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A Dual System of Self-Government for Sipaliwini

'Reconciliation of Universalism and Cultural Relativism'

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Content

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1. Subject of the Study

Draft legislation for implementing fiscal decentralization in Suriname has been submitted to the Decentralization and Local Government Strengthening Program (DLGP) of the Government of Suriname and the Inter-American Development Bank in October 2008.[1]

The draft legislation does not take account of the status of the indigenous peoples[2] and maroon peoples[3] inhabiting the Sipaliwini District.

[1] The legislation was drafted pursuant to a contract between DLGP and FHR Lim A Po Institute for Social Studies (FHR) of December 2003. This study is a follow up of the drafting exercise and has been conducted pursuant to a contract between DLGP and FHR of November 2007.

[2] The description which Martinez-Cobo, the first UN Human Rights Commission Special Rapporteur on Indigenous Peoples Rights used to characterize indigenous peoples in 1984 is still current: He identifies as such "those which have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems.

Case studies described in the literature show that many ways are used to accommodate the status of indigenous peoples. In particular the form, type and scope of the system of self-government to which they are entitled under international law, may vary in each case. These self-government systems are uniquely influenced by the state of recognition of indigenous peoples' rights in the prevailing domestic law, the constitutional framework within which the self-government system is implemented as well as local historical and actual circumstances.

But the main underlying issue is a conflict between two different ideologies of human rights at national level namely, universalism and cultural relativism. Universalism holds that more and more 'primitive' cultures will eventually evolve towards the same system of law and rights as Western Cultures. Cultural relativists hold an opposite, but equally rigid viewpoint, that a traditional culture is unchangeable. This study makes an effort to reconcile both ideologies by pragmatically accommodating the underlying principles of ideologies, respectively integration and self-determination, in the implementation of a self-government system for the Sipaliwini District. [4]

This study first briefly describes the main features of the public self-government system which the draft legislation contemplates (Section 2); then it mentions the relevant historic, demographic and geographic particulars of the Sipaliwini district (Section 3). The next three sections address the global development of indigenous peoples' rights over the last three decades (Section 4), the effects of this development on the recognition of indigenous peoples in domestic law in general (Section 5) and the status of indigenous peoples under Suriname law (Section 6). Section 7 describes the archetypal forms of indigenous decentralization identified in de literature and Section 8 describes the constitutional context for indigenous decentralization in Suriname. Sipaliwini's specific historic, geographic and demographic circumstances relevant for the selection of a preferred system of decentralization and the selection considerations are discussed in Section 9. Section 10 and Section 11 describe the architecture and

[3] According to article 1 of the ILO Convention 169 (1986) and the finding of the IACHR in the Moiwana Village v. Suriname Case (par 86.6) maroon peoples, because of their cultural distinctiveness and self-identification, are entitled to the same property rights based on traditional occupation of land as indigenous peoples. Because property rights are the foundation of the self-government entitlements which are the subject of this Study, the notion of 'indigenous peoples is for convenience being used to refer to both 'indigenous peoples' and 'maroon peoples'.

[4] See Human Rights, In the Pursuit of an Ideal, Issues today: Universalism v. Cultural Relativism, available at: http://library.thinkquest.org/C0126065/issuniversalism.html.

implementation sequence for the selected preferred system. The conclusions of the study are recorded in Section 12.

2. The Public Self-government System

The principal draft legislation for the public self-government system covers

(a) Amendments to the Constitution of Suriname
(b) Amendments to the Law of Regional Organization
(c) A general law on District Taxes
(d) A law on Financial Relations
(e) An Ordinance for a District Tax on Betterment
(f) An Ordinance for a District Tax on Premises

The system embodied in this draft legislation provides, as a first phase of transformation of Suriname from a centralized to a decentralized unitary state, in public self-government of districts in a limited number of matters primarily related to the use and maintenance of public infrastructure and facilities.

The system makes no provision for a specific right of self- government of indigenous peoples as instrument of their right of self-determination. It contemplates a continuation of the current practice of *de facto* recognition of the traditional self-government system and institutions pending the next phase of decentralization. This next phase would address matters related to use of land and other matters which might impact on the traditional lifestyle of indigenous peoples and necessitate a *de iure* incorporation of the traditional self-government system in the overall system of governance.

