

**INTERNATIONAL UNION OF ANTHROPOLOGICAL AND
ETHNOLOGICAL SCIENCES
COMMISSION ON FOLK LAW AND LEGAL PLURALISM**

**NEWSLETTER
XXXX**

AUGUST 2005

Editor: Melanie G. Wiber

Editing Assistance: Gesine Koch

Distributed by: The Max Planck Institute for Social Anthropology

**The Newsletter of the Commission on Folk Law and Legal Pluralism
is issued three times in a period of two years.**

Correspondence address:

**Melanie G. Wiber
Department of Anthropology
University of New Brunswick
P.O. Box 4400
Fredericton, NB, Canada
E3B 5A3
wiber@unb.ca**

NEWSLETTER XXXX

CONTENTS

- 1. From the Secretariat**
- 2. Minutes of the Executive Body – June 11, 2005**
- 3. Minutes of the Asian Initiative on Legal Pluralism – 18-20 May 2005**
- 4. Call for Panel Organizers/Papers – Congress 2006**
- 5. News We Have Received**
 - A. Introducing an Online Discussion Group**
 - B. Call for Papers – IASCP June 2006**
 - C. Call for Papers - a conference on land law and natural resources' management to be held in Pondicherry (India), March 2006.**
- 6. Recent Publications**
 - A. Journal of Legal Pluralism**
 - B. Mobile People – Mobile Law**
- 7. Recent Legal Decision Regarding Aboriginal Rights to Commercial Logging – Canadian Maritimes.**

1. FROM THE SECRETARIAT

This is our first issue delivered entirely electronically and we hope that it will offer better services to our members at some cost saving to the Commission. There is a great deal of news to impart and I hope that you will read the contents of this electronic newsletter carefully. I wish to draw attention to several items of importance that you will find in this issue.

- Beginning in September 2005, the annual dues for membership in the Commission will drop to 15 US dollars. This drop is due to the savings that the Commission will realize in no longer mailing out hard copies of the newsletter. We will still maintain the website and assist in the organization of regular congress and international courses.
- Please note that membership fees are outstanding for most members as the last opportunity to pay them was in association with the August 2004 congress in Fredericton. Also please note that without an up-to-date email address, you can no longer receive the newsletter. Please send the secretariat updates as your email and mail addresses change.
- The Commission website is at www.unb.ca/cflp and it will continue to contain all recent newsletters as it currently does.
- The membership is encouraged to express opinions regarding a suggested name change. The basic argument for the name change is that the inclusion of the term “Folk Law” in the title is confusing for funding agencies and national sponsors. As the Commission is interested in the interaction of many different kinds of law, including international law, project law, religious law, local law and state law, the new name for the Commission should reflect this broader focus. Some have suggested including the term “international” in the title of the commission – as in “The International Commission of Legal Pluralism”. Others have suggested including the term “anthropology” in the title. Please send your suggestions and opinions on this matter to the secretariat at wiber@unb.ca
- The next congress of the Commission will be held in Indonesia in June 2006, and is being planned to coordinate with the International Association for the Study of Common Property, also

meeting in Indonesia in June. This newsletter includes calls for papers for both meetings.

- I would encourage all members to consider organizing a panel for the Congress 2006 and/or to submit a paper. Let's make this the biggest and best Commission congress ever.
- The Asian initiative group has been extremely efficient in organizing a working group for the Asian region – see the minutes of their organizational meeting included in this newsletter and their website at www.ailp.net.
- Finally, I once again encourage members to use the newsletter to facilitate communication between members. Let us know of any news, contacts, research results, legal decisions etc. that you feel the members would be interested in.

Sincerely,
Melanie G. Wiber

**2. MINUTES OF THE EXECUTIVE BODY MEETING
COMMISSION OF FOLK LAW AND LEGAL PLURALISM
EDINBURGH, SCOTLAND
JUNE 11, 2005**

Present: Anne Griffiths (President and Chair), Melanie Wiber (secretary), Keebet von Benda-Beckmann (past president), Franz von Benda-Beckmann, Gordon Woodman, Werner Zips (Executive Body members), Markus Weilenmann (guest).

Regrets: Rene Kuppe

1. President's Welcome and Announcements

- Anne Griffiths welcomed the EB members to Edinburgh and also welcomed a guest to the EB meeting, Dr. Markus Weilenmann.
- Anne also announced that the Commission had been asked to support a chair in legal pluralism for Andre Hoekema at the University of Amsterdam. Anne notified Andre that we would be supportive of such a chair, but that we had no financial resources to commit to that and had no interest in a Commission chair.
- Anne also reminded the EB members of both the intercongress in 2005 and the large IUAES congress in China in 2008. It was agreed to add these to the agenda for discussion

2. Report of the Secretariat

- The final budget for Canada Congress 2004 was submitted for the information of the EB members.
- Newsletter in Electronic Format – there was some discussion about the cost of producing and mailing the Commission newsletter, and it was decided that given the poor record of dues payments and subsequent low income for the Commission, the newsletter would move to an electronic form. The regular format of contents will continue, but the newsletter will go out in the form of an attachment via email. Issues will continue to appear on the Commission website.
- Dues structure – given the change in newsletter form, the EB decided that a reduction of dues was warranted. As the Commission still has to cover costs such as website maintenance and supporting congress and course activities, it was agreed to drop the dues to 15\$ USD.

- Website – given the difficulties of maintaining an effective website with volunteer labor, it was decided to approach Dr. Thomson of the Asian Working Group, who has offered the services of the Asian Working Group webmaster. Anne will approach Dr. Thomson to find out what this person’s services would cost the Commission.
- Lack of Activity at the Ottawa Account – given the report by Harald Finkler that the Ottawa bank is threatening to close our account in Ottawa due to low levels of activity, it was decided to close out the Ottawa account and transfer the funds to the Fredericton account. The secretariat recommends a Euro account based in a continental bank, as payment of dues could be done as a money transfer within the EU without excessive cost for our European members. We would require a contact person to be responsible for this account. As there were no volunteers, the matter was dropped for the time being.
- 2006 Board Elections – Anne Griffiths has agreed to let her name stand as president for a second term. Melanie Wiber has requested that the Board member list be examined by each EB member to check for changes in the status of current members. The EB members agreed to forward any information on the current board members to Melanie as soon as possible. The next newsletter should include a call for nominations for Board members. Several names were recommended by EB members as possible future Board members.

3. Report on the Cochin Workshop

- Anne Griffiths noted that the Cochin workshop that was to further the organizational efforts of the Asian Working Group was a great success. Planning for the 2006 Congress to take place in Indonesia went well, and a preliminary program for both congress and course, locations, dates and preliminary budget were developed.
- Nidhi Gupta prepared minutes of a meeting of the Working Group and Melanie will include those in the next newsletter.
- The EB would like to congratulate the organizing committee for this workshop for a job well done – particularly Dr. Thomson.

