

# **Congrès de l'Association Européenne des Anthropologues Sociaux -EASA2012**

## **Uncertainty and disquiet**

**Nanterre University, France, 10/07/2012 – 13/07/2012**

### **Indigenous rights in a global context**

**Location** Theatre S3

**Date and Start Time** 12 Jul, 2012 at 11:30

#### **Panel Convenors**

Charles Menzies (University of British Columbia)

Irène Bellier (CNRS EHESS-SOGIP)

#### **Abstract**

The UN Declaration of the Rights of Indigenous Peoples recognizes the rights of indigenous peoples while not actually providing a consistent mechanism to implement these rights in specific national contexts. At the national levels, governments have variously implemented laws and regulations governing aboriginal peoples. However, there is wide variation from State to State in regards the extent of regulation and the legal definition of who constitutes an indigenous person, an indigenous nation, an indigenous people. Our participants draw from ongoing ethnographic research with Indigenous communities to explore how indigenous authority and jurisdiction is enacted at the local, and regional levels and how it is presented and enacted in global contexts. Our papers take a global, multi-scale, comparative perspective to document and discuss the social, cultural and political issues relating to governance and the rights of Indigenous Peoples. Ultimately, we are concerned with investigating the ways in which the principles of the UN Declaration are put into practice in specific national contexts.

#### **Papers**

##### **The appropriation of Navajo weavers' designs: historicizing gendered and globalized injustice**

*Author:* Kathy M'Closkey (University of Windsor)

#### **Abstract**

Thousands of Navajo weavers encounter intense competition sustained by the importation of "knock-offs" from over twenty countries. Although the Navajo Nation recently trademarked its name, protection for communal property rights eludes producers. Books authored by scholars containing large colour photographs of Navajo textiles are purchased by entrepreneurs and become templates for future production of knock-offs. As long as the imports are not labelled "Indian-made," sales of knock-offs are permitted because the federal Indian Arts and Crafts Board Act (1936, 1990), truth-in-advertising legislation, protects consumers, not producers. Because many Navajos endure third world living conditions, my presentation challenges political economists' support for the unauthorized re-production of Navajo designs by Latin American Indigenous weavers over the past three decades (Cohen 1998, Stephen 1991, 1993, 2005, Wood 2000, 2008). The production of knock-offs is well-publicized in books and high-profile journals such as *Human Organization*, *Dialectical Anthropology* and *Cultural Survival* read by thousands of scholars. Yet there has been no response from the academy acknowledging the long-term consequences of appropriation. Thus publications featuring Navajo textiles side-step the manner in which artisans are now enmeshed in globalization. Given the sustained century-long commercialization of the region and its residents, implementation of Articles 11, 20 and 31 of the UN Declaration of Rights of Indigenous Peoples, supporting artisans' rights to protection, will prove particularly challenging.

##### **Land governance in Eeyou Istchee: emergence and renewal of Cree institutions**

*Author:* Colin Scott (McGill University)

#### **Abstract**

The past four decades have seen dramatic institutional elaboration of Cree responsibility for their land and sea territory through regimes of divided and shared jurisdiction negotiated with Québec and Canadian governments. This paper examines the complementarities and contradictions that connect and separate indigenous and modern

bureaucratic forms, the intersecting and divergent interests of the parties to negotiated treaty and other arrangements, and the power dynamics involved. One dimension of Cree strategy, oriented in particular to hunters and hunting, is to define and defend local spaces where indigenous institutions may endure as largely self-governing forms. Another dimension is to craft electoral-bureaucratic practices that compete, on a regional scale, for a favourable jurisdictional and beneficiary status alongside state-level entities in the 'sustainable development' of 'natural resources' and civic administration. These strategies involve a multi-scale positioning of indigenous agency, from leadership of family hunting territories to engagement in regional, provincial, federal, and transnational organizational networks. What are the implications of resulting institutional arrangements for the fulfillment, or not, of international indigenous rights standards? How has the discourse around these standards contributed to developments in Eeyou Istchee?