3. The Sipaliwini District

Almost the entire population of the Sipaliwini District consists of indigenous peoples. This makes the subject of a special right to self-government of indigenous peoples a matter of great significance for deciding on an appropriate form of decentralization for this district.

The Sipaliwini District was established in 1983 and covers over 60% (130.000 km2) of the entire territory of Suriname. Its population of about 30-35.000 inhabitants is about 5% of the Suriname population and consists of three different peoples of Amerindian and six peoples of African descent.

The peoples in this very scarcely populated district live along the rivers in small communities preserving their traditional distinctive group culture and way of life.

These factors, in addition to the specifics of the constitutional framework in which decentralization will be implemented, are key criteria for the selection of the mode of self-government to be devised for the indigenous peoples of the Sipaliwini District.

4. Indigenous Peoples rights[5]

Traditional international law permitted only nation-states to act and hold legal rights and duties. Nation-states had a virtually unlimited discretion regarding the treatment of their own citizens. However, human rights and self-determination became a raison d'être of the UN organization. Its Declaration of 1948, the 1966 Covenants and regional instruments codified them in legally binding agreements. Apart from individual human rights the specific rights of persons belonging to national or ethnic, religious or linguistics minorities were recognized in human rights instruments[6]. But the issue remained whether the protections which these instruments provided were sufficient to meet the needs of indigenous peoples. Recognition of the special human rights entitlements of indigenous peoples by human rights bodies of the UN[7] and regional organizations[8] eventually paved the way for full recognition of the these indigenous rights in the UN Declaration on the rights of Indigenous Peoples adopted on September 13, 2007. Central to this study are the right of self-determination and the right to self-government embodied in respectively article 3 and article 4 of the Declaration.

> Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

[5] The text of this section and the text of the next section are largely taken from Siegfried Wierner, General Human Rights Instruments: Rights and status of Indigenous peoples, Harvard Human Rights Journal 1999 pag.23,26

[6] Article 27 of the International Covenant on Civil and Political Rights (ICCPR) (1966) addresses the obligation of States not to deny members of minorities the right to enjoy their culture, to profess and practice their religion and practice their religion or to use their own language.

[7] Although article 27 of the ICCPR does not employ the notion of 'indigenous peoples', the Human Rights Committee of the UN emphasized in its General Comment No 23 (1994) the applicability of article 27 in respect of indigenous peoples . In particular the notion of 'culture' has been interpreted as affording protection to the nature-based way of life, land rights and economy of indigenous peoples'.

[8] Significant in this regard are the decisions of the Inter-American Court of Human Rights (IACHR) in which the Court has established an irreducible link between the right of indigenous peoples of access to ancestral territory and the survival, identity and existence of those groups and based there upon rights to economic subsistence, cultural survival, self determination and judicial protection..

> Article 4: Indigenous peoples in exercising their right to self-determination have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Anaya and Wiesnner (2007) commenting on the Declaration, refer to *inter alia* to the decisions of the IACHR, to emphasize the customary law nature of these provisions. They note, that 'although the definition and extent of the right to self-determination remains in contention, very widespread agreement exists that indigenous peoples hold the right to political, economic, social self-determination, including a wide range of autonomy and the maintenance and strengthening of their own system of justice. (….)'[9]

5. Progress in domestic law

Despite a variety of differences in the local contexts, there are similarities in status and convergent, if not common trends in the domestic legal treatment of indigenous peoples. Native communities still occupy the bottom rung of the ladder of economic and social status in the countries in which they reside. Their physical and spiritual survival is threatened by outside encroachment – private and, sometimes, public action.

There is, however, a clear discernible trend toward legal recognition of the special spiritual bond between indigenous peoples and their land, the demarcation and legal guarantee of lands of traditional indigenous use, and a recognition of Native title conferring the right to, at least, use the resources of nature in the traditional, communal ways. (…..) An increasing range of autonomy is granted to internal indigenous decision-making processes. This recognition of self-rule covers issues of group membership through self-identification, of using traditional institutions and processes of authority and control, as well as manifestations of culture and spirituality.

