone, Coal
Sundargarh	Dolamite, Coal, Fire clay, Iron ores, Manganese ore, Bauxite, Lime stone, Lead ore, Quartz, Soap stone, Silica sand

Source Government of Orissa (nd) *Development Indicators of Scheduled Tribes in Orissa* (Bhubaneswar: Scheduled Castes and Scheduled Tribes Research and Training Institute)

MTPA of aluminium (Government of Orissa not dated: 15–16). These MoUs have had a deep impact on the scheduled areas, as they will cover a significant proportion of Adivasi land, thereby displacing large numbers of families.

Guided by the colonial doctrine of "Eminent Domain", the state has also acquired a large amount of land and forests, again depriving the Adivasis of control

Table 13.3 District-wise break-up of extraction of major minerals in Odisha 2012–2013 in lakh million tons

Districts	Chromites	Coal	Iron ore (provisional)	Manganese ore	Bauxite
Anugul	–	611.96	–		1
Dhenkanal	0.16				
Jajpur	28.68	–	7.03		–
Jharsuguda	–	342.43	–		–
Keonjhar	–	–	447.42	4.77	–
Koraput	–	–	–		54.2
Mayurbhanj	–	–	14.24	–	–
Sundergarh	–	12.03	160.62	0.53	0.4
Sambalpur	–	22.37	–		–

Source Government of Odisha (2014), *Odisha Economic Survey, 2013–2014* (Bhubaneswar: Directorate of Economics and Statistics, p. 186)

over their resources. In the name of the national interest, the construction of dams in Kolab, Machkund and Indravati of the Koraput district and Balimela in the Malkangiri district for hydroelectric projects and the setting up of industries such as Hindustan Aeronautics Limited, Nalco Alumina Refinery and mines at Damonjodi of Koraput district displaced a large number of Adivasis from their land in scheduled areas of Odisha, depriving them of important sources of livelihood as well as the means of preserving their cultural identity. For instance, the hydroelectric project of Machkund in Koraput district displaced a large number of Adivasis (51 % of the displaced families are Adivasis). The hydroelectric project of Balimela in Malkangiri district affected 1113 Adivasi families (Ambagudia 2010: 62). Though the Adivasis of Odisha constitute 22.8 % of the population, 40 % of the displaced families are Adivasis in Odisha (Government of India 2002: 466).

13.5 Discontent and Protest

The earlier part of the chapter shows that much of Odisha's mineral resources are located in the protected schedule areas. Since the formation, the fifth schedule has been under constant threat of amendment to allow the transfer of Adivasi land to non-Adivasi people and corporate bodies (Shah 2010: 18). The process of Adivasi land alienation is accelerated, not only by the establishment of different industries, but also by the transfer of land from Adivasis to non-Adivasis, discussed later in this chapter. For instance, Koraput district witnessed extensive land alienation, though it is not competitively rich in mineral resources in comparison to other scheduled districts of Odisha. The enactment of neoliberal policies in the 1990s, allowing the MNCs to extract these resources from the Adivasi region, is increasingly contributing to the growing erosion of Adivasi rights over resources, which has generated protest and resistance. The protest and resistance of the

Adivasi communities in Odisha emerged in response to a threat to their means of livelihood. Such resistance was prominent in the 1990s because the displaced Adivasis had not been rehabilitated and compensated for earlier development projects, and the state is initiating new projects. The exploitation of natural resources by the MNCs is increasingly contributing to the scarcity of resources in scheduled areas of Odisha. The laws and policies of the Odisha state are no longer governed by the idea of social justice and social welfare but by the maximisation of profit and exploitation of resources. This resulted in people's growing disenchantment with state policies and reflected various magnitudes of resistance. The contemporary Adivasis movement in scheduled areas of Odisha has two different dimensions: one, their resistance against the establishment of industries in Adivasi areas, and, two, the transfer of Adivasi land to the non-Adivasis.

13.6 Kashipur Struggle

The Adivasi people have been resisting against Utkal Alumina International Limited (UAIL), which proposed mining Bauxite from the Baphlimali hills of Kashipur block in Rayagada district. The mining project acquired 2,800 acres of land in Kashipur Block in 1995, of which 2,153 acres were privately owned. The Kashipur Block falls under the fifth schedule areas and is also governed by the PESA Act, 1996. At the initial stage of land acquisition, the state government did not follow the norms enshrined in the PESA Act and failed to consult *Gram Sabha* (village councils) while acquiring land, but *Gram Sabhas* were consulted at a later stage in order to fulfill the legal requirements. Under the PESA Act, consultation with the *Gram Sabha* or the Panchayat at the appropriate level is mandatory in the case of land acquisition in scheduled areas. It is also mandatory to obtain the recommendations of the *Gram Sabha* or the Panchayat at the appropriate level before granting a mining lease for minor minerals in the scheduled areas. The state, however, has breached the "*Gram Sabha* or the Panchayat" clause and ignored the *Gram Sabha* in most of the cases while granting licence to the corporate sectors, which has generated protest and resistance in different parts of Odisha.

The Adivasi people formed various committees such as Prakrutika Sampada Suraksha Parishad (PSSP), Bashundhara Suraksya Samiti, Vanasampad Suraksha Samiti and Baphlimali Suraksha Samiti to accelerate their struggle against the project. These important developments took place in 1998 as a result of a referendum conducted by the PSSP across 40 villages, where 96 % of the people rejected the UAIL project (Srikant 2009: 3).

The continuation of the Adivasi movement between 1998 and 2010 with its hopes and despairs compelled two of UAIL's partners, Tata and Norsk Hydro, to withdraw from the project. This has not, however, stalled the mission of the company. The state has responded to the movement with repressive measures. The movement has currently reached a standstill position, and the company is moving ahead with mining bauxite.

13.7 The Niyamgiri Movement

In the case of Langigarh block of Kalahandi district, the Dangaria Kandha Adivasi people continue to campaign against the Vedanta Alumina company which, with the Odisha mining corporation, aims to mine bauxite deposit from Niyamgiri hills. This proposed project will affect 302 households of 12 villages of Bathilima and Langigarh panchayats of Kalahandi district (Singh 2005: 240). The agitation by the Dangaria Kandha Adivasi people started in 2003 after the Chief Minister, Naveen Patnaik, laid the foundation stone for Vedanta's one-million-tonne-capacity refinery at Lanjigarh (Das 2010). The public protests and signs of resistance were initially limited to the affected households and villages (Xaxa 2012: 196). But the campaign spread and support came from other Kandhas when they realised that the proposed mining would dishonour their sacred site, Niyamgiri Hill. The Kandhas and other affected people formed an organisation known as Niyamgiri Suraksha Samiti (NSS) on April 7, 2004, with the slogan '*Vedanta Hatao*' (Remove Vedanta) (*The Times of India,* 2006, May 28). The members of this organisation planned, coordinated, executed and sustained their resistance for over a decade, with the aim to protect the natural resources. They questioned the violation of laws by the company when it went ahead with the construction of its refinery.

Vedanta claimed not to be violating any law, but the Saxena Committee report demonstrated that Vedanta violated the Forest Conservation Act, the Environment Protection Act and the Forest Rights Act (Government of India 2010: 53, 65, 71). Vedanta also violated the Samata judgement of the Supreme Court of India.[5] Acknowledging the Adivasis' rights over resources and the religious importance of Niyamgiri Hill, on April 18, 2013, the Supreme Court ordered the state government to consult the 12 affected *Gram Sabhas*. In a series of *Gram Sabha* meetings, all the 12 *Gram Sabhas* of Rayagada and Kalahandi districts unanimously voted against the bauxite mining in Niyamgiri Hill (Maharaptra 2013).

