

First and incomplete DRAFT, Please do not quote!

Abstract for the Conference Panel on:

Interdependencies of International, National and Local Law

Panel organisers: T.O. Ihromi and S. Irianto

**Isolated islanders or indigenous people: legal discourses and actions
on Siberut (Mentawai Archipelago, West-Sumatra)**

Gerard A. Persoon

Leiden University, Netherlands

At the global level the position of indigenous peoples has rapidly changed over the past twenty years. Numerous declarations and policy guidelines have been accepted (or are still being discussed) by multilateral institutions like the United Nations and ILO and major donor agencies like the World Bank, Asian Development Bank and the European Union. Nature conservation agencies like WWF and IUCN too have adopted policy guidelines for dealing with indigenous peoples. At the moment the Convention on Biological Diversity (1992) provides the best available option for indigenous peoples to seek international support for recognition of rights at the national level because the CBD has been ratified by most countries in the world.

Within Indonesia and as part of the internal democratisation process, the discourse related to indigenous peoples has also changed in spite of the fact that Indonesia is still very reluctant to accept the international discourse on this subject. Degenerating terms like *masyarakat terasing* however are no longer accepted and increasingly minority groups refer to the international debates in claiming rights related to forests and other natural resources. There is also a change in policy regarding these people away from the uniform ‘development and civilisation’ programme, which has characterised the approach towards them for many years. These opportunities also give rise to new forms a leadership among these groups as the performance in the outside world and interaction with official agencies requires other capacities in terms of communication skills. Alliances with other indigenous groups such as through the recently founded AMAN (*Alliansi Masyarakat Adat Nusantara*) can also be looked at as a result of the changing patterns of communication between the indigenous peoples’ movement with the Indonesian bureaucracy and the outside world.

In this paper I will use this interaction between the local, national and international legal discourses and actions on indigenous people focussing on the situation on the island of Siberut. Over the years the Mentawaians have been faced with increasing external legal influences. In the first place this originated from the colonial administration, followed by the Minangkabau people who as civil servants and administrators over the islands could exert a strong influence over the local system of village justice, and rights of local versus outside people. The Indonesian bureaucracy through various departments (Forestry, Religion, Home Affairs, Social Affairs) had a strong impact on the island. In recent years and largely through external interference of organisations like WWF, Asian Development Bank, and UNESCO ethnic awareness among the Mentawaians as an indigenous people is growing, leading also to new forms of representation in the outside world and a

renewed view on traditional local traditions. Also tourism and film making by foreign companies have contributing to that end. Recently acquired local ownership over resources and the new market opportunities however have also lead to severe internal conflicts. Here it seems that the interaction between international, national and local law has not only created new opportunities but it has also created new legal, administrative and authority vacuums.

Universitas Andalas, Padang 18-21 July 2001

Interdependencies of International, National and Local Law

Panel organisers: T.O. Ihromi and S. Irianto

Isolated islanders or indigenous people: legal discourses and actions on Siberut (Mentawai Archipelago, West-Sumatra)

Gerard A. Persoon

Leiden University, Netherlands

During a recent meeting of the DPR of the newly founded *kabupaten* Mentawai (West Sumatra) it was decided that the new *bupati* who was to be elected soon, should be of (ethnic) Mentawai origin and he should be a Christian. These criteria are in themselves a clear reflection of the preference for a person of local origin over a Minangkabau, as the dominant ethnic group of West Sumatra but also against fellow Mentawaians who adhere Islam. This is considered as contrary to the interests of the indigenous people of the islands. The criterion of Christianity is interesting because Christianity was brought from outside to the islands and it was more or less imposed upon the Mentawaians as the original religion was condemned as paganism, or a primitive animistic religion. The fact that Christianity is now taken to be an important aspect of Mentawaiian cultural identity vis-à-vis the Minangkabau reflects the interaction and internalisation of external pressure by the present generation of Mentawaians. Moreover the election of the highest official for the *kabupaten* emphasises a level of unity and social organisation which the inhabitants of the Mentawaiian islands have never had before. In the past they were classified as a ethnic group based on considerations of linguistic and adat law nature. They were never organised at this level. In other words the present administrative innovation is likely to produce a new sense of ethnic awareness but might also lead to internal boundaries that have never existed before.