6. The status under Suriname law

Pursuant to the provisions of Chapter V of the Suriname Constitution (1987), indigenous peoples have equal citizen rights and enjoy the same legal protection as other Suriname

[9] The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment, Jurist Legal News and Research University Pittsburgh School of Law November 25, 2007. Anaya and Wiessner observe that this explanation is indicated by the fact that the Declaration *per se* does not have legally binding effect ('soft law') While it is not binding as a treaty, individual component prescriptions of it might have become binding. They can be categorized as reflective or generative of customary international law. Their conclusion is that the right to self- determination and the right to self-government are (reflective) customary international law because there is widespread and representative state practice in support of there rules, including from the specifically affected states as well is a feeling to be obligated (*opinio iuris*).

citizens. They are legally entitled to the same economic and social benefits as other citizens, but they nevertheless belong to the socially impoverished sectors of the Suriname society because in practice they are disadvantaged, both quantitatively and qualitatively.

The law acknowledges that indigenous peoples have a legal interest in the use of lands they have traditionally occupied, but does not recognize their traditional ownership rights. Suriname constitutional law provides for the State as the owner of all land and all resources above and beneath the surface of the land. The only exception applies to those who attest to a valid title issued by the State.

The specific governance customs and traditions of existent indigenous communities are generally *de facto* respected, however the legal system does not provide for specific rights to political, economic and social self-determination and self-government of indigenous peoples as provided for in articles 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples.

7. Archetypes of Indigenous Self-government

The scope of self-government, granted to indigenous peoples in federal and unitary states differs, but in both constitutional frameworks the same three archetypes have been identified. [10] They could be characterized as:

Territory based self-government: These are instances of regional autonomy within the State. The self-governing territory is defined in geographical terms. Administrative boundaries are drawn in such a way that the indigenous populations constitute a majority within them and thus effectively can realize a degree of self-government within the nationally established public self -government system. In fact indigenous status as such formally does not play a role.[11]

[10] This characterization is based on the reports of case studies in the following articles: John B. Henriksen, Implementation of the Right of Self-Determination of Indigenous Peoples within the Framework of Human Security, Paper for the International Conference on Indigenous Peoples' Self-Determination, Baguio, Philippines, 18-21 April 1999, Natalia Loukacheva, On Autonomy and Law, Faculty Doctor of Juridical Science Paper University of Toronto, August 2004, Else Grete Droderstad et al., Political Systems Chapter V of the Arctic Human Development Report 2004 and Paul J.Magnarella, Protecting Indigenous Peoples, Human Rights and Human Welfare 5-2005 pag.135.

[11] According to Magnarella pag.132 the autonomous cultural regions within Italy which is a unitary State would be an application of this model. The Nunavut territory in Canada, Greenland would be an application within the context of federal state. (Lokacheva supra nt. 8 pg 19)

Ethnicity based self-government: In these cases ethnicity is a criterion with no link to the territory of the indigenous peoples' domiciles. Special rights of self-government are assigned to indigenous groups based on contemporary indigenous political institutions. The self-government rights are not defined in geographical terms but in ethnic terms, although they relate to a specific territory as the home land of the indigenous group. Sometimes the rights can be exercised even in the case of an indigenous person residing outside the traditional homeland.[12]

Tradition based self-government: Indigenous tradition based self-government refers to specific ethnic groups on a specific territory, but is far more limited in scope than territorial self-government. The main focus of these rights is on the use of and control over land and resources which have traditionally been used by indigenous peoples and form the nucleus of their way of life. It recognizes the fact that for indigenous peoples preservation of their way of life requires a considerable degree of self-management and control over land and other natural resources and hence entails a traditional self-government system.[13] The scope and limits of such self-government system are difficult to specify, both in theory and on the ground in specific cases. [14]

The special relationship of indigenous peoples to their traditionally used land and resources on which the last described archetype of self-government is founded is reflected in the Un Declaration on the Rights of Indigenous Peoples as follows:

> Article 26:
> (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise user or acquired.
> (2) Indigenous peoples have the right to win, use, develop and control the lands, territories and resources that they posses s by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
> (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of indigenous peoples concerned.
>
> Article 27: States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due

[12] Magnarella pag.132 qualifies the ethnic autonomous cantons of Swiss as an application of this model within a single modern State. The Saami Arrangement in Norway, Finland would be a federal state application. (Lokacheva supra nt.8 pg 19)
[13] Applications of this model in a unitary state are the Kuna in Panama and in a federal context the Indian reserves in the USA and the Alaska Native Settlements.(Lokacheva supra nt. 8 pg 19)
[14] See Asbjorn Eide, Working paper on the relationship and distinction between rights of persons belonging to minorities and those of indigenous peoples (2000) E/CN.4/Sub.2/2000/10 par.15

> recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their land, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

8. The Constitutional Framework

Self-government needs to be structured within the constitutional framework of the State. Surname is a unitary state[15], which by definition means that the lower political units of the State have no sovereignty but only self-government authority based on the principle of subsidiarity. This principle pursues two opposing aims. On the one hand it allows lower political units self-government, if the specific interest of its community concerns policy matters that can better be handled at that level. On the other hand it seeks to uphold the authority of the higher level political units in those areas that can be dealt with at the State level more effectively or with more safeguards for non discriminatory treatment. This imperative limits the scope of the specific autonomous authority to be devolved to indigenous self-government institutions to matters of their specific interest and concern because they are the foundation of their special status and entitlement to legal protection. These are in practice primarily governance matters related to their traditional use of land and its resources.

Subsidiarity further implies that provisions, made by indigenous institutions within the realm of self-government, are nevertheless subject to superior legal provisions of the State.[16]

Suriname is also a culturally pluralistic State in the sense that people are intermingled within the same State territory and that its political system and its institutions seek to culturally integrate diverse populations into a single modern state, while simultaneously observing human rights and ethnic minority status. However, the Constitution of

[15] The unitary rather than federal nature of the State is embedded in various articles of the Suriname Constitution. A clear reference is in article 2 (2) vesting the sovereign rights in the State (rather than in federatively linked units of the State).

[16] Article 54 (2) of the Constitution of Suriname (1987) explicitly states in bullet point (a) that 'Decisions of higher State organs are binding upon lower organs' and in bullet point (b) that 'Lower State organs shall be deemed to submit justification to the superior organs and to give account of their work. Telling is also the introductory sentence in article 159, the first article of Chapter XXI on decentralization: The democratic order of the Republic of Suriname comprises inferior government organs on the regional level (…..).

Suriname only guarantees the protection of individual human rights and makes no reference of human rights of minorities. Protection of the rights of minorities is largely a function of the pursued system of consociational democracy which is based on consensus between the leaders of minorities and their responsibility to gain support for common policy objectives at 'grass roots' level.[17]

Protection of indigenous rights as a special category of minority rights is neither in theory nor in practice factored in the system. The current political system and its institutions are not designed to allow for traditional self-government. They are focused on effective participation of culturally diverse minorities in the larger society and do not provide for allocating authority to indigenous peoples to preserve their own way of life and pursue autonomous development.

The right to participate in the larger society which, in the conception of cultural pluralism is central to minorities in general, is only an optional right of indigenous peoples.[18] As a new conception of 'unity in diversity', multiculturalism has had growing acceptance[19]. It is an alternative constitutional principle for pluralism. It is a political ordering that allows for recognition of specific indigenous rights in countries both with both proportionally large and minor indigenous populations.[20] But multiculturalism has not yet gained general support as a political and constitutional principle in Suriname.[21]

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[17] See for the practice of consociational democracy in Suriname E. Dew (1978), The Difficult Flowering of Suriname, The Hague Martinus Nijhoff

[18] UN Declaration on the Rights of Indigenous Peoples Article 5: Indigenous peoples have the right to maintain and strengthen their social, political, legal and economic institutions while retaining their right to participate fully, if they so choose in the political, economic, social and cultural life of the State.

[19] S. James Anaya, International Human Rights and Indigenous Peoples: The Move toward the Multicultural State, Arizona Journal of International & Comparative Law Vol. 21 (2001) pg 15 observes that the multicultural model is generally in accord with an influential strain of political philosophy led by authors such as Will Kymlicka, Citizenship in Diverse Societies Anaya illustrates the growing acceptance by referring to a number of South American constitutions which explicitly recognize the rights of persons and communities to their cultural identity in accordance with their values, languages and customs. He concludes however that in its practical application the model of the multicultural state remains problematic and that even in states that formally embrace a multicultural model in their constitutions and other official pronouncements, this model can remain a distant ideal. (….) Nonetheless the multicultural model appears to be now firmly embraced by the international human rights regime (…..).