There are instances in the cases of both the Kashipur and Langigarh movements where the state has tacitly supported the developers by deploying police personnel to stop the protest actions by the Indigenous Peoples. Though the role of the state should be to protect the rights of the people, in these cases, it has failed to intervene effectively on the side of the people, who are deprived of their rights. The existing literature, however, shows that the Adivasis are not against development and do not express a desire to live in isolation. They want to be a part of development but wish to redefine the concept of development as one which emerges from within the community (Mishra/Roy Choudhary 1993: 48–53). So, the ongoing protests are not

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[5]Samata, an NGO working in the scheduled area of Andhra Pradesh, filed a case against the Government of Andhra Pradesh for leasing Adivasi lands to private mining companies in the scheduled areas. The special leave petition filed in the Supreme Court led to an historic judgement in July 1997 by a three judge-bench which declared that government is also a 'person' and that all land leases to private mining companies in the scheduled areas are null and void.

against industrialisation but the Adivasi people are demanding their rights within the broader perspective of social justice in Odisha.

13.8 Adivasis' Resistance Against Non-adivasis

Apart from waging campaigns against exploitative resource development on their lands by commercial operators the other form of Adivasi resistance in Odisha is their protest against government policies to transfer Adivasi land to non-Adivasis, referred to as Dalits, who are the other group at the bottom of India's highly structured society in terms of poverty, education and social power. This struggle has its basis in the Indian caste system where Dalits, comprising some 16 % of the total population, are the lowest ranking of the castes and confined to the lowest levels of occupation, principally casual manual labour. Though being the most deprived of rural households in India, the Adivasis control and farm more land than Dalits. Governments in many states have enacted land reform policies to forcibly re-distribute Adivasi land to Dalits and also other marginalised ethnic groups. Adivasis have campaigned to retain control of the land that is the basis of their livelihood and cultures. Scheduled areas of Odisha witnessed this resistance in response to the appropriation of land without consent, with conflicts between Adivasis and Dalits in Narayanpatna block of Koraput district, Adivasi-Bengali conflicts in Nabarangpur district and Kandha-pana (Adivasi-Dalit) conflicts in Kandhamal district.

The centrality of all these conflicts is the importance of land and forests in Adivasi life, where the Adivasi communities experience "relative deprivation" in a resource relation paradigm. In other words, the affirmative policies of the state have failed to protect Adivasi rights in Odisha (Ambagudia 2010: 66).

13.9 Violence in Adivasi Protests

While most Adivasi campaigns have been peaceful there have been instances where frustration at the violation of their rights as Indian citizens and also as Indigenous Peoples in the international context has spilled into violence. The Adivasis' protest has sometimes taken violent forms, especially in the case of Narayanpatna and Kandhamal conflicts. In such instances questions have been raised as to whether the Adivasis initiated violence on their own or whether there has been any role of outside forces inciting violent means? It is worthwhile mentioning that the right-wing Hindu forces such as Bajrang Dal and Sangh Parivar played a significant role in creating violence in Kandhamal conflict, and transformed the socio-economic competition into a communal conflict, portraying the dispute as a case of Hindu-Christian violence. Similarly, in the case of Narayanpatna conflict, the Naxalites had a role in generating violence, while presenting their movement as

an Adivasi movement (Ismail/Shah 2015) and inciting Adivasis to following violent means. However, these are generally specific instances in local contexts and not organised campaigns.

13.10 Conclusion

The contemporary Adivasi movements in the scheduled areas of Odisha are directed towards protecting and reinstating the Adivasi rights over their means of livelihood, such as land and forests. The Adivasis are generally peace-loving people, and they do not incite violence unless compelled to do so or with outside influence. They give due recognition to the peaceful means of protest. Though the internationally renowned 'tree-hugging' Chipko movement of the 1970s in Uttarakhand may not be exclusively considered as the Adivasi movement, it set an example of peaceful movement to protect forest resources that has been followed by Adivasis in Odisha. Even in the case of protecting the sacred Niyamgir Hill, the continuous peaceful movement of the Adivasis compelled the Supreme Court's intervention to halt the project and restore the power of the *Gram Sabha* to regulate the transaction of natural resources in scheduled areas.

As there is a symbiotic relationship between the Adivasis and land and forests, the state should be functioning in accordance with the United Nations Declaration on the Rights of Indigenous People. The state should not take the advantage of the powerlessness of Adivasis. The Adivasis in India are not against the development per se. But the development model that runs counter to Adivasi culture, values, traditions and rights will certainly be questioned by the Adivasis. The need of the hour is to design the developmental process in a more "inclusive" manner, which would not only facilitate community involvement but also ensure Adivasis' rights. Adivasis participation in or control over developments that affect their lives will enable them to maintain and strengthen their institutions, cultures and traditions (United Nations 2007). The effective implementation of the rights of Adivasis to control the process of development under *Gram Sabha* will enhance harmonious and cooperative relationships between the state and the Adivasis in India.

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Chapter 14
Conclusion: Peacebuilding Experiences and Strategies of Indigenous Peoples in the 21st Century

Heather Devere, Kelli Te Maiharoa and John P. Synott

Abstract This chapter functions as a conclusion to this volume of studies of peacebuilding and the rights of Indigenous Peoples. It reviews major developments in global institutions, centred around the United Nations Declaration of the Rights of Indigenous Peoples and consequent academic scholarship in the various fields of Indigeous Studies. In particular, this chapter examines the synergy between these achievements in international policy and scholarship in respect to the rights of Indigenous Peoples with key principles and discourse in peace studies, specifically the interrelated concepts of peacebuilding and nonviolence. The chapter reviews the contents and approaches of the wide-ranging studies presented in the book, identifying important cohesions and insights across the different nations and cultures researched in this set of studies. It reviews the four interlinked themes that provide an organisational pathway for the chapters and concludes with some considerations of methodology, emphasising the value of emerging distinctive Indigenous approaches to contemporary research.

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7_14

Keywords Peacebuilding · Indigenous rights · United Nations Declaration of the Rights of Indigenous Peoples · Political processes · Peace strategies · Nonviolent action · Sustainable peace · Methodology

14.1 Introduction

At the close of the first decade since the adoption of the United Nations Declaration of the Rights of Indigenous Peoples, there has been significant documentation of the situation for Indigenous peoples globally. Much of this has been initiated through the United Nations Division for Social Policy and Development: Indigenous Peoples and the UN Permanent Forum on Indigenous Affairs. Also significant contributions have emerged from international non-government organisations such as the International Work Group for Indigenous Affairs and also Cultural Survival, with its valuable journal *Cultural Survival Quarterly*. In addition to these sources of policy, information and research there have been a range of university-based academic publications that cover areas of history, law, gender, politics and culture. Over the last several decades, Universities have established departments of Indigenous Studies, and national governments have set up institutions for the purpose of advancing knowledge and research in respect to Indigenous Peoples. These initiatives have greatly deepened knowledge related to Indigenous Peoples across spheres such as traditional and historic cultures, languages, identity, experiences of colonialism and of First Peoples pursuing pathways to survival through the 20th century and up to the present time.