The discourse on indigenous peoples takes place in various contexts. At the international level organisations like the United Nations, the World Bank, the Asian Development Bank, Worldwide Fund for Nature (WWF), World Intellectual Property Organisation (WIPO), and numerous other institutions have issued policy guidelines and principles that should serve as operational procedures by paying attention to the position and rights of indigenous peoples.

At the national level individual countries are struggling too with the definition and position of indigenous peoples. In some cases such as Columbia, Philippines, new legislation has recently been adopted to grant indigenous peoples rights to varying degrees of self-determination and access to natural resources. Australia is still struggling with the impact of the so-called Mabo decision which grants extensive rights to the aborigines (Attwood 1996). Other countries however deny the indigenous peoples issue as they consider all citizens as indigenous or define them in a different manner, like ethnic minorities, hills tribes or isolated communities.

At the local level groups of people are organising themselves under this banner of Indigenous Peoples as a powerful tool to articulate a new form of identity and to claim rights by referring to the international discourse (Li 2000).

It is clear that these discourses on indigenous peoples at various levels do not take place independently from each other. To mention just one example the widely publicised struggle of the Punan against logging companies in Sarawak, which took place in 1986, can, among others, be considered as the start of the discussion about the position of indigenous peoples in the definition of sustainable forestry. It lead directly to a boycott of the European Union of wood from Malaysia and it finally lead to the acknowledgement of the rights of indigenous peoples as one of the criteria for certification of wood relevant for import in a number of mainly western countries.

In this paper I want to discuss the interrelations of these discourses and focus in particular on the situation on Indonesia, thereby taking the island of Siberut as an example.

The international level: the global discourse

At the international level there are a large number of expressions for concern for the position of indigenous peoples in relation to human rights, negative impact of large scale development projects (dams, roads, plantations), effects of logging, mining and other forms of exploitation of the environment and ill-designed development projects directly aimed at the indigenous people themselves. Mention should also be made of the negative impact on indigenous people of centrally issued nature conservation projects, in particularly national parks in which no human habitation is allowed. In some cases this has led to forced resettlement to other areas or reduction of access to the natural resources by the indigenous peoples themselves.

Some of the most important reflections of these concerns at the international level are:

- The International Labour Organisation (ILO) was the first international organisation in the post war period to issue a convention (number 107) on the *Protection and integration of indigenous and other tribal people and semi-tribal populations in independent countries* (1957). This convention was still largely based on ideas of integration of the tribal peoples into the dominant society. It was replaced by convention number 169 titled *Convention concerning indigenous and tribal peoples in independent countries* (1989). Maybe because of the fact that this convention is phrased in relatively strong wordings, it is ratified by only a small number of countries. So far, none of the Asian countries has done so.

- The World Bank plays a very important role in relation to the indigenous peoples not only because of its scale of operations but also because of the way the bank has dealt with this issue. Based on criticism to bank operations in Latin America and elsewhere in the 1970's the bank finally published a report on the relation between tribal peoples and economic development, including also some policy guidelines (1982). This was replaced in 1991 after many more critical studies about the impact of the World Bank projects (including its role in the Indonesian transmigration programmes), the bank issued the operational directive 4.20: *Indigenous Peoples*. In 1998 the bank decided to re-examine its policy and also to pay attention to the highly varying conditions in various parts of the world (Satish 1999). It should also be noted that the bank by far proceeded other donor organisations in paying explicit attention to this problem and it has inspired many other organisations in their formulation of indigenous peoples policies.
- The Convention on Biological Diversity (CBD) which was adopted as part of the Agenda 21 by the United Nations Conference on Environment and Development (UNCED, Rio 1992), pays explicit attention to the role of indigenous and traditional communities in relation to biodiversity conservation.¹ At present it is the most important legal document because the CBD has been ratified by more than 160 countries. The CBD has also installed a special working group which allows representatives of indigenous peoples to voice their view and concerns regarding the implementation of this convention. After a number of meetings which were largely dominated by good intentions the Conference of Parties of the Convention has agreed to submit country reports on the progress made in this area during the next meeting which will take place in The Hague in April 2002.
- The United Nations declared 1993 as the Year of the Indigenous Peoples and at the end of the year it was decided that the next decade would be the *Decade of the Indigenous Peoples*. One of the formulated aims was to achieve a declaration for Indigenous Peoples comparable to the universal declaration of human rights in 2004. As yet the working group charged which the formulation of this declaration, is still faced with big difficulties to achieve agreement among all the members states regarding definitions of indigenous peoples. Another major problem is the extent to which the indigenous peoples should be granted special rights compared to non-

¹ Article 8j on the convention contains the most explicit reference to the position of indigenous peoples. It reads as follows:

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

indigenous groups and whether these rights should be only a temporary phenomenon.