4. Congress 2006

- The EB had received both a draft program (course and congress) and a draft budget as well as an email from Sandra Moniaga reporting on her discussions with Ujjwal Pradhan of the Indonesia Ford Office. After extensive discussions, it was decided that feedback on the budget would be provided to the local working group on behalf of the EB. Melanie will prepare this feedback with the help of Franz and Keebet von Benda-Beckmann, and Anne will forward it on to the local organizing group. The draft programs look very good with the exception of one or two word changes. These will also be suggested to the local organizing group.
- After some discussion it was decided to recommend to the local organizing group that the congress and course be conducted in English with no translation.
- On the course, the EB members tended to favor the four day option with a one half day outing. There was some discussion of possible local instructors to be matched with the international instructors, and these recommendations will also be passed on to the local organizing group.
- In terms of funding, Markus asked that Anne send the proposed budget as well as the congress and course proposal on to him as he has some hopes of finding additional funding agencies to support some participants.
- Werner also asked that in future courses, some consideration be given to covering some costs for the volunteer instructors, especially as they incur extra costs for longer hotel stays and meals.

5. Upcoming Meetings

- China 2008 IUAES – it was agreed that the Commission should hold the next congress (after our 2006 meetings in Indonesia), in conjunction with the IUAES congress in Beijing.
- Keebet von Benda-Beckmann also raised the possibility of organizing something for the 2007 Law and Society meetings in Berlin. Since there is an interest in this organization in promoting a more international perspective, the EB members agreed that we could try to organize a couple of sessions which include the term legal pluralism in the heading.

6. Publications

Werner Zips (chair of the publications committee) reported that the following publication activities are in progress:

- Maarten Bavinck is producing a book based on the Canada Congress panel that he organized.
- Rene Kuppe is also interested in putting together a volume based on the aboriginal papers from that congress.
- Gerhard Anders and Monique Nuijten have a corruption panel book under development from that congress.
- Markus and Werner are also working on a book that will combine the Canada Congress papers with several papers from the Vienna meetings they organized.
- Gordon Woodman reported that some papers from the Canada Congress are appearing or will soon appear in the *Journal of Legal Pluralism*.

7. Commission Name Change

Melanie Wiber suggested that the Commission consider changing its name from the *Commission of Folk Law and Legal Pluralism* to the *Commission on Legal Pluralism*. This change would better reflect the evolving direction of the Commission's work and the interests of many of the members. She noted that "folk law" in particular, tended to confuse funding agencies and potential members as to the main subject matter of the Commission. Since our members are interested in all kinds of law, this term is misleading. The members of the EB discussed this recommendation (and followed up with extensive email discussions), and it will be suggested to the members in the next issue of the newsletter.

3. MINUTES OF THE COCHIN MEETING OF THE ASIAN INITIATIVE ON LEGAL PLURALISM

(Prepared by Nidhi Gupta)

As decided during the meeting of the Asian participants on 27th August 2004 at the XIV International Congress of Folk Law and Legal Pluralism in Fredericton, the first meeting of the Asian Initiative on Legal Pluralism took place in Cochin, Kerala, India. The meeting was held from 18th May to 21st May 2005. It was organised by Dr. K.T. Thomson under aegis of School of Industrial Fisheries and School of Legal Studies, Cochin University of Science and Technology, Kochi, Kerala. The meeting was sponsored by Max Planck Institute of Social Anthropology, Halle, Germany, with funding from Ford Foundation. The focal theme of this meet was “Natural Resource Conflicts and Resource Governance in Asia: Legal Pluralist Perspectives”.

The programme for the meeting was:

Day 1: 18th May 2005: Inauguration, presentation of country reports, sharing of issues and sector experiences, discussions and summary

Day 2: 19th May 2005: Field trip, a paper on Conflicts related to water rights and legal pluralism perspective by Dr. Rajendra Pradhan

Day 3: 20th May 2005: Planning future activities, organisational issues of AILP, launching of website.

Day 1: 18th May 2005

The meeting was inaugurated by Justice V. P. Mohankumar, Chairman, Kerala State Human Rights Commission. The Pro Vice-Chancellor of Cochin University of Science and Technology presided. After the formal inaugural session, the first technical session of the meeting was dedicated to discussions about various activities with legal pluralist perspectives in different countries/regions. Country reports from Nepal, Indonesia, Philippines, Sri Lanka and India were presented in this session. The Report from Nepal was presented by Bishnu Raj Upreti, Indonesia by Sandra Moniago and Sulistyowati Irianto, Sri Lanka by Ranjit Wickramasinghe, Philippines by Augusto Gatmaytan, and India by Nidhi Gupta.

These reports threw light on various areas/sectors where researchers or activists have applied legal pluralist perspectives. Natural resources in general and sectors relating to forests, fisheries, and water rights emerged as the most common areas where issues relating to governance and management of resources have been dealt with under a legal pluralist perspective. The reports also gave an account of the institutions that have made efforts to apply legal pluralist perspectives. A brief description of the concrete outcomes of these efforts, in other words, the success that has been achieved in establishing the importance of legal pluralism, also appeared in all the reports. Furthermore, reports also discussed constraints that individual researchers, activists and also the institutions face while adopting legal pluralist perspectives.

The reports highlighted that in all the countries/regions that were represented in the meeting, legal pluralism is a restricted phenomenon. Limited appreciation of the importance of legal pluralism in official (both national and international) policies and in education systems appeared as a feature common to all the countries/regions.

The kind of activities that emerged as necessary for establishing and promoting the importance of legal pluralism were:

- 1) **Education:** efforts for inclusion of courses on legal anthropology and legal pluralist perspectives in curriculum of law schools and other social science programmes. It was thought that legal pluralism perspectives should also be included as a separate module in natural resource management courses, especially in leading institutes like IIMA IRMA, Administrative Staff College India etc. and other institutes working with inter/multi-disciplinary perspectives.
- 2) **Training:** specific programmes to inform, train, sensitise and educate scholars, teachers, activists, bureaucrats, judges, legislators with legal pluralist perspectives.
- 3) **Networking:** systems for effective communication and exchange of information between policy makers, governmental bodies, national and international governmental and non-governmental organisations, and the academic community. Also, systems for issue-specific networks are needed in order to undertake concentrated discussions.

- 4) **Research:** efforts are needed for infusing legal pluralist perspectives in debates focussed on issues such as decentralisation, ‘governance’, gender, human rights, alternative dispute resolution mechanisms
- 5) **Rethinking Legal Pluralism:** efforts are required to further discussions on conceptual and methodological issues relating to legal pluralism.

During discussions in the second technical session of the day, the participants endorsed the above mentioned activities, with difference in emphasis depending upon different backgrounds of participants. For example while those from the academic community emphasised the necessity of deeper discussions on conceptual and methodological issues of legal pluralism, the participants who have been working with NGOs and other peoples’ movements and training institutes were of the view that it is necessary to go beyond academic debates focussed on ‘rethinking legal pluralism’. Many participants endorsed the idea that legal pluralism should serve as a tool for analysis of different socio-legal problems. Some also emphasised that efforts should be made to go beyond journals and books and to reach out to popular media for disseminating the importance of legal pluralism.

By the end of the session there was a general agreement that there is an urgent need to develop synergy in different regions and in different activities required for promoting legal pluralism.