### **Marine rights and coastal indigenous peoples of the North Pacific**

*Author:* Thomas Thornton (University of Oxford)

#### **Abstract**

In the United States the strongest protections of indigenous rights have come through treaties with Indian tribes, and court decisions enforcing these rights. Yet a variety of other regimes have evolved in post-treaty America (i.e., since 1868) to protect indigenous rights to sacred sites and natural and cultural resources. The success of these other regimes, based upon limited recognition of ethnicity and cultural rights, rather than Native sovereignty, has been considerably lower from the standpoint of achieving indigenous human rights, though there are some signs of hope. Using a political ecological framework, this paper examines, in particular, subsistence rights over marine resources and repatriation rights to alienated objects of cultural patrimony in order to assess the prospects and problems in implementing indigenous rights in the North Pacific US and beyond.

### **Lip service? Indigenous engagement in closing the gap - Fitzroy Crossing, North-Western Australia**

*Author:* Martin Préaud (EHESS)

#### **Abstract**

After changing its position and supporting the UN Declaration on the Rights of Indigenous Peoples, the Australian Government has declared on the international stage that it considered its current laws and policies to be "consistent with the spirit of the Declaration". This paper provides an ethnographic account of current reform initiatives in service delivery to remote Indigenous communities in the Fitzroy Valley (Kimberley region, Western Australia). In particular, the presentation focuses on the role of Indigenous Engagement Officers recruited by the Government to establish and put to work Local Implementation Plans (LIPs), highlighting the difficulties to act as mediator in a process that despite being presented as a new way of doing business with Indigenous Peoples, pursues an agenda and priorities defined in Perth and Canberra.

The presentation situates the current reforms both in the history of Indigenous policies in Australia and in the political history of the remote town of Fitzroy Crossing. While the establishment of the Fitzroy Futures Forum - whose governing committee is an important actor in the follow-up of the LIP - was saluted as an illustration of good practice, stemming as it was from a community initiative against violence and alcohol abuse, several years on it demonstrates the contradictions and difficulties faced by subaltern actors in the institutionalisation of their agency by the State.

### **The Indians, the supreme court and the indigenous rights in Brazil**

*Author:* Renato Athias (Federal University of Pernambuco (Brazil))

#### **Abstract**

In 1988 Brazil wrote a new Constitution that replaced that of 1967. The new Constitution gave special emphasis to human rights and instituted very positive policies. Article 23.1, recognized both the cultural and territorial rights of indigenous peoples based on their traditional heritage, that Indians are "primary and natural owners" of their lands. After years of campaigning Raposa-Serra-do-Sol was approved by President Lula on 15 April 2005. The government of Roraima state lodged an unusual petition in Brazil's Supreme Court contesting the federal government's legal and official recognition demanding that it be reduced in size. Finally, on 19th March 2009, the Supreme Court judges upheld the Indians' rights, saying it had been demarcated according to the constitution and that its size and borders should be maintained. The Supreme Court judges decision was not in this case to deny the validity of a normative statement declared unconstitutional. The 19 conditions were created as general statements, mostly about the future relationship between the state and indigenous peoples, including in relation

to the territorial issue. This new approach goes beyond the interest focused on indigenous issues. It matters refers to the functioning of the judiciary, especially the role of its governing body, the Supreme Court. It is the question of the legitimacy of judges to create the right, now placed under the optical limiting of social rights. This paper discusses indigenous rights through the case of Raposa-Serra-do-Sol that gives an insight into the applicability of demarcation of indigenous lands in Brazil.