Much of the recent literature has been concerned to redress research and scholarship of previous times that ignored the perspectives of Indigenous Peoples and contributed substantially to the subordination and discrimination against Indigenous Peoples worldwide. The emergence of academic literature that presents Indigenous Peoples' perspectives and Indigenous research methodologies is, according to Reimer et al. (2016) "a guiding framework that is in the infant stages of remedy" in addressing past forms of knowledge that contributed to the conflicts.

In this book, we have presented essays that contribute to this framework through recognition of the engagements of the pursuit for the rights of Indigenous Peoples based on the principles of peacebuilding. The concept of peacebuilding in international discourse has evolved from an uncomfortable hyphenated compound of two words—peace-building—into an integrated concept with a single word. "Peacebuilding" in the words of political scientist Ho Won Jeong (2000, 38):

> is largely equated with the construction of a new social environment that advances a sense of confidence and improves conditions of life. Leaving an abusive and dependent relationship intact is incompatible with peacebuilding. Conflict transformation can underscore the goal of peacebuilding through empowering a marginalised population exposed to extreme vulnerability in such a way to achieve self-sufficiency and well-being. Thus, the successful outcome of conflict transformation contributes to eliminating structural

violence…Reviving indigenous cultural, social and political forces is essential to expanding democratic social space.

The authors in the chapters of our book have analysed the peacebuilding work of Indigenous Peoples in eight different nation states: The Aboriginal Peoples of Australia; Maori and Moriori in Aotearoa New Zealand; the First Nations People of Canada; the Adivasi People, the Purumunda Community, and Indigenous Peoples of India's Northeast; the Indigenous East Timorese; the First Nations Peoples of Taiwan; the Aymara People of Bolivia; and the Sami in Sweden.

Across this range of locations interesting similarities and differences can be discerned. While there have been relatively different experiences in respect to the degree of violence to which the Indigenous people have been subjected and the various government responses, these case studies reveal similarities in the struggles and challenges faced by Indigenous communities everywhere. These include the long-term and on-going impacts of colonisation, particularly the core issues of land ownership and rights, poverty, social and political inequality, the demands for self-determination and the endeavours of the different communities to assert their distinctive identities.

Likewise, the peacebuilding practices of Indigenous groups worldwide are widely shared, including nonviolent resistance, resilience in adhering to cultural principles, the appeal and dedication to reconciliation processes, efforts to work through formal, often alien, systems of law and political processes, community-based activism and the formation of Indigenous Peoples alliances locally and worldwide. The trend of forming international alliances continues to strengthen with the sharing of past experiences and circumstances through participation in the agencies established for Indigenous Peoples within the United Nations and through technological advances that facilitate communications between Indigenous Peoples' groups. The chapters show ways that peacebuilding activities are adapted to the realities of the challenges in each country and show a range of innovative and original applications specific to the circumstances.

14.2 The Key Themes of the Book

In the Introduction, John Synott orients the book towards the UN Declaration of the Rights of Indigenous Peoples as an internationally validated framework for the multi-faceted campaigns for the rights of Indigenous Peoples worldwide. Four interlinked themes provide an organisational pathway for the subsequent chapters.

Theme One consists of chapters by Andrew Gunstone, Kim Verwaayen and Cheng-Feng Shih that cover *the pursuit of Indigenous Peoples' rights through political processes.* The authors analyse instances of how the peaceful campaigns for the rights of Indigenous Peoples have been affected by different government administrations in, respectively, Australia, Canada and Taiwan.

These chapters highlight the calls of the Indigenous Peoples to address issues ranging from territorial and identity rights, to violence (particularly gender violence), in their pursuit of self-determination and self-government. In these chapters identity is shown to be a complex issue, with self-identity often related to traditional community affiliations rather than a common Indigenous identity. The fiction of a stereotyped and characteristic identity was imposed on Indigenous Peoples through the colonial invasions of soldiers, convicts and settlers. The values of European civilisation with its scientific racist theories of a hierarchy of humans were imposed, with Europeans at the top of the "chain of being" and Indigenous people at the bottom. This process has left Indigenous populations decimated and battling to retain and regain indigenous cultures, land, languages and identities.

The relentless struggle of Indigenous Peoples to have their human rights recognised has been unceasing in the relationships between Indigenous Peoples and their oppressor cultures and governments. Not surprisingly then, particularly in the contemporary age of identity politics, identity is understood in this book as a key factor in the political process involving Indigenous Peoples. The chapters examine the campaigns by and successes of Indigenous Peoples in the context of opposition by governments to implement constitutional and legislative reforms that recognise Indigenous identities.

In addressing political processes and constitutional changes, the chapters trace the initial race-based classification of Indigenous Peoples and the history of changing nomenclature of the people by governments, with terminology ranging across labels such as Indian, Aboriginal, Indigenous and First Nations (apart from all the racist, pejorative labels and language of oppression), and then to more recent recognition of locally diverse identities such as the sixteen distinct Indigenous Peoples officially recognised in Taiwan, and the inclusion of Torres Strait Islander People in the Australian legislation. The authors provide examples of the actions of Indigenous Peoples in the form of activism and peacebuilding in pursuit of their political rights. In Canada are examples of individual activists, such as Sharon McIvor, member of the Lower Nicola First Nations people, and the petitioning of governments. In Australia there are shared political campaigns with other social movements and Aboriginal and Torres Strait Islander Peoples' alliances with diverse sectors of society.

The second key theme of the book is concerned with *presenting cases of campaigns to improve the rights of Indigenous Peoples by using traditional peace strategies and nonviolent actions*. The case studies in this section come from Aotearoa New Zealand, Canada and India. Within Aotearoa New Zealand the regeneration of three forms of Indigenous peace traditions are narrated by Kelli Te Maihāroa (Waitaha), Maui Solomon (Moriori) and Maata Wharehoka (Parihaka), with Heather Devere (Pākehā), in a collaborative chapter. In Canada, Jeffrey Ansloos who is Nehiyan (Cree) from the Fisher River Cree Nations combines narrative and analysis to highlight the First Nation's peace perspectives. From Bolivia, Fabiola Vidaurre Belmonte explores Indigenous conflict resolution concepts and strategies pursued by the Aymara people.

These chapters establish common themes related to the negative impacts of colonisation and European settlement such as land dispossession, militarisation, lack of recognition and political disempowerment. Nonviolent actions by the Indigenous Peoples include passive resistance, protests, political lobbying, peace marches and prayers. A significant contrast is evident between government-imposed reconciliation processes such as the Truth and Reconciliation Commission in Canada and the conflict resolution and reconciliation practices of the Indigenous Peoples. As Nishnaabekwe scholar, Leanne Simpson (2011: 22 cited in Ansloos) puts it: "To me, reconciliation must be grounded in cultural generation and political resurgence."

Indigenous peace resolution traditions in these chapters incorporate values of wholeness, spirituality, harmony, honouring, building trust, respect, and healing. They are culturally maintained through remembrance, re-enactment and regeneration of cultural histories, knowledges and narratives. The metaphor of a river, as used by Ansloos, resonates with the messages of these chapters where he describes peace as "parallel and intertwining rivers, interacting yet distinct, honouring of that which we share in common as well as protecting our distinctiveness in a harmonious way".