[20] See Oswaldo Kreimer, Indigenous Peoples Rights to Land, Territories and Natural Resources, Washington College of Law Volume 10 Issue 2 (2003) pag.13.

[21] In a Publication of the World Bank in the Yale Law Journal (May, 2005) reference is made regarding the issue of internalization of international principles to the observation of Martha Nussbaum (Woman and Human Development: The Capabilities Approach (2000) pag.105, that 'the implementation of such principles must be left , for the most part, to the internal politics of the

Nevertheless, indigenous peoples are nowadays recognized by international law as minorities that possess a right to political identity and self-government. This right is seen as probably the most effective means of protecting their group identity, group equality and group dignity within States.[22] A system of decentralization for the Sipaliwini District will therefore only conform to contemporary international law if it not only supports integration of culturally diverse populations into a single modern State but, at least, also recognizes and respects the special status of indigenous peoples and their right to self determination and self-government.[23] This could be achieved by implementing decentralization though a dual system of public and tradition based self-government.

9. The Sipaliwini Case

The Sipaliwini Case is characterized by a number of factors. The first factor is the apparent ambition of the indigenous peoples of Suriname to preserve their cultural distinctiveness and ethnic group identity, by seeking recognition and protection of rights to property and judicial protection and of the authority to exercise self-government in matters related to these rights through their traditional institutions, organizations and customs. There is no indication (yet) that the indigenous peoples of the Sipaliwini District would seek to exercise self-government in a wider scope of areas.

The second and third factors are the high degree of cultural diversity and geographic dispersion of the indigenous peoples of Sipaliwini. UN Rapporteur Irica-Irene Daes has pointedly observed that exercise of internal self-determination is impractical in cases where the group is highly dispersed, and lacks a principal centre of population and activity. The territorial element is central to the claims of indigenous peoples, and it should be given particular weight precisely because it is so closely related to the capability of groups to exercise the rights which they assert. [24]

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nation in question, although international agencies and other governments are justified in using persuasion - and in especially grave cases economic or political sanctions - to promote such developments.

[22] Alfredsson, Gudmundur, Indigenous Peoples and Autonomy (1998) quoted by Lokacheva supra nt. 8 pg 13.

[23] See Erica-Irene Daes Working paper on the relationship and distinction between rights of persons belonging to minorities and those of indigenous peoples (2000) E/CN.4/Sub.2/2000/10 par..44

[24] Supra nt. 22 par.45.

Capability perspectives are the fourth factor. One could think of a couple of ways in which self-government and capability perspectives are related. The first is of course that the capability perspectives should be a determinant of the preferred areas of tradition based self-government. Because of the pivotal role of land in the life of indigenous peoples, one should assume that the capacity perspectives for tradition based self-government in this area should be better than the perspectives with regard to other areas like education and criminal matters. But the wide space of land based traditional self-government will evidently include important aspects of self-government in cultural matters.

A second aspect of capability perspectives in relation to self-government is obviously the instrumental function of the latter in enhancing self-government capabilities. The actual capability of traditional institutions charged with self-government in land and related cultural matters, needs to be assessed and implementation of a program for strengthening these capabilities will most likely be required.

What stands out in the foregoing analysis is the special link between each of highly diverse and dispersed indigenous peoples of the Sipaliwini District land and resources which they traditionally use. It is a decisive common factor concerning their right to enjoy a particular culture or lifestyle. It is also a definite factor that distinguishes them from other populations (including general minority groups) and from each other. These two factors indicate that in the Sipaliwini Case rather than the first archetype of territory based indigenous self-government or the second archetype of ethnicity based self-government the third archetype of traditional land rights based self-government would be the most suitable point of departure for devolving self-government to indigenous peoples of the Sipaliwini District.[25]

10. The architecture of a dual system

It appears from these circumstances and considerations that the most appropriate form of decentralization for the Sipaliwini district would be a dual system of which the two sub-systems are the public self-government system, as contemplated in the draft legislation and a traditional self-government system related to use of traditionally occupied land and

[25] Annika Tahvanaien, Commentary to Professor Guibernau, Michigan Journal of International Law Vol. 25:1283 pag.1283-1291 comes to a similar conclusion for defining an appropriate mode of indigenous self-government in general.

resources. The institutions of the latter are currently only *de facto* recognized and need to be embedded in the overall governance system of the State.
A dual system of self-government allows for instituting self-government as a process. Indigenous peoples may, depending on actual circumstances, demand a degree of tradition based self-government as a reasonable means of protecting themselves from discrimination but for other purposes they may prefer to fully integrate into national society including their participation within a system of public self-government[26]. With change of circumstances this balance may also change over time.