Day 2: 19th May 2005- Field Trip

Day 2 was dedicated to a visit on a site on Vembanad lake Philupputty farm of Mr. Vinod Thomas at near thannermukkam bund Vembanad lake. This trip, in addition to offering an exciting treat on Kerala backwaters for the participants, offered an opportunity for a first hand look into the operation of the concept of eco-tourism. The owner of the tourist resort, who happened to be a scholar of social sciences besides giving a tour in his organic farm informed the participants about various threats to natural resources and conflicts thereof in Kerala engendered by various development activities and increasing tourism. He also drew attention towards issues of livelihood, unemployment and the problems relating to water rights and drinking water that a place like Kerala, which is surrounded by water, faces.

Dr. Rajendra Pradhan from Nepal provided a comparative perspective on the problems relating to water and water rights. He discussed conflicts over water with the help of two examples, the first one over the different uses of a small lake in Nepal and the second over decision-making rights over an ancient tank in Sri Lanka.

Day 3: 20th May 2005

The sessions on Day 3 were dedicated to discussions related to the organizational matters of AILP and for launching of the website. Apart from this Dr. Rajendra Pradhan and Sandra presented the thematic areas of next congress to be held in Jakarta, Indonesia in July 2006. Besides, a digital documentary on National Park issues “Faces of Kudremukh” was shown by Amalendu Jyotishi.

The following important decisions were taken with respect to organizational matters:

Organizational Structure:

It was decided that the existing structure consisting of a coordinator, a secretary and country representatives would continue. Dr. K.T. Thomson from Cochin University of Science and Technology, School of Industrial Fisheries, Cochin, Kerala will continue to act as the coordinator. Dr. Sulistyowati from Indonesia continues as secretary. A slight change was introduced in the names of country representatives. The country representatives are as follows:

Nepal: Bishnu Raj Upreti

India: Ruchi Pant

Indonesia: Sandra Moniaga

Sri Lanka: W A Ranjit Wickramasinghe

Philippines: Augusto Gatmaytan

Executive Committee: It was decided that the executive committee will consist of the coordinator, the secretary and the country representatives. It was also decided that an audit report will be sent to the committee. A general proposal was that scholars and researchers from other countries in the region such as Pakistan, Bangladesh, Japan, China, Thailand should be contacted in order to enhance the representative base of the Initiative.

Membership: It was decided that for the time being no membership fees will be levied for membership in AILP.

AILP's Relationship with the Commission on Folk Law and Legal Pluralism:

It appeared that the relationship with the Commission will be mainly advisory in nature. Dr. Anne Griffiths confirmed that the Commission will perform the function of an advisory body and will be giving advise on networking with European institutions, and on avenues for fundraising. An advisory group was also proposed for the purpose. The names that were suggested for this group were:

Rajendra Pradhan
Maarten Bavinck
Franz Von Benda-Beckman
Keebet Von Benda-Beckman
Melanie Wiber
Ujjwal Pradhan
Anne Griffiths
Gordon Woodman
Shalini Randeira

Activities for the Initiative

Seven activities were recognized for the Initiative:

- 1) Research and publication
- 2) Bibliography on legal pluralism in Asia
- 3) Posting working papers/research papers on AILP website
- 4) Training programmes
- 5) Research Collaboration
- 6) Advocacy and Dissemination
- 7) Website Development

1) Research Publication:

Considering the fact that most members of the Initiative have been consciously applying legal pluralist perspectives in their work, it was decided that a research publication containing a collection of essays will be conceived. Since most the present members have natural resource management as their main focus, the tentative title for this publication is: "Natural Resource Management: Legal Pluralist Perspectives from Asia".

Nidhi Gupta is to be responsible for co-ordinating this publication. She will be supported by Myrthena L. Fienza and Augusto Gatmaytan from Philippines. The proposed time frame for this publication is two years.

Apart from this, a research publication on the 'policies on, and, practices of shifting cultivation in South and South-east Asia' was proposed. Amalendu Jyotishi from India Myrthena L. Fienza and Augusto Gatmaytan from Philippines, Yonariza (presently in Thailand), and Sandra Moniaga from Indonesia offered to co-ordinate and work on this thematic area.

2) Bibliography:

In order to facilitate accessing to a wide range of research works on legal pluralism themes, it was decided that a comprehensive bibliography of the works that have used legal pluralist perspectives will be prepared and posted on the AILP website. Each member country has to contribute in preparation of this bibliography and for this purpose bibliography co-ordinators from each country and a general bibliography co-ordinator were named. Amalendu Jyotishi accepted the responsibility of the general bibliography coordinator. The bibliography coordinators from member countries are:

Indonesia: Sandra Moniago

Philippines: Myrthena L. Fienza

India: Vishal Narain

Nepal: Bishnu Raj Upreti

Sri Lanka: Ranjit Wickramasinghe

3) Working Papers on AILP website:

In order to increase access to the published material relating to legal pluralism, efforts will be made to post the research papers or working papers on AILP website. Amalendu Jyotishi will be the academic coordinator for the website and will be responsible for screening the papers before they can be accessed through the website.

4) Training Programmes:

There was a general consensus about the necessity of training programmes for establishing the importance of legal pluralism. It was also agreed that it was important to develop a training module or a reader on legal pluralism which can be used in the different training programmes. Everybody endorsed the suggestion that it was important to

identify areas of interest in different regions in order to prepare effective modules. Rajendra Pradhan who is in the process of preparing a reader on legal pluralism with Dr. Anne Griffiths assumed the responsibility for identifying areas of interest and also for receiving inputs from other country's training modules.

5) Research Collaboration:

No definitive agreement could be reached on the modalities of establishing research collaboration. Fundraising and modalities for managing funds appeared as one of the important issues which needed to be clarified for any such collaboration. A widely accepted suggestion was that researchers from different countries could work on common themes and each country could approach donors individually for project finance. It was suggested that one of the ways to establish collaboration could be organizing conference(s) on the common theme on which researchers have been working separately. A proposed common theme was: Landscapes (or Ecosystems) and Livelihood.

It was generally agreed that it was too early for the Initiative to be able to establish research collaboration and more ground work needs to be done. Dr. K.T. Thomson and Sarah S. Bernasor assumed the responsibility for locating possibilities for conceiving research collaborations.

6) Advocacy and Dissemination:

It was agreed that here the requirement was to identify the regionally relevant topics for advocacy and dissemination. It was also proposed that AILP could act as a facilitator to other agencies which engage in advocacy. Participants endorsed that advocacy should stem from concrete research. Some of important issues identified for facilitating advocacy were: Indigenous peoples; Gender and Development, Natural Resource Management.

There was a general agreement that the Commission's support should be sought for the purposes of dissemination. Members endorsed the view that since the Initiative, being in its infancy and due to lack of consolidated physical, financial and intellectual resources, the Commission should be approached for support in order to clarify the issues such as what to disseminate and how to disseminate. It was agreed that the Commission could also be approached for obtaining materials that may be required for dissemination of knowledge on legal pluralism.

7) Website development:

Since the initiative is a virtual network, the website is its backbone. The website was launched officially on Day 3. It was decided that various fundamental decisions concerning a logo of the Initiative, different forums, discussions groups will be taken by Dr. Thomson after consultation with members of the initiative. There was a general consensus that all the members have responsibility to take active interest in development of this website.