The third organisational theme of the book focuses explicitly on *the challenges and barriers to the implementation of the rights of Indigenous Peoples*. The countries examined here are Australia and India. In a close analysis of complexities within the Australian legal system Asmi Wood describes the continuing struggles of Aboriginal and Torres Strait Islander Australians to gain recognition in the Australian Constitution. In her Indian case study of opportunities and difficulties for community development, Mousumi De addresses the problems of absolute poverty and food insecurity for the Purumunda Community in the state of Odisha in India. Her grassroots case-study maps the experiences of a collaborative development programme between the Purumunda village community of Indigenous People and external NGOs. Following this discussion, the long-standing and sometimes violent struggles for their internationally-recognised rights of the Indigenous People of India's Northeastern states are analysed by Leban Serto and Mhonyamo Lotha who describe in their broad-ranging chapter the pressures of the "predatory forces of modernisation and development" on Indigenous Peoples. They examine how the Indian government is an active participant in struggles over development through its continuing manipulation of the rights of Indigenous Peoples as it collaborates with the forces of corporate development and also pursues its own political agenda. Of all the studies in these chapters the case in N.E. India represents a high degree of armed conflict in recent history between Indigenous Peoples and government and the study records the current trend pursued by the Indigenous groups away from arms and towards nonviolent and negotiated conflict resolution.

These analyses highlight a range of complexities concerning the legal status of Indigenous Peoples. Initially faced with discriminatory legislation, followed by government resistance to appeals for issues to be addressed and subsequent reforms that produce further negative impacts, the Indigenous Peoples of Australia and India continue to experience marginalisation. The lack of power and representation, particularly for women, leave them vulnerable to exploitation. However, as De

presents in her chapter, there are valuable possibilities and lessons to be learned through empowering communities to engage in self-development projects, often in liaison with external non-government organisations. However, maintaining the balance of responsibility for decision-making and operational power in such projects is a delicate process upon which the success or failure of such projects may depend.

The Indian case studies are of isolated communities that often have no access to knowledge about their rights and where even the most basic human right of sustaining life is in doubt. Their crises include starvation and death from hunger. The constitutional status for the Indigenous people of India is complex, with its roots in the Hindu social caste system, having separate provision for different categories of "scheduled tribes", with some communities completely denied recognition.

In the Australian case, many Aboriginal and Torres Strait Islander people suffer from poverty and experience severe inequality across most social areas in comparison with other Australians. This inequality is underscored by the race-based nature of the Australian Constitution and the chapter here analyses the efforts, possibilities and challenges of ensuring that Constitutional change results in equal rights for Indigenous Peoples.

As Wood affirms, without proper recognition and equal legal status for Indigenous Peoples, peacebuilding efforts are founded "as if on quicksand". Following from Ansloos' chapter in the previous section the metaphor of a river also resonates with Wood who writes: "Today the two rivers, black and white run separately and unequally: perhaps tomorrow their waters will be equal and one".

The fourth linked theme we identified as a key perspective in this book is that of *concepts and practices related to the 21st century achievement of Indigenous Peoples Rights within the context of sustainable Peace*. This section presents three chapters whose authors examine ways different groups of Indigenous People have worked towards the outcome of sustainable peace. The chapter by Sophie Close is focused on cultural principles and norms that contributed to the peace process in East Timor. This study examines the period in the wake of Timor Leste's war of independence from the repressive forces of Indonesia. The long-standing armed and also passive resistance of the people of East Timor to Indonesian rule, combined with the efforts of the international community convinced Indonesia to withdraw, resulting in the establishment of the Democratic Republic of Timor Leste in 2002. Close's chapter compares the Indigenous East Timorese peacebuilding practices with liberal peacebuilding methods employed by international agencies in the context of post-conflict trauma and community breakdown as consequences of the violence of the war.

There will be recognition from other Indigenous communities of some of the complexities involved in the peacebuilding systems of Indigenous East Timorese. Babo-Soares 2003 (quoted in Close) describes them as "continuous, non-linear, multi-dimensional, connecting multiple generations, lineages and clans, land, customary houses, the future, and the ancestors". The inadequacies of liberal peacebuilding and conventional conflict resolution are exposed by Indigenous approaches that are based on holistic values that weave together understandings of

Indigenous knowledge systems, culture and governance, with rituals, symbolism and chanting or singing.

In her chapter in this section, Guðrún Rós Árnadóttir discusses the political mobilisation of the Indigenous Sami population of Sweden and questions of identity. Resonating with the experiences other Indigenous Peoples around the globe are some of the issues that Árnadóttir's research has identified as mobilising the campaigns for rights of the Sami people. Indigenous rights, recognition, and identity have been assessed as fundamental to peacebuilding. The implications of legal status for Sami compare with other Indigenous People in terms of access to traditional resources and the retention of social, economic, cultural and political institutions.

Jagannath Ambagudia examines in his chapter the Adivasi movement in India and the forms of resistance used by Adivasi people to retain their ancestral rights over 'jal' (jungle) and 'jamin' (land, water and forests). Issues surrounding the exploitation of the natural resources of the Adivasi regions in India are common to many other Indigenous groups facing commercial exploitation of their lands and resources. The challenge to their means of livelihood and gradual erosion of the Adivasi way of life, culture, values and traditions has created resentment and disenchantment. The chapter describes the development of a resistance movement by a peace-loving community trying to protect its rights through non-violent means, yet drawn into occasional violence.

In summary, the four key themes reach across a wide range of experiences and issues faced by Indigenous Peoples around the globe. The chapters presented in this book, summarised here in the Conclusion, provide important case-examples and insights into the way different Indigenous communities have worked within the conditions of their circumstances to advance their claims for various rights as endorsed by the Universal Declaration of Indigenous Rights. In the following sections we complete our survey with an evaluation of distinctive aspects of the book, informed by the material in the preceding chapters.

14.3 Peacebuilding and the Rights of Indigenous Peoples

The preceding synthesis of the chapters presented in this book has identified a range of both unifying and distinctive themes that represent the contact experiences and subsequent engagement of Indigenous Peoples with recognisable global forces such as historical colonialism and contemporary economic globalisation. They show that Indigenous Peoples movements are both culturally-based and engage in nonviolent activism for social change, using recognised nonviolent movement tactics such as demonstrations, occupations, publications, informal education. They also examine the ways Indigenous Peoples have worked through the formal political and legal process of the various nations identified in these studies. In many instances the concurrent social movements and legal and political activism reinforce each other. These pillars of Indigenous Peoples' campaigns for their now universally-recognised

rights have been strengthened through their commitment to peacebuilding, understood here in the sense of nonviolent practices and strategies to pursue their distinctive rights as laid out in the United Nations Declaration of the Rights of Indigenous Peoples.

The crossroads of philosophical, ethical and political traditions that placed nonviolence as the essence of peacebuilding in modern movements for political and social change is most notably recognised in the person of Mohandas Gandhi, who exemplified and repeatedly insisted that nonviolence was not just the key way but was the only way to achieve the goals of the movement. He is recognised as the teacher and inspiration for the distinguished tradition of modern leaders who through nonviolence brought about major social and political change in their nations, highlighted on the global stage by Martin Luther King and Nelson Mandela, but with many outstanding examples. Nevertheless, some of the chapters here underscore much older traditions of nonviolent peacemaking amongst First Nations cultures around the world.

When the term "peacebuilding" was first introduced into international and peace studies lexicon its meaning was defined around the core of nonviolence and there was considerable attention paid to Gandhi's work, philosophy and writings. The founders of the International Peace Research Association (IPRA) in 1964, such as Kenneth Boulding, Johan Galtung and Elise Boulding defined IPRA as an association "to advance interdisciplinary research into the conditions of peace and the causes of war and other forms of violence", (IPRA Statutes Article 3). Under the pressures of the Cold War, that had brought the world's population to the brink of military disaster, those who joined IPRA over the succeeding half century developed and examined concepts and strategies that were relevant to the goal. The emphasis on nonviolence in peacebuilding was widely disseminated over the next decades through the spread of peace studies courses and research in universities, and the formation of specialist research centres around the world.