- WWF issued a statement of principles regarding indigenous peoples and conservation in 1996. Worth noticing here is that it explicitly refers to the instrumental role of indigenous peoples because as is clear in article 11 of this statement the organisation only supports indigenous peoples in as far as their life style contributes to the aims of conservation.
- The Asian Development Bank was rather slow among the big international donor agencies in issuing a policy statement regarding indigenous peoples in spite of the fact that about 70% of the world's indigenous peoples are supposed to live in the Asia-Pacific region. For many years it more or less implicitly followed the guidelines by the World Bank but after numerous meetings and consultations it finally came up with official policy statement in 1999 (ADB 1999). The document plays attention to policy objectives, operational processes and operational approaches. It prescribes how the bank should operate in areas where bank projects are expected to have an adverse effect on the life style or the environment of indigenous peoples.
- The World Intellectual Property Organisation (WIPO) has recently also taken up the issue of indigenous peoples in relation to the protection of rights to genetic resources, traditional knowledge and folklore. It is still far from issuing policy guidelines because of the highly complicated state of affairs. One of the difficulties is that countries differ widely among themselves with regard to the protection of these kinds of rights. Under these circumstances it is considered almost impossible to achieve sound international legislation with sufficient opportunities for law enforcement. Under the present circumstances it is recommended to aim for contractual agreements between the parties concerned (WIPO 2000).

This list of organisations and institutions at the international level could be substantially extended but the message should be clear. All major international institutions working in the field development, and nature conservation have issued statements of concern or rights of indigenous peoples. Most of the western countries have also published policy statements to guide them in their development aid activities: United Kingdom, Germany, the Netherlands, Denmark, Belgium and collectively the European Union have among others issued policy statements.² These are in no way isolated events. Organisations echo ideas and statements of other organisations and try to adjust them to some degree to their own purpose. They are all participants in the global discourse. Few organisations working in these fields and at this level can do without a clear statement on this subject.³ There is a striking agreement nowadays regarding the

² Interestingly this policy statement of the EU refers only to indigenous peoples in relation to the development activities in other countries. In other words it does not touch on the delicate issue of indigenous peoples within the European Union (EU 1998).

³ One of the striking examples of an organisation which has not issued a policy statement regarding indigenous peoples is the United Nations Development Programme (UNDP).

terminology used at the international level. Though initially terms like tribal peoples, cultural minorities, indigenous communities, ethnic minorities, native tribes were often used, the term *indigenous peoples* is now generally employed. This is even so in contexts where the historical evidence for defining one group as indigenous vis-à-vis others is lacking or where various ethnic groups are known to have a comparable history of settlement. The way of thinking in terms of being indigenous or non-indigenous is largely inspired by clear cases of historical colonisation, like in the case of Latin or North-American Indians, Australian Aborigines or Southeast Asian Negrito groups. But the distinction is now also employed in cases where similar processes of colonisation have not taken place. Ethnic groups might have had different kinds of histories based on different ecological circumstances, or based on different patterns of mobility. In many cases it is the outside world which employs the category of indigenous peoples also for people who maintain a kind of life style different from the mainstream of society (or a tribal way of life). This is for instance the case with the Pygmies from Central Africa (Bahuchet 2001) or the scheduled castes and tribes from India (Satish 1999).

The Indonesian level: state bureaucracy

Since the fall of Suharto in May 1998 the discussion on indigenous peoples has taken a radically different direction. For many decades Indonesia denied the relevance of this discourse for internal matters. All Indonesians were claimed to be indigenous. Official delegations to large international meetings in Geneva (UN, WIPO), Manila (ADB), or New York (UN, UNDP) refused to discuss this issue and unofficial representatives of self-acclaimed indigenous peoples met with big problems if they showed up during these meetings or if they wanted to express their views on the negative impact of logging, transmigration or ill defined development activities. Indonesia also did not participate in the activities of the UN Year of the Indigenous Peoples (1993).