4. THE COMMISSION ON FOLK LAW AND LEGAL PLURALISM

ANNOUNCEMENT OF THE XVTH INTERNATIONAL CONGRESS AND THE VIITH INTERNATIONAL COURSE ON LEGAL PLURALISM

The Commission on Folk Law and Legal Pluralism will hold its XVth International Congress in Depok, West Java, Indonesia, June, 29 - July, 2, 2006, with the theme "Law, Power and Culture: Transnational, National and Local Processes in the Context of Legal Pluralism". The Commission will also organise its VIITH International Course on the same theme, in Ciawi/Bogor, West Java, June 24 – June 27, 2006. Both the Congress and the Course will be hosted jointly by the Faculty of Law and the Centre for Women and Gender's Studies, University of Indonesia, HuMa (Association for Community- and Ecologically Based Law Reform), and the Center for Irrigation, Land and Water Resources and Development Studies (PSI-SDALP UNAND), Andalas University, Padang, West Sumatra.

The Commission on Folk Law and Legal Pluralism

The Commission on Folk Law and Legal Pluralism was established in 1978 by the International Union of Anthropological and Ethnological Sciences (IUAES). A network of approximately 400 lawyers, anthropologists and other social scientists as well as NGO activists and policy makers representing all regions of the world and concerned with state law, folk law and international law in both theory and practice has participated in the activities of the Commission. The Commission's primary purpose is to further knowledge and understanding of folk law and legal pluralism, with a focus on theoretical and practical problems resulting from the interaction of many levels of law. The Commission's current activities are: the issue of a newsletter; the organization of international symposia, and the initiation and encouragement of regional working groups in different parts of the world. The Commission is particularly concerned to further mutual learning and cooperation between scholars and practitioners of northern and southern states. So far, the Commission has organized 14 international conferences, all of which have led to book publications or special issues of international journals.

The Commission has also organized six international courses on issues such as governance, resource rights, human rights, and social, economic and political development from a legal pluralism perspective to contribute to the capacity building of younger academics and practitioners who are confronted with problems of folk law and legal pluralism in their academic or practical work. The Commission members (and its executive board) work on a voluntary basis; the Commission as such is unable to finance major activities but has always attempted to raise funds for participants from less developed regions for whom the cost of attending international meetings is often prohibitive. External funding is essential to undertake these activities.

Call for Papers and Paper Organizers

The Congress will address a number of related themes and issues pertaining to power and cultural aspects of law, especially in the context of the relations between transnational, national and local processes which affect the everyday life of people as they pursue their various activities.

While the congress symposia are comparative in nature and ask for papers from all over the world, a major focus will be on issues particularly relevant to South and Southeast Asia. In the historical development and contemporary situation in these regions, the legal landscapes are undergoing rapid change. Local populations, non-governmental and governmental agencies alike are faced with immense challenges posed by the plurality of laws and institutions. Besides local forms of traditional and neo-traditional law and the diverse regulations of governments at different levels of administration, religious laws (Islamic, Buddhist and Hindu law in particular) also play an important role in the organization and legitimation of governance, of social, political and economic relationships, and the administration of justice. In the context of globalisation, international and transnational legal rules and conventions as well as international actors, governmental and non-governmental organisations increasingly add to the earlier forms of legal complexity, not only influencing law making at the national level but also having impacts on small-scale local communities.

The Congress will attract participants from all over the world including people from various academic backgrounds, such as law, anthropology, sociology, development studies and gender studies as well as practitioners (social workers, NGO members, dispute mediators, legal advocates,

planners, state officials, political activists) who in their work are confronted with issues of legal pluralism.

The Congress will address a number of issues that will form the core themes of the symposia and panels. The following outline is in the preparatory stages. The symposia and panels will be more closely focused in cooperation with panel organizers and the local organizing committee. Moreover, interested colleagues are invited to suggest additional proposals for panels, and proposals by participants from less developed countries as well as joint panels organized by northern and southern scholars are very welcome.

People who are interested in organising panels, either the ones listed below or new ones, are invited to notify the local organising committee latest by 30th September, 2005. The panel organisers will be expected to submit the description (themes, issues, questions) of their panels for general information.

Abstracts of papers are to be submitted to panel organisers, with a copy to the local organising committee by **31st January, 2006**. Completed papers are to be submitted to the panel organisers by **15th May, 2006**.

Proposed symposia and panels for the congress

Symposium I: Theoretical and Methodological Issues

Panel 1: The Problems of Case-Method Approaches in Legal Anthropology

Panel 2: Disputing Process and Legal Anthropology

Panel 3: Inter- and Intra Societal Comparison

Panel 4: Normative and Analytical Study of Law

Panel 5: Space, Time and Law (Or Spatial and Temporal Dimensions of Law)

Symposium II: Law, Governance and Market in a Transnational World

Panel 1: State Structures and Practices in Relation to Legally Plural Populations

Panel 2: Devolution of Power and Legal Change

Panel 3: Globalisation, Market and Law

Panel 4: International Agencies, Multinational Corporations and the State

Symposium III: Rights, Culture and Plural Laws

Panel 1: The State, Multiculturalism and Rights

Panel 2: Indigenous Groups and Legal Pluralism

Panel 3: Religion and Legal Pluralism

Panel 4: Human Rights, Conflicts and Law

Symposium IV: Gendered Perspectives on Law

Panel 1: Gendered Violence and Discrimination

Panel 2: The International Trafficking of People

Panel 3: Access to Property and Resources: A Gendered Perspective

Panel 4: Reproductive Health and Rights

Panel 5: Gender and Development: Where Do We Go from Here?

Symposium V: Natural Resources, Property Theories and Legal Pluralism: Southeast Asia in Comparison

Panel 1: Property Theories and Legal Pluralism

Panel 2: Intellectual Property and Genetic Resources

Panel 3: Rights, Equity, and Justice in Natural Resources and the Environment

Panel 4: Recent Developments in Local/Indigenous Natural Resource Management Regimes

Panel 5: Conflict and Dispute Resolution in Natural Resource Management

Panel 6: Gender and Natural Resources Tenure after Crisis: Lessons from Southeast Asia and other Regions

Symposium VI: Social Security and Social Insecurity, Disasters, Aid and Rights

Panel 1: Social Security and Insecurity in Everyday Life

Panel 2: Disasters, Conflicts, Aid and Rights

The International Course

In addition to the congress, a four-day International Course on the subject "Law, Power and Culture: Transnational, National and Local Processes in the Context of Legal Pluralism" will be organized for academics, researchers and practitioners whose work might benefit from an in-depth study of the implications of legal pluralism.

The course aims at capacity building on the complex issues of legal pluralism by drawing on the expertise of international scholars in the field who will attend the conference. It will provide a combination of practical

and theoretical insights into some of the central questions and problems of legal pluralism, especially concerning the development and safeguarding of local populations' rights in the context of transnational, national and local processes and laws. The course will assist participants to develop the legal and anthropological skills necessary to understand and move towards the practical solutions of problems in contexts of legal pluralism. The purpose of the course is to familiarize the participants with the current international debates and insights in legal pluralism and to offer them a comparative perspective that allows them to rethink their own research and practical work. At the centre of the discussion will be issues of human rights, recognition of local populations' folk laws and governance in the context of globalising economic, political and legal developments. Special attention will be given to rights to natural resources and sustainable development.