While "peacebuilding" was a key term from that early work which became a theoretical foundation of peace research, another important concept was that of "structural violence". The notion of structural violence was an explanatory concept that identified institutionally embedded structures and practices that embodied, enforced and reproduced repressive racial, cultural, gender, social, property, economic, and power relations. Identification of systems of structural violence was inherent in social change towards peacebuilding. Thus it was not surprising that the early definition of "peacebuilding" included the notion of structural violence, as the antipathy of nonviolence. From their early conceptions the process of peacebuilding entailed nonviolent practices. However the term "peacebuilding" has changed in response to changing international priorities and crises. It is worthwhile to briefly review these changes in the "peacebuilding" concept, because it helps to locate the understandings of the concept as used in this book and its potential implications into the future.

In 2005 the United Nations established a Peacebuilding Support Office (PBSO).[1] In its online statement of its activities, the PBSO presents the changing definitions of the term "peacebuilding". It notes that the term was promoted in the early 1970's by Johan Galtung, an IPRA founder, who called for the creation of peacebuilding structures to promote sustainable peace by addressing the "root causes" of violent conflict and supporting indigenous capacities for peace management and conflict resolution. In 1992, former UN Secretary-General Boutros Ghali produced the report *An Agenda for Peace* in which peacebuilding was defined as action to solidify peace and avoid relapse into conflict.

The 2002 report of the Panel of UN Peace Operations, the so called Brahimini Report, defined peacebuilding as:

> activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war.

In 2007, under Sec.-Gen. Ban Ki Moon, The Secretary-General's Policy Committee adopted the following concept of peacebuilding to inform UN practice generally:

> Peacebuilding involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives (PBSO).

Reviewing these definitions, it is clear that there have been both achievements and losses in the changing constructions of peacebuilding. The gradual inclusion of the peacebuilding concept into becoming a core principle of the United Nations is a great achievement. It has been advanced though the activities of those five generations of peace researchers and educators that have fostered, examined, researched and published books, established courses on and presented conference papers on peacebuilding. The term is essentially an active and operational concept and has been employed by UN and other international agencies work in many post-conflict reconstruction programmes of recent decades, commencing from the cessation of the Balkans War and the Northern Ireland Peace Agreement. Since those times the UN has placed peacebuilding activities at the centre of post-conflict sites. Therefore, one can recognise and appreciate the growing global adoption of peacebuilding.

However, a core notion, ethic and operational principle of peacebuilding has been subsumed by the new pragmatic definitions and concepts of implementation of peacebuilding, and that is the principle of nonviolence. Whereas the term was used specifically in the early formulations of "peacebuilding" it is not mentioned in the most recent definitions (above). Perhaps the best that can be claimed is that the notion of nonviolence is implicit in terms like "sustainable peace and

[1]Accessible Online at http://www.un.org/en/peacebuilding/pbso/pbun.shtml (9, May 2016).

development", in the current definition. Does this matter? Is nonviolence sufficiently central to the peacebuilding process that it has to be explicit in definitions of peacebuilding? Is, perhaps, the promotion of nonviolence impossible to achieve and not sufficiently pragmatic in the actual context of post-conflict societies? A reasoned reply to these questions would surely be that nonviolence is a precondition for societies and cultures in pursuit of sustainable peace and development. Arguably, the planet's human populations are realising that violence against each other and to the planet herself are threats to our sustainable survival and, under the threat of crisis, are shifting towards nonviolent forms of development, for instance, renewable energy systems.

The case studies in this book of Indigenous Peoples in pursuit of their rights demonstrate that principles of nonviolence retained in many Indigenous cultural traditions have long been valuable resources for those groups in maintaining their coherence and identities, that nonviolence as a tactic in the modern period has benefited Indigenous movements as they move away from violence, as in the case of N.E India. The commitment to nonviolence through participation in democratic political processes in all of the countries investigated in these studies has advanced the causes of Indigenous Peoples in pursuit of their rights.

For sure, the cases in this book document how difficult the journeys of Indigenous Peoples through the political systems have been and that there have been major setbacks and obstacles presented by what can only be identified as structural violence. Even such matters as changing definitions of who is and who is not regarded as an Indigenous person manifest embedded resistances and tendencies towards exclusion of Indigenous Peoples. To address these instances of structural violence, peacebuilding with nonviolence at the core has been the most successful strategy for Indigenous Peoples.

14.4 Comments on Methodology

While the authors of the various chapters in this book have employed a range of qualitative methodologies in their research, the overall project constitutes an example of the comparative case-study research method. This undertaking has produced some interesting insights and conclusions regarding the usefulness of such a method. Firstly, the range of studies along a common theme of investigating the pursuit of Indigenous Peoples rights allows researchers to identify features that are common to this activity across different national and cultural contexts. In the current study a common characteristic to the campaigns of the various Indigenous groups is that of the aspirational standards set by the United Nations Declaration of the Rights of Indigenous Peoples. Another constant feature, discussed above, has been the adherence to nonviolent strategies as the key to peacebuilding for Indigenous Peoples.

Another valuable finding from the methodology of these studies is that of the contributions offered by scholars and researchers of Indigenous identity who

increasingly employ research methods aimed at capturing Indigenous perspectives on the particular cases under examination. Without opportunity here to elaborate on this important methodological development, comparative to the emergence of feminist research methodologies in women's studies, it is salient to recognise the historical context that Indigenous People around the world were one of the most studied "subjects" in the field of Anthropology from the late eighteenth century, and that research contributed greatly to the legitimacy of dispossession and genocide of Indigenous Peoples. Without a voice they were defined and treated in ways that legitimated the invasions and destructions of their peoples and cultures.

More recently, research theories and methodologies consistent with Indigenous worldviews have been developed by Indigenous scholars to articulate their investigations and analyses on their own terms and in their own voices. This relocation of research agendas by focusing on issues affecting Indigenous Peoples, as well as way in which the research is conducted, serves not only to heighten political awareness and raise consciousness, but also to create spaces within the academic world for undertaking research through an Indigenous lens. Thus research is now or can be viewed as a form of decolonisation as Indigenous Peoples engage with the research tools in order to resist colonial discourses and dismantle the shackles or forms of oppression by elevating Indigenous voices, positions and experiences.

In particular Chapters Five and Six in this book present self-consciously Indigenous research methods that are shaped by the cultural perceptions of appropriate research discourse for Indigenous scholars on Indigenous research topics. These chapters both exhibit a fealty to cultural identity, subjectivity and narrative exposition. Inclusively, of the fourteen chapters in this book, half of them were written in whole or part by Indigenous scholars, and of the seventeen authors represented in the book, nine of them are Indigenous people. The comparative case-study method has undoubtedly facilitated this opportunity and valuable outcome.

14.5 Experiences and Strategies for the 21st Century

A final consideration we must address in this conclusion is how the understandings gathered from this book can be developed in the future. As Moana Jackson, the inspirational teacher, Maori lawyer and human rights activist who worked on the early formulations of UNDRIP has written in his Foreword to this book, the embrace of nonviolence as the peacebuilding key towards achievement of the distinctive rights of Indigenous peoples is also the key to the cessation of war and other forms of violence that threaten human and planetary well-being.