Internally Indonesia only acknowledged the social problem of primitive isolated tribes for which an extensive development and civilisation programme was developed and implemented since the early seventies. About 1.5 million people were supposed to belong to this category of *masyarakat terasing* (isolated communities), spread over 20 provinces. This part of the population consisted of more than 200 different ethnic groups. Some of the better known groups are the various Dayak tribes, the Papuas, the Baduy, the Sea Gypsies (Orang Laut), the Mentawaians and numerous others (Koentjaraningrat 1993). For many years the Departments of Social Affairs and Forestry dealt with these communities in an effort to bring them (back) into the mainstream of the Indonesian social and economic life. They were resettled in large villages within reach of the government. Important elements of the development and civilisation programme were the introduction of permanent agriculture (instead of shifting cultivation or even hunting and gathering) nuclear and permanent housing (instead of a nomadic way of life or communal houses), adherence of one of the official religions

(instead of natural religions or paganism), decent clothing (in stead of loincloth), decent cultivated food (instead of foods from the wild), modern health care (in stead of medicine men) and modern education (instead of no education at all). This programme was implemented in hundreds of project villages across the country (see Persoon 1994 for a discussion of this programme).

Since the change of power however from Suharto to Habibie and on to Wahid, there has been a wave of democratisation throughout the country. Elections were organised on a totally different footing with 48 political parties participating in the event (Pompe 1999). *Reformasi* is a powerful word in Indonesia and it is largely understood as increased regional autonomy and decentralisation (see Forrester 1999 and Van Dijk 2001).

With respect to the indigenous peoples there have also been interesting events, which will be indicated briefly:

- In March 1999 a major gathering of hundreds of representatives of indigenous peoples from all over the country took place in Jakarta. It was concluded with a declaration aimed at 'reconsidering the relationship between indigenous peoples and the state' and claiming that the government should accept the international conventions and policy guidelines regarding indigenous peoples. Explicit reference was made to the ILO convention 169 of 1989 regarding indigenous peoples. The state should also refrain from implementing ill-designed development plans. At that meeting the *Aliansi Masyarakat Adat Nusantara* (AMAN) was officially founded (AMAN 1999 and 2000).
- At international meetings Indonesian representatives of indigenous peoples show up and speak out on crucial issues in their home territories. They seek active support for their struggle for land and cultural identity. More than in the past they also solicit for financial support from donor organisations and international NGOs.
- During the 1999 elections five seats in the parliament were reserved for what is now called the ethnic minorities: this was a major breakthrough with regard to the political representation of this part of the population. After internal discussion representatives of the Baduy, the Kubu, the Dayak, the Sangir and the Papuas took the seats.
- The Department of Social Affairs⁴ adopted a presidential decision in 1999 (no. 111) changing the name of the *masyarakat terasing* and also changing some major ideas regarding the uniform development and civilisation processes.
- In the last two years Indonesia has adopted a number of new laws on regional autonomy and decentralisation including also the distribution of the revenues originating from forestry, mining and other sectors (law 22

⁴ Officially the Department of Social Affairs has been dissolved. However part of its functions are continued by the newly created institution for social affairs under supervision of the president. Since a few months it has been decided that the department should merge with the department of public health. At present there is still a lot of uncertainty regarding its mandate, funding and activities with regard to the *masyarakat adat terpencil*.

and 25, 1999). Also a completely new forestry law has been accepted (law 44, 1999). All of these contribute either by the actual text of the laws or in spirit to a very strong sense of local ownership of natural resources. Indigenous peoples in particular participate actively in the process of dissolving state responsibilities through the foundation of new co-operatives active in the field of forest management, mining or fisheries.

- Part of this movement is also a revival of the old concept of *adat* in relation to *adat* lands, *adat* regulations of local justice and the like. At the present moment *adat* regulations are put forward again in the vacuum that is created by the abolition or weakening of numerous centrally issued government regulations. One of the aspects of this movement is the return to the system of village government before the implementation of the law of village government (1979) which abolished all local forms of government in favour of the Java based *desa* concept.

In short it is clear that in Indonesia there is a new society in the making even though the present situation is very uncertain, unstable and even potentially dangerous with respect to outbreaks of violence based on ethnic, religious or other types of differences such as the recent conflicts between the Dayak and Madurese people in Central and West Kalimantan (Van Dijk 2001). Dissolving central authority might also jeopardise the levels of security necessary for a civil society to continue to function properly. Claims for increased regional autonomy through the establishment of new provinces of *kabupaten* may in some cases also be based on considerations of ethnic identity.