### **(Re)embedding indigenous organizations to fit new legal frameworks**

*Author:* Sabine Kradolfer (Universitat Autònoma de Barcelona)

#### **Abstract**

In Argentina, due to the federal organization of the State, indigenous rights are effective at national and provincial levels. This conducts to the multiplication of different legal frames inside the same country. With particular focus on the case of the Neuquén province, I will show how the implementation of indigenous rights and of the UN Declaration of the Rights of Indigenous Peoples have led to important changes in the Mapuche social organization and leadership leading to the reinforcement of indigenous NGOs and urban organizations. I will describe how the local is not anymore embedded in the national, and how new transnational relations among different indigenous people have drawn new alliances and/or antagonisms.

### **Indigenous rights in East and West Panama: a comparative perspective**

*Author:* Mònica Martínez-Mauri (Universitat Autònoma de Barcelona/Ecole des Hautes Etudes en Sciences Sociales)

#### **Abstract**

In this paper I attempt to analyse the application of indigenous rights in Panama. I will investigate the ways in which the principles and mechanisms of the UN bodies are put in practice in this national context characterized by the successful autonomy of some indigenous people (the Kuna), but also by the imposition of development projects (dams, mines, resorts) in other indigenous territories (comarca Ngäbe-buglé). The comparison between the Kuna and the Ngäbe experience in Panama will allow us to explore the connections between the application of indigenous rights and the active participation of indigenous leaders in national and international affairs. In other words, the central question of this paper is to elucidate the role of mediators in the application of indigenous rights and the functions that they accomplish between the global and the local context.

### **Undrip and indigenous autonomy in Taiwan: a legal framework under construction**

*Author:* Scott Simon (University of Ottawa)

#### **Abstract**

Taiwan, excluded from the UN since 1970, tries to present itself as a proponent of human rights. Simultaneously, Taiwanese grassroots social movements also attempt to access international forums to pressure their government for change. Among them are indigenous Austronesian groups at the Working Group on Indigenous Populations in Geneva and at the UN Permanent Forum in New York. Taiwan's Council of Indigenous Peoples has also sought, albeit with less sympathy from international NGOs, to represent state interests at these events. The result of these activities, which began in the late 1980s, is that Taiwanese indigenous groups and government bodies have adopted UNDRIP as a key inspirational document.

In 2005, Taiwan's Legislature passed the Basic Law on Indigenous Peoples, based on earlier drafts of UNDRIP. Indigenous activists were quick to point out differences between the documents. Whereas most UNDRIP articles begin with "indigenous peoples have the right to....", articles in the Basic Law start with "the state shall..." This suggests that UNDRIP is based on the concept of inherent sovereignty; whereas Taiwan's Civil Code is based on positivist legal assumptions. Since 2005, legislators have worked to draft or revise laws in accordance with these documents. This paper evaluates progress made on autonomy - Article 4 in both UNDRIP and the Basis Law. What legal progress has been made? To what extent do existing proposals constitute real autonomy? What obstacles obstruct passage and implementation of relevant laws? What does this impasse suggest about the triangular relationship between indigenous peoples, states, and international law?

### **Indigenous rights and traditional authorities in Namibia**

*Author:* Jennifer Hays (EHESS Paris / Univeristy of Tromso)

#### **Abstract**

The San (also known as "Bushmen"), former hunter-gatherers from southern Africa, typify both the popular global conception of indigenous peoples, and the economic, political and social dilemmas that many indigenous groups face. About 38,000 San reside in Namibia, where they are at the very bottom of the socioeconomic ladder and their access to economic resources and government services is severely constrained. San communities in Namibia are vulnerable to land invasions, relocation, and shifts in access to economic opportunities. Political participation is extremely low. Namibia's Traditional Authorities (TA) Act allows for the election of local authorities, and five San communities currently have a TA that is recognized by the government. One large San community has been pursuing a case for recognition but is not yet recognized. Some of the San chiefs have participated in international indigenous peoples forums, including the UN Permanent Forum meeting in 2010, and all have participated in workshops on indigenous rights. Some of the chiefs are considered legitimate by their communities; others are strongly contested. The recognition of leadership is intimately linked with questions of land rights, and these issues take different shapes for different communities. Based on recent anthropological fieldwork in Namibia, including interviews with San chiefs and other local and national authorities, this paper uses case studies of San Traditional Authorities to explore the complexity of indigenous rights issues in Namibia, and to assess correspondence between the principles enshrined in the UNDRIP and other indigenous rights documents, and local realities.