Progress towards these essential goals can be achieved to the extent that research on the campaigns for the achievement of the rights of Indigenous Peoples can be linked towards broader community and global concerns. Research into sustainable solutions on environmental issues such as protection of land and nature, biodiversity, development, resource extraction and management are implicitly informed by the environmental knowledge and cultural concepts of Indigenous Peoples

around the planet. Similarly, the pursuit of peace for all peoples on our planet is most achievable through peacebuilding practices that place nonviolence as the core principle. The cases in this book show ongoing examples of this principle in practice. As Mr. Moana Jackson writes in the Foreword:

> As in so many things Indigenous Peoples have much to offer humanity and the common belief that everyone and everything is interrelated, that we are all friends, might be the most important contribution of all. For it offers not just a framework for humans to find peace with each other but with the Earth Mother as well.
>
> The contributions in this book illustrate how Indigenous rights are being advanced through various peacebuilding strategies. But they also suggest strategies for peace too, strategies which understand that peace is more than the absence of war. It is living with 'friends' respectful of the fullness of each other's humanity and mindful that such respect is itself an antidote to the 'othering' that too easily leads to war. Therein lies the hope.

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Appendix I
Definitions and Demographics of Indigenous Peoples in the Countries Researched in this Book

Who are the World's Indigenous Peoples?

It has been estimated that the world's population of 400 million Indigenous Peoples, some 5 % of the world's population, represent over 5000 distinct peoples who reside in approximately 90 countries of the world. Indigenous Peoples live in every region of the world while about 70 % of Indigenous Peoples live in Asia. One third of the world's 900 million extremely impoverished rural people are Indigenous Peoples. Indigenous Peoples hold 20 % of the Earth's land mass and that land is home to 80 % of the Earth's remaining biodiversity. Moreover there is great diversity across Indigenous populations, within nations as well as between them. Global and national indicators of a demographic group named Indigenous Peoples suggest a common identity and while many Indigenous Peoples around the world have formed together as a world Indigenous Peoples movement with official status at the United Nations and are unified in their support for the Declaration of the Rights of Indigenous Peoples, each group and individual's primary cultural identity and affiliation is with their familiar, usually traditional communities.

Moreover various factors ensure that both globally and locally those figures are approximate ones only. Factors that affect accurate population statistics of Indigenous Peoples include: that Indigenous Peoples have historically been omitted from national population censuses and this practice continues in some regions; that the remote and dispersed locations of Indigenous Peoples make it difficult for proper census to take place; and the census-gathering processes are often under-resourced in remote locations. Another contributing factor that distorts Indigenous Peoples demographics is that some Indigenous Peoples choose not to identify as such for population census purposes, fearing that may bring oppressive consequences. For example, some nation-states have at times established policies of removing children from homes where there are Indigenous and non-Indigenous parents. Under such conditions parents withhold information regarding their Indigenous identity from government officials such as census collectors. In other cases, changed wording on census forms from one census to another regarding ethnicity have been known to affect to a considerable degree those people who

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

identify as Indigenous. In summary, accurate statistics of Indigenous Peoples are rarely available, particularly in developing and underdeveloped nations.

In developed nations with sizable populations of Indigenous Peoples, such as USA, Canada, Australia, New Zealand and Taiwan, more accurate statistics regarding Indigenous Peoples have been obtained in situations where Indigenous Peoples become involved in formal institutions, such as imprisonment rates, employment, health and welfare statistics and education rates. However, such measures represent points of engagement by Indigenous Peoples with the systems that have overwhelmed and often oppressed Indigenous cultures, so serve to highlight problems faced by Indigenous Peoples of criminality, unemployment, welfare-dependency, high degrees of ill-health and illiteracy in mainstream societies, while rendering invisible the many strengths of Indigenous societies such as strength of identity, cultural vitality, powerful forms of knowledge of the natural world, and distinctive forms of justice and peacemaking. Thus, these statistics need to be interpreted with a view to policies for support and development of Indigenous Peoples. As stated by the Division of Social Policy and Development: Indigenous Peoples: "Data collection and disaggregation concerning Indigenous Peoples pose unique challenges in terms both of developing data for global comparative purposes and of developing data that is useful at a microlevel for Indigenous Peoples".

The most useful sources for demographic data on Indigenous Peoples around the world are the United Nations Division for Social Policy and Development: Indigenous Peoples, available online at: www.un.org/development/desa/indigenouspeoples/; international NGOs such as International Work Group on Indigenous Affairs (IWGIA), available online at: www.iwgia.org/; international institutions such as development banks and the World Health Organisation; and government national statistics bureaus in specific nations. We have used information from all these sources in presenting in this Appendix demographic information for the various Indigenous Peoples discussed in this book in their respective nation-states. These figures are presented as a guide to understanding the material in the various chapters and not as definitive statistics. Some chapters may present more detailed and varying statistics than the ones presented as a general guide here.

Identification and Indigenous Peoples

Not surprisingly statistical information on Indigenous Peoples has also varied because of changing definitions of Indigenous Peoples. Historically definitions were concocted using skin colour and other physical characteristics, principally for the purposes of scientific racism, dispossession of land, social exclusion, and at times murder and genocide of Indigenous Peoples. In more recent decades, with the development of human rights principles, there have been considerable debates around the question of the definition of "Indigenous Peoples". In the present time different nations continue to hold various definitions as to who are Indigenous Peoples. No formal definition has been adopted by any United Nations body and the

UN holds the position that "no formal universal definition is necessary for the recognition and protection of their rights."

A useful working definition was proposed in the United Nations report *State of the World's Indigenous Peoples, Vol. 2* (2015), which we quote in full here:

> One of the most cited descriptions of the concept of 'indigenous' was outlined in José R. Martínez Cobo's Study on the Problem of Discrimination against Indigenous Populations. …Martínez Cobo offered a working definition of "Indigenous communities, peoples and nations". In doing so, he expressed a number of basic ideas…including the right of Indigenous Peoples themselves to define what and who are Indigenous Peoples. The working definition is as follows:
>
> 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 systems. This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors: (a) Occupation of ancestral lands, or at least of part of them. (b) Common ancestry with the original occupants of these lands. (c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.). (d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language). (e) Residence in certain parts of the country, or in certain regions of the world. (f) Other relevant factors. On an individual basis, an Indigenous person is one who belongs to these Indigenous populations through self-identification as Indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference (From *State of the World's Indigenous Peoples*, Vol. 2, 2015, United Nations. Available Online; at: http://www.un.org/esa/socdev/unpfii/documents/2015/sowip2volume-ac.pdf) (28 April 2016).

Indigenous Peoples Around the World

Some valuable perspectives on Indigenous Peoples presented in the United Nations Report: *State of the Worlds Indigenous Peoples* (2010) included that:

> The current situation of Indigenous Peoples remains a concern within the United Nations. They are among the world's most marginalised peoples, and are often isolated politically and socially within the countries where they reside by the geographical location of their communities, their separate histories, cultures, languages and traditions. They are often among the poorest peoples and the poverty gap between Indigenous and non-Indigenous groups is increasing in many countries around the world. This influences Indigenous Peoples' quality of life and their right to health.

Every day, indigenous communities all over the world face issues of violence and brutality, continuing assimilation policies, dispossession of land, marginalisation, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and a host of other abuses (Source: *State of the Worlds Indigenous Peoples* (2010); at: http://www.un.org/esa/socdev/unpfii/documents/SOWIP/press%20package/sowip-press-package-en.pdf) (20 April 2016).