The local level: the case of Siberut

Siberut is the largest of the Mentawaiian islands off the west coast of Sumatra. The population is predominantly Mentawaiian (about 25,000 people). Relatively small groups of people originate from other ethnic groups such as the Minangkabau, Javanese and Batak. Traditionally the people lived in small settlements along the banks of the rivers that cut through the thick forest. People were living on hunting and gathering and the domestication of pigs and chickens. Sago is the staple food and in addition they practice a form of shifting cultivation characterised by the importance of perennial crops. Annual crops like upland rice or corn were unknown until recently. Politically the people of Siberut were organised in small autonomous settlements consisting of one extended patrilineal family of up to 50 or 60 people. Friendly relations were maintained with other settlements within the same watershed area but people were never organised at this level. The Dutch colonial administration imposed a system of village heads on the traditional situation. The estimated 250-300 *uma* settlements were forced into a smaller number of *kampung* in the early 1950's, each headed by a *kepala kampung*. The implementation of the 1979 law on the village administration reduced the number of *kampung* of about 60 to 20 *desa* divided over two *kecamatan* under the

kabupaten of Padang-Pariaman, with its capital in Pariaman on the mainland of Sumatra.

In the history of Siberut the Minangkabau officials and migrants always considered the people as primitive and backward. They were supposed to be in urgent need of development. Missionaries bringing Christianity, development activities in the form of the special development programme for the *masyarakat terasing*, logging operations and eco-tourism have fundamentally changed the conditions on the island in the past few decades. The state has claimed the primary forest resources on the island for granting logging concessions since the early 1970's even though there is no empty land on the island according to the perceptions of the local people. The patrilineal groups consider even the closed canopy forest as their property.

Within the Mentawai archipelago almost all external attention has been focussed on Siberut, the largest island with a good deal of rainforest and with the most traditional population. The combination of a relatively small island with traditional people in their intact natural environment has a strong attraction for western tourists as well as donor organisations working in the field of nature conservation. The relatively large number of international films on the 'traditional' conditions on the island has been instrumental in attracting this kind of attention. Many of these films were broadcast in western countries but also in Japan and Singapore. All of them portray the harmonious life of isolated islanders in an abundant environment facing an aggressive outside world in search of adherents of new religions, timber, or with a mission to civilise and develop the primitive and indigenous people.

Over the years Siberut has attracted a number of these organisations. To mention just the most important ones:

- Survival International: a London based organisation for the protection of rights of indigenous people. A project was implemented on the island from 1979-1982 aimed at strengthening of local land rights and fighting the logging companies which were operating on the island. Based on extensive experience in Latin America, Survival International now broadened its scope to Indonesia. Siberut was the first and up till now only field project in this country. The situation in Indonesia proved however to be radically different with respect to the role of the government and the way local and indigenous peoples are defined vis-à-vis other ethnic groups.
- Simultaneously WWF was implementing a project to save the wildlife on the island and in particular the four endemic primate species. This could of course only be achieved if the natural habitat of the animals, the forest would be protected. For that reason reconsideration of the previously issued logging concessions, and establishment of a sufficiently large nature reserve would be a necessary step (WWF 1980). After 1982 WWF

terminated its involvement in Siberut, leaving the conservation efforts to the Indonesian department for nature conservation.

- The Asian Development Bank has funded the largest single conservation and development project on the island. It started at a time that the bank had not yet fully formalised its policy statement regarding indigenous peoples in 1994. However the consultants of this project were requested to act in accordance with the World Bank's statement in this respect. As participation of the local people is an important aspect of the project, a local NGO was founded using also the English term *indigenous people* to differentiate themselves from the Minangkabau, Batak and Javanese on the island.
- From within Indonesia, the Jakarta based non-governmental organisation SKEPHI (Indonesian network on tropical conservation) got involved in the actions to save Siberut from being converted into a large palm oil plantation. It did so through campaign and lobby activities on the island as well as in Padang and Jakarta while it also tried to link up with a number of sympathetic organisations abroad (see e.g. SKEPHI 1992).
- UNESCO: Siberut was officially declared a Man-and-Biosphere reserve in 1981. This status should be looked upon as a kind of legal instrument to combine local people's interests with nature conservation. In many other cases of MAB reserves the local people enjoy special rights compared to migrants. Since 1981 this declaration did not have a great impact on the island. It was only towards the end of the ADB project in 1998/99 that UNESCO started to take an active interest in Siberut and tried to revive the ideology of the Siberut Man-and-Biosphere reserve but it can only do so with the explicit co-operation of the Indonesian government and the local people.
- Conservation International is an American conservation organisation, which is now gradually taking an interest in Siberut because others are pulling out. Attempts to do so a few years ago were fruitless because of the involvement of the Asian Development Bank. At the moment CI is preparing plans to protect the island from being logged and converted into plantations by trying to lease the island's forests and compensate for the 'losses' for not logging the trees. Beneficiaries of this contract would be the government as well as the local people through improved infrastructure such as schools, and polyclinics.