Key issues of devising such a dual system will include definitions of (i) the hierarchy between the tradition based sub-system and other systems of governance, (ii) the demographic and geographic determinants of the territories, (iii) the scope of tradition based self-government, (iv) the interface of the two sub-systems, (v) rules of interaction of their institutions, (vi) conflict resolution mechanisms (vii) the incorporation of tradition based law in the main legal system and (viii) the provision of ways and means for financing the tradition based self-government function. Each of these issues will require extensive preparation, both analytical and empirical.
The following observations might serve as a reference framework for such an exercise.

Ad (i): In similar terms as the public self-government system, the tradition based self government system needs to be developed and incorporated within the governance structure of a unitary state. This implies *inter alia* that tradition based self-government will be subject to the principle that regulations of a higher order will prevail over tradition based self-government provisions. [27]

Ad (ii): The territories in which traditional based self-government is exercised need to be properly defined. The definition should be related to land that was traditionally occupied and used by the indigenous peoples along with their demographic concentrations.[28]

[26] Erica-Irene Daes Supra nt.22 par 50.
[27] Constitution of Suriname (1987) art 54 (2) sub a.
[28] See Saramaka People v Suriname Case par.194

Ad (iii): The scope of the tradition based self- government system will be framed by the parameters for self-management and control of the use of land and resources by indigenous peoples as recognized in international law.[29]

Ad (iv): The definition of the interface between the public and the tradition based self-government sub-systems should provide for internationally recognized safeguards that public self-government measures will respect the substance of the land rights of indigenous peoples, 'being the inextricable relationship between both land and resources as well as between the territory (understood as encompassing both land and resources) and their economic, social and cultural survival'.[30]

Ad (v): The regulatory framework for interaction between the public and the tradition based self-government institutions should recognize that, the right of self determination of indigenous peoples[31] involves in addition to their right to self government[32], the right to establish and conduct their relationships with non indigenous institutions on the basis of full participation at all levels of decision-making in matters affecting their rights and in devising legislative and administrative measures that may effect them[33].

Ad (vi): There should be appropriate conflict resolution mechanisms to safeguard both respect for human rights and integrity of the allocation of domains of self-government

Ad (vii): Guidelines need to be established for the mode of incorporation of tradition based self-government provisions in the main legal system. Three modes of incorporating indigenous law in the main legal system have been identified by Jacob

[29] See Saramaka People v Suriname Case par 125-140
[30] UN Declaration on the Rights of Indigenous Peoples Articles 26 and 27
[31] UN Declaration on the Rights of Indigenous Peoples Article 3
[32] UN Declaration on the Rights of Indigenous Peoples Article 4
[33] UN Declaration on the Rights of Indigenous Peoples Article 5.Kristin Henrard, in Book Review Pekka Aiko & Martin Scheinin (eds), Operationalizing the Right of Indigenous Peoples to Self Determination, International Journal on Minority and Group Rights Vol. 8. (2001) pg 85, refers to the notion of the relational approach to self-determination. It focuses on the relation between the State and the communities living within its boundaries. He observes that this approach actually captures many of the aspirations embodied in the UN Declaration of which the broad philosophy is indeed is that indigenous peoples have the right to maintain and strengthen their distinct characteristics and legal systems while retaining the right to participate fully in the life of the State.

Levy.[34]. Since tradition based self-government of the indigenous peoples will be founded on the special relationship of indigenous peoples to their traditionally used land and resources the mode of incorporation of tradition based self-government measures in the main legal system should in principle be the same mode which will be adopted for the incorporation of indigenous law pertinent to land and resources in the main legal system. If the land rights regime which embodies the special relationship of indigenous peoples to their traditionally used land and resources would be an autonomous system and the self-government system would be founded on this regime, both the regime and the self-government provisions to manage and control the land and its resource could well be incorporated as separate systems of law parallel to the law of the State.