Indigenous Peoples Demographics in Nations Covered in this Book

Aotearoa/New Zealand: Indigenous Peoples population: 598,000 people; 15 % of total Aotearoa/New Zealand population (Source: International Work Group on Indigenous Affairs at: www.iwgia.org/regions/oceaniapacific/aotearoa-new-zealand) (1 May 2016).

Australia: Indigenous Peoples population: 670,000 people; 3 % of total Australian population (Source: International Work Group for Indigenous Affairs).

Bolivia: Indigenous Peoples Population: 430,000; 40.3 % of total population (2102 census). Source: InterAmerican Development Bank, Gender and Diversity Division.

Canada: Indigenous Peoples population: 1,400,685 people; 4.3 % of the total Canadian population (Source: International Work Group on Indigenous Affairs; at: www.iwgia.org/regions/north-america/canada) (1 May 2016).

India: Indigenous Peoples population: 84.3 million people; 8.2 % of total population (Source: International Work Group on Indigenous Affairs).

Sweden, Indigenous Peoples population: 20,000 (Source: International Work Group on Indigenous Affairs; at: www.iwgia.org/regions/arctic/sapmi) (1 May 2016).

Taiwan: Indigenous Peoples population: 534,561; 2.28 % of total Population (Source International Work Group on Indigenous Affairs; at. www.iwgia.org/regions/asia/taiwan) (1 May 2016).

Timor Leste: the majority of East Timorese identify as members of the 16 different language/cultural groups in Timor-Leste, which are all regarded as Indigenous groups, with a total population of 1,185,613 (April 19, 2016).

The National Centre for Peace and Conflict Studies, University of Otago, Dunedin, New Zealand

The National Centre for Peace and Conflict Studies (NCPACS) is New Zealand's first Centre to combine global cross-disciplinary expertise on the issues of development, peacebuilding and conflict transformation. The Centre was established at the University of Otago in 2009. The NCPACS is a post graduate theory, research and practice centre located within the Division of Humanities, University of Otago. It has a multidisciplinary faculty, research affiliates, visiting scholars and partner organisations from around the globe. Under the leadership of Founding Chair, Professor Kevin Clements, the faculty has established a world class reputation in the field.

The aims of NCPACS are:

- To build understandings of peace and conflict grounded in the experiences of people, places and history, and in ways that respect customary and local requirements for sovereignty, development, legitimate governance and wellbeing.
- To learn from dialogue, theoretical insight, international research and practical experience, including Aotearoa/New Zealand's own experiences of Treaty partnership and engagement in international peacebuilding.
- To deliver high-quality postgraduate programmes at Masters and Ph.D. levels.
- To conduct research on the causes of intrastate and international armed conflict; security, conflict resolution and post-conflict peacebuilding with special reference to the Asia-Pacific region.
- To provide expert advice and advanced-level short courses and training for government and non-government organisations engaged in conflict resolution,

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

peacebuilding, development, humanitarian intervention, and policy making around the role of justice and good governance in sustainable peace.
- To engage in practical projects that build local capacities for sustainable development, community engagement, governance and conflict transformation in the Asia-Pacific region, and in Aotearoa/New Zealand's own contexts.
- To facilitate evaluations and impact assessments of practical projects in the field.
- To advance the understanding and knowledge of conflict resolution processes by conducting state-of-the-art training in negotiation, mediation, and cross-cultural conflict resolution.

The Centre has a large and growing cohort of New Zealand and international Ph.D. students, many funded by University of Otago Scholarships and Rei Foundation Ltd Scholarships. The Centre also offers a Master of Arts by thesis and course work Master of Peace and Conflict Studies, drawing students from a wide range of undergraduate disciplines. NCPACS Faculty and students are involved in a range of innovative research within Aotearoa-New Zealand, South East and Northeast Asia and conflict zones in Africa. The results of this are being published in a range of refereed journals and academic and commercial publishing houses. For more information about the Centre, its courses, scholarships and research go to www.otago.ac.nz/ncpacs.

The Department of Peace and Conflict Studies, University of Sydney, Australia

The University of Sydney's Department of Peace and Conflict Studies promotes interdisciplinary research and teaching on the causes of conflict and the conditions that affect conflict resolution and peace. Research projects and other activities focus on the resolution of conflict with a view to attaining just societies.

The Department aims to facilitate dialogue between individuals, groups or communities who are concerned with conditions of positive peace, whether in interpersonal relationships, community relations, within organisations and nations, or with reference to international relations.

The Department is involved with the selection and awarding of the Sydney Peace Prize since 1998. Its most recent recipient in 2016 was human rights and climate change activist and author Naomi Klein. Previous recipients of this prestigious award include Archbishop Desmond Tutu (1999), Vandana Shiva (2010), Xanana Gusmao (2000) and Australian Indigenous Rights leader Patrick Dobson (2008).

Other projects of the Department of Peace and Conflict Studies includes the establishment of an Australian Peace Museum.

Profile and details of The University of Sydney Department of Peace and Conflict Studies is available from: http://sydney.edu.au/arts/peace_conflict/.

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DOI 10.1007/978-3-319-45011-7

The International Peace Research Association (IPRA)

Founded in 1964 during the crisis period of the Cold War, IPRA developed from a conference organised by the "Quaker International Conferences and Seminars" in Clarens, Switzerland, 16–20 August 1963. The participants decided to hold international Conferences on Research on International Peace and Security (COROIPAS), which would be similar to the Pugwash Conferences on science and world affairs, with a focus on nuclear disarmament.

A Continuing Committee established for the new body met in London, 1–3 December 1964. At that time, they took steps to broaden the original concept of holding research conferences. The decision was made to form a professional association with the principal aim of increasing the quantity of research focused on world peace and ensuring its scientific quality.

An Executive Committee was appointed. This group was also designated as Nominating Committee for a 15-person Advisory Council to be elected at the first general conference of IPRA, to represent various regions, disciplines, and research interests in developing the work of the Association. The first conference was held in 1965 in Groningen, Netherlands.

Since then, IPRA has held twenty-five biennial general conferences, the venues of which were chosen with a view to reflecting the association's global scope. Thus it operates as a truly global NGO for academic researchers and educators across the general area of Peace Studies. From its early consolidation around European and more generally Western membership it has grown to become a cosmopolitan, globalised association with strong participation of women and members from all regions and cultures.

The core identity and purposes of IPRA are contained within its statutes. Article 2 states that IPRA "is a voluntary non-profit association of researchers and educators cooperating for scientific purposes". Article 3 states that "the purpose of IPRA is to advance interdisciplinary research into the conditions of peace and the

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

causes of war and other forms of violence. To this end IPRA shall undertake measures of world-wide cooperation designed to assist the advancement of peace research, and in particular:

- to promote national and international studies and teaching relating to the pursuit of world peace,
- to facilitate contacts between scholars and educators throughout the world,
- to encourage the international dissemination of results of research in the field and of information on significant development of peace research.

Over half a century IPRA has become a prominent international association in pursuit of these goals and has been associated with a vast number of publications and research projects that have built the knowledge fields across different discourses of Peace Studies. It has been a pioneer in the links between research, education and activism in interdisciplinary projects, university courses and research centres.