In reaction to the changing conditions in Indonesia and on Siberut in particular but also as a reaction to the way the outside world presents itself, a number of NGO's have established themselves on Siberut and more in particular in Padang, in an effort to protect the island from the unfortunate projected futures in terms of logging, establishment of oil palm plantations, or transmigration. Examples of such organisations are Yasumi, Laggai Simaeru, IPPMEN, and Citra Mandiri. All of them stress that they are directly or indirectly *representing the indigenous people of Siberut*. Just as the outside world, most of these NGO's have a strong focus on the island of Siberut and far less on the other Mentawaiian islands of

Sipora and Pagai. They reflect the interest of the outside world in terms of ‘wild nature’ and ‘exotic people’. In addition to these truly Mentawaiian organisations, there are also a number of organisations that are founded and run by Minangkabau or Batak people. Some also claim to aim for the development of protection of the islands but they are less outspoken about the ethnic origin of the founders or of the members of the organisations.

So far the Mentawaians have not been very active within the national indigenous peoples movement. The recently established organisations suffer from internal conflicts, and lack of co-operation. They are competing for scarce resources while the relation with the local people on the island is relatively weak. There is certainly not a direct form of representation and accountability of the actions and positions taken by the Padang based NGO’s to the people living on the island.

On the other hand it is clear that the process of *reformasi* and the call for regional autonomy has also reached Siberut island. At present local people are not willing to accept the national claims on their forest resources anymore. They voice severe criticism regarding the national park status of almost half the island. There is also a strong feeling of resentment regarding the fact that Andalas University has been given a concession of almost 50,000 hectare on the island under the Land Grant College arrangement. Recently founded village co-operatives, financed by business people and investors from the main land are now willing to convert the forest into other land use types and sell the timber to saw mills in Padang or elsewhere. After decades of logging operations by outsiders and with little benefits for the local people, many of them feel that they should make use of the newly acquired opportunities to sell the timber that is located on their land. At present however there is great concern among the people of Siberut because of the internal conflicts. Land that used to be considered as common property is now being sold or logged without the consent of all *uma* members. It is predicted that there will be ‘war’ on Siberut. The new opportunities offered by the 1999 forestry law and the laws on regional autonomy do not coincide with the way decisions regarding forest resources used to be taken on the island. Incidents have already been reported about the destruction of equipment of logging companies and the use of violence by the police or military (.....).

Interaction and interdependencies between legal discourses

The interaction between the various levels regarding indigenous peoples is by no means a one-sided kind of influence from the international level through the national level to the local level. In general one could say that in most cases the national bureaucratic level was strongly influenced both by the international and as well as by the local level. The departments involved within the national bureaucracies felt more or less forced to act because of international pressure or because of internal pressure as a result of claims for democratisation from local groups or their spokesmen.

To a large extent it can be argued that the international level was influenced initially by events at the local level which were brought to the attention of politicians or the general public through the media as a result of concerned individuals and a number of international NGO's. The international reaction in the last two decades was largely borne out of a number of accidents and clear violations of collective human rights. Particular cases like the Punan resistance against the logging companies in Sarawak in which the Swiss Bruno Manser played a crucial role (Manser 1996), the murder Chico Mendes as the leader of the rubber tappers in Brasil (Revkin 1990), the performance of the Kayapo Indians during the UNCED conference in Rio in 1992 (Posey 1998), the case of the Chipco movement in the Himalaya Mountains (Guha 1994), and the dramatic case of the hunting for human genes among the isolated Indians in Latin America in order to obtain patents on human blood in the preparation of new kinds of medicines (Holland 1996), have greatly contributed to the general awareness that indigenous peoples need protection from outside in order to avoid abuse, land encroachment, social misery and blatant injustice. More than national governments international governmental institutions urged by international NGO's active in this field of protection of indigenous peoples which have been instrumental towards that end.⁵ They have substantially contributed to the growth of international law regarding indigenous peoples (Ayana 1996).