### **State codification of indigeneity and access to development**

*Author:* Sidsel Saugestad (University of Tromsø)

#### **Abstract**

History shows many examples of states with indigenous peoples within their borders, who for various, sometimes well intended, reasons abstain or refuse to use in-group (endogenous) names for the group. Instead, euphemisms are used, often referring to a socially problematic situation.

The case of Remote Area Dwellers (Botswana about the San) or Historically Marginalised peoples (Rwanda about the Twa) are cases in point. It is suggested that such strategies are used in order to avoid recognition of an (implicit or expected claim for) indigenous status. The use of such universalizing terminologies may be politically correct according to some criteria, but tend to obscure the analysis of the social reality at hand, and hence creates uncertainty about what would be the proper remedies. As an example, it is argued that significant changes in Norwegian policy towards the Saami are expressed in the change from paraphrasing by reference to language (Saami speaking), geography (areas with Saami population) or adaptation (reindeer herding), to a recognition of the Saami as a people.

The paper will seek to make a contribute to the discussion of implementation of the UN Declaration by analysing examples of state and colonial codification in history, changes in contemporary policies, as well as resistance to change. Discourse analysis will be used to analyse documents, policy statements and historical and anthropological records.

### **On "glocal" governance: on the consequences of the "vernacularization" of human rights concepts for Sámi people in northern Europe**

*Author:* Reetta Toivanen (University of Helsinki)

#### **Abstract**

The paper considers the power of transnational networks influencing the local interpretations of international "rights discourses". The question is in which ways do the partly from outside imported rights discourses have an impact on the in-group solidarity among the minority members on the one hand and on the local solidarity among all the inhabitants of one municipality on the other hand. When the thesis is that minority rights empower minorities, what happens when there are several minorities and a majority in one municipality? In which ways are the local negotiations depending on the external transnational networks in contributing to the democratic and stable development of the municipality? I am using Sámi land title claims in Finland as a case study in order show the mechanisms of how the Sámi, the only people with an indigenous peoples' title in the European Union, are kept at the margins of power.

### **"So that people would start to respect us": the Russian Sami parliament as a new institution of stability in times of uncertainty**

*Author:* Vladislava Vladimirova (Tromsø University/Uppsala University)

#### **Abstract**

The Sami, an indigenous group in the North of Russia, work to establish better political, economic and social positions. State legislation's vague formulations and arbitrary administrative practices together with controversial

Western influence inspired by alien reform ideologies have brought fragmentation in the Sami community instead. The representativity of Sami political organizations is contested, while economic organizations are blamed for misappropriation of funds allotted for traditional economy. Sami cannot obtain their rightful fish quotas because of bad coordination, and reindeer herding cannot play the revitalizing role which it does for other indigenous groups because of the irrevocable changes which Soviet time caused. External efforts to raise tourism as Sami economy are accepted with enthusiasm by few people, because of bad infrastructure. The grasp of evolutionary theory that Soviet ethnography imposed and contemporary anthropology and public culture sustain, enforces upon the Sami the image of an "under-developed" people. These developments tear apart the Sami community inflicting identity fragmentation and feeling of decay on individual and group levels. The Russian Sami Parliament, following the model of the Fennoscandic Sami, has been recently created as a response to this crisis. It is grounded in alleged continuity with pre-Soviet Sami organization, thus laying the foundation for unity of all Russian Sami. By analogy with Fennoscandia, it aims to extend over the Sami of Russia a sense of stability and of a more equal and respectful position of an ethnic minority in a multi-ethnic democratic state, and hereof, of a more just social order.