The academic core of IPRA is the Commissions of which there are currently twenty-four, including the Commission for the Rights of Indigenous Peoples. The names and interest areas of the Commissions are: Art and Peace; Conflict Resolution and Peacebuilding; Peace Security and Development; Ecology and Peace; Migration and Peace; Gender and Peace; Global Political Economy; Indigenous Peoples' Rights; Internal Conflicts; Human Rights and Human Security; Nonviolence and Peace Movements; Peace Culture and Communication; Peace Education; Peace History; Peace Journalism; Peace Negotiation and Mediation; Peace Theories; Media, Conflicts, Human Rights; Reconciliation and Transitional Justice; Religion, Spirituality and Peace; Security and Disarmament; Sports and peace; Youth and Peace; Peace Tourism.

Apart from the Commissions there is a world-wide network of regional associations affiliated with IPRA. Working from the same core principles, the regional Associations have their own internal structures and host their own conferences yet work closely with IPRA in their activities. Currently IPRA has five affiliated Regional Peace Research Associations:

AFPREA—Africa Peace Research and Education Association
APPRA—Asia-Pacific Peace Research Association
CLAIP—Latin America Peace Research Association
EuPRA—European Peace Research Association
PJSA—North America Peace Research Association.

One of IPRA's valuable functions is as a roster organisation with consultative status to the Economic and Social Council of the United Nations (ESOC). In this role IPRA has potential opportunities to participate in advocacy, consultation and discussion on issues pertinent to the work of ESOC. These representatives also fulfil important roles through communications back to the IPRA regarding progress and status of various matters before ESOC.

Further information on these activities of IPRA, including membership opportunities, current conferences, newsletter and other activities can be accessed from the website of the International Peace Research Association at: http://www.iprapeace.org/.

The Commission for the Rights of Indigenous Peoples Within IPRA

The Commission for the Rights of Indigenous Peoples was initiated at the IPRA Conference in 1996 and fully established in 2000. The focus of the commission has been the recognition of First Peoples, globally embracing over 350 million people, with a great diversity of cultures and distinctive ways of life and important knowledge systems. However, Indigenous Peoples have been historically invaded by colonial empires, bringing much cultural destruction and loss of traditional lands and in the modern period are commonly subordinated as minorities within nation states where they suffer the effects of development, marginalisation, environmental destruction and cultural hegemony.

Nevertheless, the world-wide movement of Indigenous Peoples to assert their human rights, gain land, cultural, political and economic rights, legal recognition, education, health and other forms of social equality has been an important movement in the international context. Often, Indigenous Peoples have been involved in internal-conflicts within states but have also celebrated their cultures and achieved important developments in securing their distinctive rights, as recognised by the United Nations Declaration of the Rights of Indigenous Peoples. This commission welcomes participation from Indigenous researchers, scholars and educators as well as all those working or interested in promoting the rights of Indigenous Peoples.

Information about the commission can be obtained from the current convenor Dr. Manjushri Sharma, Symbiosis Arts and Commerce College, Pune, India. Email: manjushrisharma@hotmail.com or from the IPRA Secretariat.

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

Kelli Te Maihāroa

Ko Aoraki te mauka teitei	Mt Cook is the ancestral mountain
Ko Waitaki te awa	Waitaki is the river
Ko Uruao te waka	Uruao is the ancestral canoe
Ko Waitaha te iwi	Waitaha are the people
Nō Te Waipounamu ahau	I am from the South Island
Ko Te Maihāroa te rakatira	Te Maihāroa is the chief
Ko Kelli Te Maihāroa ahau	I am Kelli Te Maihāroa

Kelli Te Maihāroa descends from the Waitaha People and is the great granddaughter of the Māori prophet Te Maihāroa, the last prophet of the South Island, who led his people on a peace walk (Te Heke) to reassert their claim to land. She is a Lecturer at the University of Otago, College of Education in Aotearoa New Zealand and a mother of five boys. She works closely with her whānau (family) and iwi (tribe) on various events/issues ranging from environmental protection to the preservation of cultural customs and resources. She is currently studying towards her Ph.D. in the area of indigenous passive resistance and peace traditions. She works in the area of initial teacher education and has twenty years work experience within the health and educational sector, specialising in working within indigenous models of practice. She is the Secretary and Board Member for the Waitaha Tai Whenua Trust Board and is an Executive Committee member of the International Peace Research Association (IPRA) and of the Asia Pacific Peace Research Association (APPRA).

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

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About this Book

This book analyses perspectives for advancing the rights of Indigenous People within peace-building frameworks: Part I critically links issues of Indigenous Peoples Rights (struggles for land, human, cultural, civil, legal and constitutional rights) with key approaches in peacebuilding (such as nonviolence, non-violent strategic action, peace education, sustainability, gender equality, cultures of peace, environmental protection). Part II examines Indigenous leaders and movements using peace and non-violence strategies. Part III presents case-studies on the successes and failures of peace perspectives in respect to contributions, developments, advancement and barriers to the rights of Indigenous Peoples. Part IV investigates pathways to the achievement of Universal Indigenous Peoples Rights in the 21st century within the context of sustainable peace. This book confirms that peace-building approaches underpin significant achievements for the rights of Indigenous Peoples.

Introduction: Advancing Indigenous Peoples Rights Through Peacebuilding (John P. Synott)

Part I: The Pursuit of Indigenous Peoples' Rights Through Political Processes in Contemporary Peacebuilding: 2 Reconciliation, Peacebuilding and Indigenous Peoples in Australia (Andrew Gunstone)—3 UN Declaration on the Rights of Indigenous Peoples in the Canadian Context: A Study of Conservative Government Rhetoric and Resistance (Kim Verwaayen)—4 Pursuing Indigenous Self Government in Taiwan (Cheng-Feng Shih).

Part II: Cases of Traditional Peace Strategies and Nonviolent Actions Inspiring Campaigns for the Rights of Indigenous Peoples: 5 Regeneration of Indigenous Peace Traditions in Aotearoa/New Zealand (Heather Devere, Kelli Te Maihāroa, Maui Solomon, Maata Wharehoka)—6 Peace Like a Red River: Indigenous Human Rights for Decolonising Reconciliation (Jeffrey Ansloos)—7 Right to Justice and Diversity of the Indigenous Peoples of Bolivia (Fabiola Vidaurre Belmonte)

Part III: Challenges and Barriers to the Implementation of the Rights of Indigenous Peoples: 8 The Confluence of Two Rivers: Constitutional Recognition of Australia's First Peoples (Asmi Wood)—9 Empowering Tribal Communities towards Sustainable Food Security: A Case Study of the Purumunda Community

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H. Devere et al. (eds.), *Peacebuilding and the Rights of Indigenous Peoples*,
The Anthropocene: Politik—Economics—Society—Science 9,
DOI 10.1007/978-3-319-45011-7

Media Lab in India (Mousumi De)—10 Indigenous People's Struggle for Dignity and Peacebuilding in Northeast India (Leban Serto and Mhonyamo Lotha).

Part IV: Concepts and Practices Related to the 21st Century Achievement of Indigenous Peoples' Rights within the Context of Sustainable Peace; 11 Indigenous East Timorese Practices of Building and Sustaining Peace (Sophia Close)—12 Who is Sami? A Case Study on the Implementation of Indigenous Rights in Sweden (Guðrún Rós Árnadóttir)—13 Regime of Marginalisation and Sites of Protest: Understanding the Adivasi Movement in Odisha, India (Jagannath Ambagudia)—14 Conclusion: Peacebuilding Experiences and Strategies of Indigenous Peoples in the 21st Century (Heather Devere, Kelli Te Maihāroa and John P. Synott).

More on this book is at: http://www.afes-press-books.de/html/APESS_09.htm.

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