On the other hand over the years the international discourse on indigenous peoples has developed concepts and ideas which are now successfully employed by local groups in order to phrase their claims in an official and acceptable idiom. The concept of indigenous peoples itself is a clear example of this development. Other concepts that are widely used in the rhetoric on this subject are: indigenous ecological wisdom, the spiritual value of biodiversity, the sustainable use of resources, life styles in accordance with the carrying capacity of the environment, protection of cultural heritage and the contribution to the cultural diversity in the world, self-determination, and also the management of natural resources. In most cases these concepts have no clear equivalent in the local context, they are hard to translate and in most cases these concepts were alien to the local people. At present however they are successfully employed by representatives of indigenous peoples at various kinds of meetings. They are read into traditional practices and knowledge. They provide a suitable idiom to articulate new forms of identity that are met with sympathy in the outside world. Another important aspect of the international discourse in terms of indigenous peoples is that ethnic groups, which were hitherto never politically organised as a social unit, are now implicitly

⁵ Organisations which have been very active in this field are the International Working Group on Indigenous Affairs (based in Copenhagen), Cultural Survival (based in the United States), Survival International (London) and numerous regional and national organisations. Within the Asian context mention should be made of the Philippine based Tebtubba Foundation, the Asia Indigenous Peoples Act (Bangkok), and the Asian Indigenous and Tribal Peoples Network (New Dehli).

invited to do so because rights are attributed to them as collective units or as *peoples*. In order to do so many of them have to overcome internal differences.

There is one area in which there is a clear interdependence between international and national law but which has hitherto had little effect on the local system of law and regulations and that is in the field of nature conservation. The legislation in Indonesia with regard to national parks, and other protected areas and in particular with regard the protection of endangered species is highly influenced by the international legislation and regulations. Indonesia, as a signatory of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES 1973), should implement the protection of particular species. There is in fact a direct relation to what is agreed upon at the international level and the need for a nation to issue regulations at the national level. The list of protected species of plants and animals within Indonesia should reflect this international legislation, if necessary with additions based on national considerations. About half of the island of Siberut has been declared a national park and numerous protected animals are to be found in the forests or coastal waters surrounding the island. To mention just a few of the protected species: various species of marine turtles, the *duyong* or sea cow, four primate species, hornbills, sea eagle and numerous other bird species. One of the trees that is officially protected is the *Aquilaria* tree which provides the valuable agarwood or *gaharu* (Barden et al 2000). The people on Siberut are notified about these regulations through widely distributed posters with pictures of the protected species. Due to low levels of law enforcement, the compliance with the international and national rules and regulations regarding protected species is rather limited. Many of the regulations are also ill understood. The planning of the park boundaries was rather unfortunate: the park includes a number of long established villages. Protection of a number of animals is difficult to grasp for the local people because of their relative abundance and in particular because protection rules were put in place after decades of extensive logging.

The number of ritual ceremonies on the island largely determines hunting pressure for the primate species. The *gaharu* boom at the end of the 1980's almost brought the *Aquilaria* tree on the island almost to the point of extinction. Local rules regarding the rights of exploitation still determine who is entitled to hunt and gather these resources more than international and national regulations. So in this respect there is little if any interdependence between the two systems. Because of the increased concentration of people in the coastal zones, and the changing life style, the hunting pressure is reduced but this is not to be attributed to international or national legislation.

Another interesting field is the relation between the various kinds of legislation that exist at present. Though regulations regarding nature conservation both at the international level (CITES, TRAFFIC etc) as well as at the national level (national park legislation, list of protected species etc.) have a general validity for all citizens, some indigenous peoples' policies or conventions tend to favour

indigenous peoples vis-à-vis non-indigenous peoples. Examples are for instance hunting permission in case of aboriginal whaling, or permission for killing animals for ritual purposes, or collection of plants for medicinal reasons. Combining two legal domains however often leads to confusion, as a hierarchy in legal preference needs to be determined, and it often creates unrest particularly among those who do not classify as indigenous and who for that reason can not enjoy the special rights.

The new forms of articulation of ethnic identity in the idiom of indigenous peoples is likely to produce internal tensions. Recognition of rights to collective units demands adequate internal structures in order to allow for the equitable sharing of the benefits by all the members of the communities involved. Because of the big differences within the communities regarding the level of experience in dealing with the outside world and the high level of jealousy among the members of the communities, opportunities offered by the outside world for enjoying new and collective rights could easily lead to increased tensions.⁶

⁶ Previous experience with the allocation of IDT, BANDES or other types of funds has made this clear already.