As in past courses (held in Wellington, Accra (Ghana), Moscow, Arica (Chile), Chiang Mai and Fredericton) the teaching teams will consist of senior academics drawn from the Commission and of colleagues from the region, in this case from Indonesia, India and the Philippines. Co-teaching among international and local scholars has proven to be very conducive for challenging discussions among the staff and the participants. Here, as during the conference, both practitioners and academics of various backgrounds will be brought together.

The Course Participants

Participation is limited to 30 persons, to allow for maximum discussion. The majority of the participants (maximally 25 of the 30) will come mainly from South and Southeast Asia, but it has been an established practice to have some wider international participation. Therefore five places in the course will be reserved for participants from other regions. *Participation to the course is open only to persons who will attend both the course and the congress.*

The participants should be academics and practitioners who are dealing with folk law and legal pluralism in their academic or practical work. Academics are those who are teaching legal anthropology, sociology of law, *adat* law (indigenous/folk law) science and other socio-legal field of studies and/or doing research using legal pluralism perspectives. Practitioners are those who have to address issues of legal pluralism in their activities or work; they include NGO activists, planners and government officials.

Proposed topics for the course:

1. Theories and methodologies in legal anthropology (two sessions)
2. Transnational, national and local processes and laws (one session)
3. Gendered perspectives on law (one session)
4. Natural resources and legal pluralism (one session)
5. Rights, culture and legal pluralism (one session)
6. Disasters and conflict research (one session)
7. Field trip: (half-day)

Organization

The conference and the course will be hosted jointly by the Law Faculty and the Center for Women and Gender's Studies, University of Indonesia, Association for Community-and Ecologically Based Law Reform (HuMa), Center for Irrigation, Land and Water Resources and Development Studies (PSI-SDALP UNAND), Andalas University, West Sumatra. The local *organising committee*, co-chaired by Hikmahanto Juwana and Sulistyowati Irianto of the Law Faculty, University of Indonesia, and including as members, Asep Yunan and Sandra Moniaga of HuMa and Yonariza of PSI-SDALP UNAND, will organize the logistics of the congress and the course in cooperation with the Commission on Folk Law and Legal Pluralism.

The *programme committee* will develop and coordinate the symposia and panel structure for the conference and the teaching and discussion programme of the course. The programme committee will consist of members of the local organisation committee and some members of the Commission on Folk Law and Legal Pluralism. The programme committee will review and evaluate the applications for full or partial funding of non-Indonesian applicants for the course and congress. It will also coordinate with the Course Organisers. Members of the programme committee are Sulistyowati Irianto (*convenor*) Anne Griffiths, Melanie Wiber, Franz von Benda-Beckmann, Keebet von Benda-Beckmann, Valerine Kriekhof, T. Omas Ihromi and Yonariza.

The *course organisers* will help develop and coordinate the teaching and discussion programme of the course, in consultation with the programme committee. The course organisers are Sandra Moniaga and Asep Yunan F. (*co-convenor*), Gordon Woodman, Anne Griffiths, Melanie Wiber, Rival G. Achmad and Rajendra Pradhan.

The *secretariat* for the congress and course will be located in the Center for Women and Gender's Studies, University of Indonesia, with Lim Sing Mei as the Executive Secretary. A supporting secretariat, mainly for the course, will be located in HuMa.

Finance

The Congress and the Course fees will be 100 US \$ each. Registered members of the Commission will have to pay only US \$ 75 each. Accommodation for the congress will be most probably in Makara Hotel located in the campus of University of Indonesia in Depok and a training center/hotel in Ciawi/Bogor, West Java for the course. The definitive choice of the hotels and their prices are still under negotiation. The probable costs will be around 45 US \$ for a single room, and 56 US \$ for a double room (US\$ 28 per person), including accommodation and all meals. Local transport to the course's venue is between US\$ 10 (shuttle bus + mini bus) and US\$ 30 (taxi). Further information will be provided in subsequent communication.

Travel and Participation Grants

There is a probability that the organising committee will find funding for a limited number of persons, especially from South and Southeast Asia, to attend both the congress and course. We expect that these funds will cover participants' travel costs, conference and course fees and living costs during their stay in Indonesia. Those who wish to attend the course and the congress are strongly advised to seek funding from their own sources, due to the limited funding available.

In addition to the grants for both congress and course, there will hopefully be some funds for persons interested in presenting papers at the congress. These funds will be used to (co-)finance travel and accommodation costs of scholars and participants from less developed countries.

Applications for Grants

Applications for grants to cover travel and other expenses should be sent to Dr. Sulistyowati Irianto, with a cc to the secretariat by February 28th, 2006. Applications should include a one page letter indicating what the applicant's work has been so far in the field of folk law and legal pluralism, the reasons for attending the course and conference, and a CV.

Important Deadlines

1. **Panel organizers** to notify the local organising committee (Dr. Sulistyowati Irianto) of their intention to organise a panel (if possible with panel description – key themes, issues and questions) – **September 30th, 2005.**
2. **Panel description** – Submission by panel organisers of panel description to the local organising committee - **October 15th, 2005.**
3. **Information regarding panels** (organisers and description of panels) to be posted on the website and sent via email – **November 7, 2005.**
4. **Submission of paper abstracts** to panel organisers, with a copy to the local organising committee – **January 31st, 2006.**
5. **Acceptance of abstracts** (to be communicated by the panel organisers to their panel members and the local organising committee) – **February 15th, 2006.**
6. **Application for funding for the course and congress** – **Feb 28th, 2006.**
7. **Information about funding** – **31st March, 2006.**
8. **Visa letters** to be sent out first week of **April** by regular post.
9. **Submission of papers** - **15th May, 2006.**

Contact persons

Co-Chair, Local Organising Committee

Dr. Sulistyowati Irianto
Faculty of Law,
University of Indonesia
Rectorat Building 4th floor
Salemba Raya no. 4
Jakarta 10430, Indonesia
Tel: 62-21-3924392
E-mail: sulis@pacific.net.id

Secretariat

Lim Sing Mei
The Center for Women and
Gender's Studies
University of Indonesia
Rectorat Building 4th floor
Salemba Raya no. 4
Jakarta 10430, Indonesia
Tel: 62-21-3924392 / 62-21-
7247180
0818 1600 81
Email: mei5susilo@yahoo.com

Commission

website:

www.unb.ca/cflp

5. NEWS WE HAVE RECEIVED

A. A Yahoo Group for Discussions Relevant to the 2006 Congress

Mei Susilo of the Asian Initiative on Legal Pluralism (AILP) Group has announced a yahoo group for discussion on the upcoming congress in Indonesia:

Description of the group:

Legal Pluralism International Conference June 2006 Depok,
Indonesia

Important information about the legalpluralismconf group

* To send a message to the members of this group, send an email to:
legalpluralismconf@yahoo.com

* To leave the group, you can unsubscribe by replying to this message,
or by sending an email to:
legalpluralismconf-unsubscribe@yahoo.com

* To learn more about the legalpluralismconf group, please visit:
<http://groups.yahoo.com/group/legalpluralismconf>

* To view and modify all of your groups, visit:
<http://groups.yahoo.com/mygroups>

B. Call for Papers

**The Eleventh Biennial Global Conference of The International
Association for the Study of Common Property (IASCP)**

Survival of the Commons: Mounting Challenges & New Realities

June 19 – June 23, 2006 Bali, Indonesia

[note: this is just before our Commission Congress in Java]

The IASCP is an association devoted to bringing together a group of international and interdisciplinary researchers, practitioners, and

policymakers for the purpose of fostering better understanding, improvements, and sustainable solutions for environmental, electronic, and other types of shared resource that is a commons or common-pool resource.