Ad (viii): In accordance with the provision of article 4 of the UN Declaration on the Rights of Indigenous Peoples, the decentralization system should provide for appropriate funding of the tradition based self-government functions (institutions and measures). [35]

11. Implementation Plan

Two Maroon Peoples, the N'djuka and the Saramaka have submitted petitions under the Inter American Human Rights system, respectively in 1997 and 2000, complaining that the State of Suriname did not comply with and violated the American and UN Human Rights Instruments in their regard.[36] The Inter-American Court of Human Rights delivered Judgment with respect to the first complaint on June 15, 2005 (Moiwana Village v. Suriname Case) and with respect to the second on November 28, 2007

[34] Three Modes of Incorporating Indigenous Law in Citizenship in Diverse Societies eds. Will Kymlicka and Wayne Norman (2000) pag.297-325. is that the land rights regime for indigenous peoples on which would be the foundation for a system of tradition based self-government would be a separate system of law and that the effects of the provisions which follow from this system would have no territorial outside their traditional territory.

[35] Interesting in this regard is the following observation by David Lee, Individual Autonomy, Group Self Determination and the Assimilation of Indigenous Cultures, North Australia Research Unit (2000) on pag.14: 'My conclusion is that if the survival of indigenous communities as distinct cultural enclaves is guided by a policy which aims for autonomy and self-determination, it is difficult to avoid the economic imperative which links self-determination with a degree of financial sufficiency. The political autonomy of the community may depend on an effective command of financial resources. This means that member of these communities must be capable of engaging in income earning pursuits and otherwise participating in the modern growing global market economy (…..) However, the more successfully the community becomes integrated into the economic mainstream, the more irrelevant the traditional cultural context may become.'

[36] Groups of the Saramaka people are inhabitants of the Sipaliwini District and compliance with the order of the IAHCR to establish an appropriate land rights regime for the Saramaka People would therefore be a logical first step in the process of establishing an indigenous self-government system for the Sipaliwini District.

(Saramaka People v. Suriname Case). In both instances the Court ruled that the State has, to the detriment of the Maroon Peoples failed to give proper domestic effect to its international obligations (article 2), by failing to adopt legislative, administrative and other measures necessary to protect their rights to property (article 21) and to judicial protection (article 25). And in the latter case the Court also found that the State violated the right of judicial personality of the Saramaka People (article 3). These Judgments can be generalized in the sense that the international law based orders of the Court to give domestic legal effect to these specific rights to property and to judicial protection to the N'djuka People of Moiwana and Saramaka People and the right to judicial personality to the Saramaka People have force of precedent with respect to all Indigenous and Maroon Peoples of Suriname including those that inhabit the Sipaliwini District.

Implementation of decentralization in the Sipaliwini District as a dual system, of which one element is tradition based self-government founded on traditional property rights of the indigenous peoples logically needs to be preceded by the preparation - in accordance with the guidelines provided by the IACHR in the Saramaka People v. Suriname Case - of an appropriate land rights regime and its implementation with regard to the indigenous peoples that inhabit the Sipaliwini District.

In the meantime, as long as no tradition based self-government system has been legally recognized and given effect as such, the involvement of the indigenous peoples in self-government of the Sipaliwini District would take place in the public self-government system through their *de iure* participation as individuals and their *de facto* participation as indigenous groups through their indigenous institutions.

12. Conclusions

Categorization under international pressure, of the land rights issue of indigenous peoples as a societal problem, is likely to result in some domestic internalization of a basic legitimacy of the peoples' desire for political recognition by the State of their special status, and to promote a process of political engagement between them and the State.

Subsequently, *de iure* recognition and institutionalization of indigenous land rights should gradually lead to recognition and institutionalization of indigenous self-government. This is likely to take place in a rather complex dual system that pursues the

principle of self-determination through tradition based self-government and the principle of integration through public self-government. The complexity follows from the need to reconcile within one unitary state two legal systems with different sources (tradition versus legislation), different patterns (indigenous versus westerns) and with a different focus (indigenous human rights specifically versus human rights in general and democracy).

Although there is no clear indication yet as to when the Government expects to prepare and adopt an appropriate land rights regime for the Indigenous peoples of Suriname, the inevitability of such occurrence in the future and the complexity and the time involved with devising, preparing (including strengthening of the capacity of indigenous institutions) and implementing a suitable decentralization system would, justify follow up work to this Study.

HRL
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