

Rapporteur Report on Session 1.6

Panel on Customary Law and Governance

Chair: Aroha Mead (New Zealand)

Presentations by: Kwabena Mate (Ghana); Vijay Jardhari (Nepal); Kanhaiya Gujar (India); Parshuram Tamang (Nepal); Alejandro Argumedo (Peru); Aroha Mead (New Zealand); Pihopa Kingi and Donna Hall (New Zealand); Ratu Ose Gavidu (Samoa)

Rapporteur: Sandy Gauntlett

Kwabena Mate spoke of the decline of customary authority in terms of the impacts of religious colonization and western colonization of the law. Customary law is now recognized as a part of the common law of Ghana. However, there is uneven acceptance of customary law.

Some discussion centred around comparisons between Ghana and other countries with a history of colonization. One question related to the extent of acceptance of customary law and how much religious belief system impacts on customary law. The answer was it is everything. Another question concerned the extent to which NGOs can help in getting customary law accepted, and the answer was that a critical area is documentation of what customary law existed and what has been accepted. Another question focused on whether colonization had any benefits for conservation and the answer was that certainly colonization had introduced legal and other mechanisms that can be used to help address the issue.

There were two presentations from India. One by **Vijay Jarhari** addressed the battle to save biodiversity in terms of the seeds available to villagers in remote areas. Another by **Kanhaiya Gijar** addressed the system of the river parliament that makes customary law for environmental resource usage.

Parshuram Tamang talked about the reality of being an Indigenous person in Nepal, of what happens to local customs and laws when a country is colonized by another country that itself had been colonized by Britain, and the imposition of British law (second hand) through the process of hegemony. He also talked about the traditional system of protected areas that existed in Nepal pre-colonization and of how the mountain peoples adopted a plant as a symbol of their tribe and that each plant (or tribe) had its place within the Mandala of life and law. Parshuram called for recognition of the ancestral laws and customary laws and rights of Indigenous Peoples, including recognition of Indigenous Lands and Territories, and addressed the issue of the imposition of protected areas on Indigenous areas without consultation and consent. He called for compensation for past injustices and for current application of consultation and prior and informed

consent. He also called for IUCN to set up a Commission on Indigenous Peoples and protected areas.

A question was asked regarding the dreams and aspirations of all three speakers in terms of the future (specifically 10 years ahead).

Alejandro Argumedo spoke next and talked about the Andean system of customary law, of the different layers and structures within it and of its application. Specifically, he used the Potato Park as an example of multi-tribal cooperation and of the application of customary law and methodologies to ensure that the range of biodiversity within the potato crops of the Andes is not diminished. Particular interest was expressed by the audience in the slide showing the layers and applications of customary law.

Aroha Mead spoke next and addressed the process of land alienation for the Maori of Aotearoa (New Zealand) and of the current process of land settlements through the Waitangi tribunal. In particular she spoke of the loss of cultural identity that can occur when a people are alienated from their land and of how some of this alienation had occurred (or been worsened) through the establishment of some parts of the conservation estate of New Zealand. She spoke of her hopes for the successful adoption of Community Conserved Areas as a national concept and of how this might help to address the issue of alienation.

Pihopa Kingi blessed the gathering, talked about the customary way of living of Maori, pre-colonization and before the arrival of Christianity. He also related how impressed he was with the other speakers and of their presentations. He then introduced his niece **Donna Hall**, who addressed traditional ownership and law in Aotearoa/New Zealand. She spoke of the kiwi preservation project of Mokoia Island as an example of community conservation in co-operation with the Department of Conservation.

Ratu Ose Gavidi of the Fijian Council of Chiefs talked about land law and conservation in Fiji and of the reality that laws were created to address human wrongdoing. He spoke about customary law as meaning “this is the way we do things around here.” He also spoke of the laws relating to fishing and marine access in Fiji. Of importance, he spoke of laws on conservation (customary or otherwise) being created to address human abuse of the environment and of the need to respect nature and the natural order.