Conference Host

The official conference host will be The Center for Agrarian Studies (Pusat Kajian Agraria, or PKA) of the Bogor Agricultural University (Institut Pertanian Bogor, or IPB), Indonesia. IPB is the largest and oldest agricultural university in Indonesia, and is situated in Bogor, West Java, and 60 kilometers south of the capital, Jakarta.

PKA was established in December 1999 as the newest in a suite of research institutes at IPB. The Center is devoted to the study of agrarian questions in support of the agrarian reform process in Indonesia. The Center's staff and directors include many of Indonesia's foremost scholars in the field of agrarian research.

The Center's goals are:

- * To promote the development of policies in agrarian and related fields in support of a balanced fulfillment of the state's as well as community-wide interests.
- * To provide references and recommendations through studies of agrarian problems and issues.
- * To foster the development of expertise in the field of agrarian studies.
- * To foster the cooperation between national as well as international institutions

Conference Chairperson and Organizing Committee Conference Chairperson:
Ernan Rustiadi, Director of the Center for Regional Development Planning
Co-chairperson: Satyawan Sunito, Executive Secretary of the Center for Agrarian Studies.

Organizing Committee: Moira Moeliono: CIFOR

Hery Purnomo: CIFOR

Soeryo Ariwibowo: Environmental Study Centre (PSL-IPB) Martua Sirait:

ICRAF

Indriatmo Soetarto: ICRAF Damayanti Buchori: Faculty of Agriculture, IPB

Craig Thorburn: Monash University, Melbourne, Australia

About the theme

Recent IASCP conferences have highlighted globalization and its challenges.

For the 2006 conference, the committee sought a theme that emphasizes

Issues of importance to Indonesian communities and policy-makers, but that also encompasses supranational topics and concerns. Internationally emphasis has shifted to new arenas of innovation and contestation and new institutional forms - such as the virtual commons, the ownership of ideas and information, and global commons. In the case of Indonesia, the issue of survival and adaptation are of highest importance. The organizing committee proposes the following conference theme and sub-themes:

Conference theme: Survival of the Commons: Mounting Challenges & New Realities

Conference Sub-themes

- 1.1 Contemporary analytical tools and theoretical questions
- 1.2 Conservation policy and the commons
- 1.3 Culture, identity, and survival of the commons
- 1.4 Local resource rights and management institutions
- 1.5 New frontiers (the new global commons)
- 1.6 Privatization
- 1.7 Resurgent commons within public or private property
- 1.8 The commons and the fate of agriculture, forestry, and fisheries
- 1.9 The state, legal reform, and decentralization

Special Panel Series: "The International Journal of the Commons"

In addition to the above themes, a set of panels will focus on an effort to provide an excellent synthesis of where we stand in regard to core theoretical issues and/or specific substantive concerns related to a particular sector. A selection of papers presented at this series of panels will be published in January of 2007 in the very first issue of the "International Journal of the Commons". This is the new journal that IASCP plans to start publishing in 2007.

The inaugural issue will provide an overview of where we have come in our understanding of key theoretical and policy issues in the study of the commons. Papers that provide an update of findings related to inshore fisheries, irrigation systems, pastoral systems, digital commons, and forestry would be of major assistance in helping summarize for all of us where we are. This would be particularly important for students who wish to gain a good overview before they start their own research. Synthesis articles on the impact of the size of a group, its heterogeneity, the kinds of rules in use, the level of governance arrangements, and other major issues are also encouraged.

Guidelines for the abstract submissions

We invite anyone interested in the survival of the commons to participate

In the conference. We encourage researchers and practitioners to submit proposals for a panel, individual paper, or poster presentation. The panel, paper, or poster abstracts of 500 words, or less, should be submitted in word or word perfect format to the conference secretariat at:

iascp06@indiana.edu, by November 15, 2005.

Please send a Word or Word-Perfect file as an e-mail attachment **ALONG WITH THE FOLLOWING FORM:**

IASCP 2006 Abstract Submission Form

Surname

First Name

Mailing Address

Country

Email

Phone Number

Fax Number

Funding Needed(Indicate Yes or No)

Indicate theme if applicable

The above form MUST accompany your abstract submission

An international committee of commons researchers and practitioners will review all abstracts. Abstracts are accepted based on quality and appropriateness to the conference. Interested participants are encouraged to submit an abstract on their topic of expertise that will be suitable for discussion and debate, even if it does not necessarily fit in the stated conference sub-themes.

The conference secretariat will notify individuals of acceptance by January 15, 2006. The final papers should be submitted by April 15, 2006.

The committee requests that panel proposals are limited to 2-4 papers (maximum 4). Panel proposals should include an abstract and abstract submission form for each paper. Funding for panel proposals will be considered in the same group as paper presentations and considered according to individual abstracts in each panel proposal.

Funding for Participants

In the past, we have only been able to fund a limited number of

Participants so strongly encourage all persons to seek independent funding. The FORD Foundation, IDRC, and the Christensen Fund have supported travel to past IASCP conferences. We are hopeful that they will be able to partially fund a small number of conference participants at IASCP2006. Please indicate on your abstract submission form if you will need partial funding to attend the conference.

Multiple Submission Guidelines

In order to keep the participation at the conference as wide as possible, the program co-chairs discourage multiple submissions for single-authored paper/poster presentation. Most professional associations and funding agencies require that a person present a paper/poster at the meeting. Allowing multiple single-authored paper/poster presentations by one person would reduce the possibility for other participants to obtain funding to attend the conference. Therefore, the program committee will follow the below guidelines regarding multiple submissions:

- * We CANNOT accept two or more single authored papers from the same person;
- * We CANNOT accept more than two papers that have the same author as one of the co-authors;
- * An author presenting a paper at a panel CANNOT be the discussant for the same panel; and
- * An author presenting a paper at a panel CAN chair a panel.

*Please note the following exception. Individuals who submit abstracts for themes 1.1 - 1.9 may also submit a separate abstract for the special panel series on the "International Journal of the Commons". Please indicate on the abstract submission form if you are submitting an abstract for the special panel series.

Contact Information:

IASCP2006 Conference Committee

Email: Iascp06@indiana.edu

Website: <http://www.iascp.org>

Please visit our website regularly for updated information on IASCP activities at: www.iascp.org

C. News From Christoph Eberhard

Christoph Eberhard writes:

After the announcement of the publication of the special issue of the Indian Socio-Legal Journal on Legal Pluralism in India, I have a second information which may be interesting to include in the next Newsletter of the Commission: it is the call for papers for a conference on land law and natural resources' management to be held in Pondicherry (India) in March 2006.