References

- Aliansi Masyarakat Adat Nusantara (1999a) *Catatan hasil kongres masyarakat adat nusantara*. Jakarta, AMAN.
- (2000) *Menggugat posisi masyarakat adat terhadap negara*. Jakarta, AMAN.
- Asian Development Bank (1999) *Policy on Indigenous Peoples*. Manila, Asian Development Bank.
- Attwood, B. (1996) *In the age of Mabo. History, Aborigines and Australia*. St. Leonards, Allen & Unwin.
- Ayana, S.J. (1996) *Indigenous peoples in international law*. Oxford, Oxford University Press.
- Bahuchet, S. (ed.)(2001) *Tropical forests, human forests: an overview*. Brussels, APFT-ULB.
- Barden, A. et al. (2000) *Heart of the matter: agarwood use and trade and CITES implementation for Aquilaria Malaccensis*. Cambridge, TRAFFIC.
- Beltrán, J. (ed.)(2000) *Indigenous and traditional peoples and protected areas: principles, guidelines and case studies*. Glan: IUCN.
- Davis, S. (1993) *Indigenous views of land and the environment*. WB Discussion Papers no. 188. Washington: World Bank.
- Departemen Sosial (1999) *Keputusan Menteri Sosial RI (97/HUK/1999) tentang pembinaan kesejahteraan sosial komunitas adat terpencil*. Jakarta, Departemen Sosial.
- European Union (1998) *Working document of the Commission on support for indigenous peoples in the development co-operation of the community and the member states*. Brussels: EU.
- Garcia-Romeu, B., A. Lopez and H. Huertas (2000) *Indigenous peoples facing the new millennium. A working tool for indigenous participation in the international environmental agenda*. Madrid: WATU.
- Guha, R. (1994) *The unquiet woods. Ecological change and peasant resistance in the Himalaya*. New Dehli, Oxford India Paperbacks.
- Holland, L. (1995?) *The gene hunters*. London.
- Iorns, C.J. and M. Hollick (1998) *Land conflicts in Southeast Asia. Indigenous peoples, environment and international law*. Bangkok: White Lotus.

- Li, T.M. (2000) 'Articulating indigenous identity in Indonesia: resource politics and the tribal slot'. In: *Comparative studies in society and history*, vol. 42(1): 149-179.
- Manser, B. (1996) *Voices from the rainforest. Testimonies of a threatened people*. Petaling Jaya, INSAN.
- Persoon, G.A. (1994) *Vluchten of veranderen. Processen van verandering en ontwikkeling bij tribale groepen in Indonesië*. Leiden: FSW.
- Pompe, B.
- Posey, D. (ed.) (1998) *The cultural and spiritual value of biodiversity*. London, IT Publications.
- Revkin, A. (1990) *The burning season. The murder of Chico Mendes and the fight for the Amazon rain forest*.
- Satish, S. (1999) *The World Bank policy on indigenous peoples. India consultations on the approach paper for revision of operational directive 4.20*. New Dehli, World Bank (SASSD).
- Secretariat of the Convention of Biological Diversity (2000) *From policy to implementation. Decisions from the Fifth Meeting of the Conference of Parties (Nairobi, Kenya 15-26 May 2000)*. Montreal, CBD.
- SKEPHI (1992) *Destruction of the world's heritage: Siberut vanishing forest, people and culture*. Jakarta, SKEPHI.
- Van Dijk, C. (2001) *A country is despair*. Leiden, KITLV Press.
- World Intellectual Property Organization (WIPO) (2001) *Intellectual property needs and expectations of traditional knowledge holders*. Geneva, WIPO.
- World Bank (1982) *Tribal peoples and economic development: human ecological considerations*. Washington, World Bank.
- World Bank (1991) *Operational directive OD 4.20: Indigenous Peoples*. Washington, World Bank.
- WWF (1980) *Saving Siberut: a conservation master plan*. Bogor: WWF.
- WWF (1996) *Indigenous peoples and conservation: WWF statement of principles*. Gland: WWF.

WWF and Terralingua (2000) *Indigenous and traditional peoples of the world and ecoregion conservation. An integrated approach to conserving the world's biological and cultural diversity.* Gland, WWF and Terralingua.