See: <http://www.dhdi.free.fr/annonces/colfoncierpondi.htm>

6. RECENT PUBLICATIONS

JOURNAL OF LEGAL PLURALISM and Unofficial Law

NUMBER 49 / 2004

CONTENTS

Diffusion of Law: A Global Perspective
William Twining

Hegemonic Treatment of Hindu Divorce
Customs by Dominant Legal Discourses
Livia Holden

Life in Reindeer Rhythms: Customary and State
Regulation
N. Novikova

Competition and Interaction in the Court Room:
Inheritance cases in Indonesia
Sulistiyowati Irianto

Lawyers, Legal Education and Shari'a Courts in
Nigeria
Abdulummini A. Oba

JOURNAL OF LEGAL PLURALISM and Unofficial Law

The Journal of Legal Pluralism and Unofficial Law (JLP) is a refereed, independent, inter-disciplinary, international journal devoted to scholarly writing, documentation, information on current developments, and communications about all aspects of legal pluralism and unofficial law anywhere in the world and at any time. Issues 1 to 18 bear the name *African Law Studies*.

PUBLISHERS

From Number 49 the JLP has been published by LIT Verlag, Münster-Hamburg-Berlin-Vienna-London, <http://www.lit-verlag.de/>

JLP WEB SITE

The JLP web site is at:

<http://www.jlp.bham.ac.uk/>

The JLP web site currently (June 2005) contains:

[Contents of Numbers 25-49](#)

All abstracts published, i.e. [Abstracts of Articles from Numbers 43-49](#)

[Index of articles and abstracts from Numbers 25-49](#)

[JLP Author Guidelines](#)

[Information about the JLP including Associate Editors and Editorial Advisory Board](#)

Further work on the web site is currently proceeding. The Index of articles and abstracts is to be extended to include all numbers from Number 1. Preparations are in hand to place on the web site [the full texts of all numbers published more than two years ago.](#)

SUBSCRIPTIONS

Subscriptions to the Journal of Legal Pluralism are currently €27.00 for individuals and €52.50 for institutions. A subscription consists of two numbers, each of approximately 200 pages. From nr. 49 (2004) the Journal has been published by LIT Verlag, Münster-Hamburg-Berlin-Vienna-London, whose address for orders is Grevener St./Fresnostr.2, D-48159 Münster, Germany, Fax (+49) (0)251 23 19 72, vertrieb@lit-verlag.de.

Back numbers of African Law Studies and the Journal of Legal Pluralism prior to nr. 48 are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209-1987, United States, mail@wshein.com.

Gordon R. Woodman
Editor-in-chief, Journal of Legal Pluralism
School of Law, University of Birmingham
Edgbaston, Birmingham B15 2TT
United Kingdom
Tel: (+ 44) (0)121 414 6313
Fax: (+ 44) (0)121 414 3585
Email: G.R.Woodman@bham.ac.uk

Order Form



Please return to...

Ashgate Publishing Direct Sales
Bookpoint Limited
130 Milton Park
Abingdon
Oxon
OX14 4SB

Tel: +44 (0)1235 827730
Fax: +44 (0)1235 400454
Email: ashgate@bookpoint.co.uk

Order Ref: 30FL2225

Please send me _____ copies of:

Mobile People, Mobile Law

Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths

Hardback:

ISBN: 0 7546 2386 6

Price: £60.00*

** Prices are subject to change without notice. Postage is charged at £3.95 for UK orders and £7.50 for overseas orders.*

I enclose a cheque for £ _____ payable to: **Bookpoint Limited**

Please invoice me/my company/institution (delete as appropriate)

Please charge my VISA/MasterCard/American Express (delete as appropriate)

Account number _____

Expiry date _____

Signature _____

Please supply the address to which your card is registered if it differs to the delivery address below

Deliver to (BLOCK CAPITALS PLEASE):

Name _____

Position _____

Company/Institution _____

Address _____

Postcode _____

Telephone _____

Fax _____

Date _____

Your organization's VAT/IVA number (European customers outside the UK) _____

Failure to provide this may result in considerable delay

We endeavour to despatch all orders within 5 working days. In the event a product is not available, your order will be recorded and the product despatched as quickly as possible.

Ashgate Publishing Limited or other organizations may mail offers reflecting your preferences. Tick if you do not wish to receive offers from us or from other organizations .

New
Now available...



Mobile People, Mobile Law

Expanding Legal Relations in a Contracting World

Edited by **Franz von Benda-Beckmann** and **Keebet von Benda-Beckmann**, Max Planck Institute for Social Anthropology, Germany and **Anne Griffiths**, University of Edinburgh, UK

Law, Justice and Power

Demonstrating how users of law, who often operate in multi-sited situations, are forced to deal with increasingly complex legal circumstances, this volume focuses on political and social processes through which people appropriate, use and create legal forms in multiple legal settings. It provides new insights into social and political processes through which transnational law is locally appropriated by different actors and presents empirical studies of confrontation, adaptation, vernacularization and hybridization of law due to its transplantation across the borders of national states. The contributors offer insights into modern dynamics of legal change, challenging assumptions about increasing homogeneity in law, with a keen eye for the historical situations in which current legal changes stand.

'Anthropologists, lawyers, sociolegal scholars and human rights advocates will find here highly current projects on the new conflicts, idioms, purposes, institutions, partnerships and risks emergent from the ground-level effects of globalization, as these are registered through law. Thematically, regionally and methodologically varied, the essays – together with the editors' critical synthesis of the field – yield a thoughtful provocation toward a new legal anthropology.'

Carol Greenhouse, Princeton University, USA

Contents: Mobile people, mobile law: an introduction, *Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths*; Transborder citizenship: an outcome of legal pluralism within transnational social fields, *Nina Glick Schiller*; Transnational migration and the re-framing of normative values, *Monique Nuijten*; 'Global fire': repatriation and reparations from a Rastafari (re)migrants perspective, *Werner Zips*; McTradition in the new South Africa: commodified custom and rights talk with the Bafokeng and the Bapedi, *Barbara Oomen*; Democracy in flux: time, mobility and sedentarization of law in Minangkabau, Indonesia, *Franz von Benda-Beckmann and Keebet von Benda-Beckmann*; Mobile law and globalism: epistemic communities versus community-based innovation in the fisheries sector, *Melanie G. Wiber*; Contesting decentralization: transitional policy narratives and the emergence of volatile socio-legal configurations in Central Kalimantan, Indonesia, *John F. McCarthy*; Negotiating water rights in the context of a new political and legal landscape in Zimbabwe, *Anne Hellum and Bill Derman*; The Americanization of international law, *Laura Nader*; Human rights and global legal pluralism: reciprocity and disjuncture, *Sally E. Merry*; Project law – normative orders of bilateral development cooperation and social change: a case study from the German agency for technical co-operation, *Markus Weilenmann*; School and religious difference: current negotiations within the Swiss immigrant society – viewed in a comparative perspective, *Joanna Pfaff-Czarnecka*; Localizing the global: rights of participation in the Scottish Children's Hearings System, *Anne Griffiths and Randy F. Kandel*; Mobility versus law, mobility in the law? Judges in Europe are confronted with the thorny question 'which law applies to litigants of migrant origin?', *Marie-Claire Foblets*; Index.

ASHGATE

June 2005
344 pages
Hardback
0 7546 2386 6
£60.00

Mobile People,
Mobile Law

Expanding Legal Relations in a Contracting World

Edited by
Franz von Benda-Beckmann
Keebet von Benda-Beckmann
Anne Griffiths

www.ashgate.com

7. RECENT LEGAL DECISION REGARDING ABORIGINAL RIGHTS TO COMMERCIAL LOGGING – CANADIAN MARITIMES

SUPREME COURT OF CANADA -- JUDGMENTS IN APPEALS

OTTAWA, 2005-07-20

THE SUPREME COURT OF CANADA HAS TODAY DEPOSITED WITH THE REGISTRAR JUDGMENT IN THE FOLLOWING APPEALS.

FROM: SUPREME COURT OF CANADA (613) 995-4330

COMMENTS/COMMENTAIRES: comments@scc-csc.gc.ca

(Reasons for judgments will be available shortly)

30005 Her Majesty the Queen v. Joshua Bernard (N.B.)

2005 SCC 43 / 2005 CSC 43

Coram: McLachlin C.J. and Major, Bastarache, LeBel, Fish, Abella and Charron JJ.

The appeal from the judgment of the Court of Appeal of New Brunswick, Number 113/01/CA, 2003 NBCA 55, dated August 28, 2003, heard on January 17-18, 2005, is allowed and the conviction is restored. No order as to costs. The constitutional questions are answered as follows:

1. Is the prohibition on unauthorized possession of Crown timber pursuant to s. 67(1)(c) of the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 and amendments, inconsistent with the treaty rights of the respondent contained in the Miramichi Mi'kmaq Treaty of June 25, 1761, and therefore of no force or effect or application to the respondent by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?

No.

2. Is the prohibition on unauthorized possession of Crown timber pursuant to s. 67(1)(c) of the *Crown Lands and Forests Act*, S.N.B. 1980, c. C-38.1 and amendments, inconsistent with Mi'kmaq aboriginal title to the provincial Crown land from which the timber was cut, by virtue of (i) exclusive occupation by the Mi'kmaq at the time the British acquired sovereignty over the area, or (ii) *Belcher's Proclamation*, or (iii) the *Royal Proclamation, 1763*, and therefore of no force or

effect or application to the respondent by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?

No.

L'appel interjeté contre l'arrêt de la Cour d'appel du Nouveau-Brunswick, numéro 113/01/CA, 2003 NBCA 55, en date du 28 août 2003, entendu les 17 et 18 janvier 2005, est accueilli et la déclaration de culpabilité est rétablie. Aucune ordonnance n'est rendue quant aux dépens. Les questions constitutionnelles reçoivent les réponses suivantes :

1. L'interdiction pour quiconque d'être en possession sans autorisation de bois qui provient des terres de la Couronne contrairement à l'article 67(1)(c) de la *Loi sur les terres et forêts de la Couronne*, L.N.-B. 1980, ch. C-38.1, et ses modifications, est-elle incompatible avec les droits issus de traités de l'intimé et qui figurent dans le traité conclu, le 25 juin 1761, par les Mi'kmaq de Miramichi et, donc, inopérante ou inapplicable à l'égard de l'intimé selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?

Non.

2. L'interdiction pour quiconque d'être en possession sans autorisation contrairement à l'article 67(1)(c) de la *Loi sur les terres et forêts de la Couronne*, L.N.-B. 1980, ch. C-38.1, et ses modifications, est-elle incompatible avec le titre aborigène des Mi'kmaq sur les terres de la Couronne provinciale où le bois a été coupé en vertu de (i) l'occupation exclusive de ces terres par les Mi'kmaq lorsque la Couronne y a acquis souveraineté ou en vertu de (ii) la *Proclamation de Belcher* ou (iii) de la *Proclamation royale de 1763* et, donc, inopérante ou inapplicable à l'égard de l'intimé selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?

Non.

30063 Her Majesty the Queen v. Stephen Frederick Marshall, et al. (N.S.)

2005 SCC 43 / 2005 CSC 43

Coram: McLachlin C.J. and Major, Bastarache, LeBel, Fish, Abella and Charron JJ.

The appeal from the judgment of the Nova Scotia Court of Appeal, Number CAC 178066, 2003 NSCA 105, dated October 10, 2003, heard on January 17-18, 2005, is allowed and the convictions are restored. The cross-appeal is dismissed. No order as

to costs. The constitutional questions are answered as follows:

1. Is the prohibition on cutting or removing timber from Crown lands without authorization pursuant to s. 29 of the *Crown Lands Act*, R.S.N.S. 1989, c. 114, inconsistent with the treaty rights of the respondents/appellants on cross-appeal contained in the Mi'kmaq Treaties of 1760-61, and therefore of no force or effect or application to them, by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?

No.

2. Is the prohibition on cutting or removing timber from Crown lands without authorization pursuant to s. 29 of the *Crown Lands Act*, R.S.N.S. 1989, c. 114, inconsistent with Mi'kmaq aboriginal title to the provincial Crown land from which the timber was cut or removed, by virtue of (i) exclusive occupation by the Mi'kmaq at the time the British acquired sovereignty over the area, or (ii) the *Royal Proclamation, 1763*, and therefore of no force or effect or application to the respondents/appellants on cross-appeal by virtue of ss. 35(1) and 52 of the *Constitution Act, 1982*?

No.

L'appel interjeté contre l'arrêt de la Cour d'appel de la Nouvelle-Écosse, numéro CAC 178066, 2003 NSCA 105, en date du 10 octobre 2003, entendu les 17 et 18 janvier 2005, est accueilli et les déclarations de culpabilité sont rétablies. L'appel incident est rejeté. Aucune ordonnance n'est rendue quant aux dépens. Les questions constitutionnelles reçoivent les réponses suivantes :

1. L'interdiction pour quiconque de couper du bois se trouvant sur les terres de la Couronne ou de l'enlever de ces terres sans autorisation donnée en vertu de l'article 29 de la *Crown Lands Act*, R.S.N.S. 1989, ch. 114, est-elle incompatible avec les droits issus de traités des intimés/appelants dans l'appel incident, et qui figurent dans les traités conclus par les Mi'kmaq en 1760 et 1761 et, donc, inopérante ou inapplicable à leur égard selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?

Non.

2. L'interdiction pour quiconque de couper du bois se trouvant sur les terres de la Couronne ou de l'enlever de ces terres sans autorisation donnée en vertu de l'article 29 de la *Crown Lands Act*, R.S.N.S. 1989, ch. 114, est-elle incompatible avec le titre aborigène des Mi'kmaq sur les terres de la Couronne provinciale où a eu lieu la coupe du bois ou son enlèvement en vertu de (i) l'occupation exclusive de ces terres

par les Mi'kmaq lorsque la Couronne y a acquis la souveraineté ou en vertu de (ii) la *Proclamation royale de 1763* et, donc, inopérante ou inapplicable à l'égard des intimés/appelants dans l'appel incident, selon les articles 35(1) et 52 de la *Loi constitutionnelle de 1982*?

Non.