

Indigenous and Tribal Government and the Decentralization Programme in Suriname

International Legal Framework and Examples of Self-Government Arrangements from Abroad

Draft Report

Prepared for the Decentralization and Local Government Strengthening Programme, the Ministry of Regional Development and the Inter-American Development Bank

24 January 2006

By Dr. Ellen-Rose Kambel*

* Comments are welcome: ekambel@planet.nl

CONTENTS

Abbreviations

Executive Summary

Introduction

Background and Objective
Methodology and Structure

Chapter 1 International Legal Framework

1.1 The Status of International Law in Suriname
Definition of Indigenous and Tribal Peoples

1.2 International Instruments and Case Law Relating to Indigenous and Tribal Peoples' Rights to Self-Government and Participation in Decision-Making

United Nations Human Rights System:

The International Covenant on Civil and Political Rights
The International Covenant on Economic, Social and Cultural Rights
The International Convention on the Elimination of All Forms of Racial Discrimination
The Convention on the Rights of the Child
The Draft United Nations Declaration on the Rights of Indigenous Peoples

Inter-American Human Rights System:

The American Convention on Human Rights
The American Declaration on the Rights and Duties of Man
The OAS Draft Declaration on the Rights of Indigenous Peoples

Other Instruments:

The Convention on Biological Diversity
International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries

1.3 Summary of International Standards
Discrimination and Special Measures
Territorial Rights
The Right to Self-Government and Autonomy
The Right to Participate in Decision-Making

1.4 Legal Obligations of Suriname

Chapter 2: Self-Government and Autonomy Models: Examples from Abroad

1.1 Canada (including Nunavut)
1.2 Panama
1.3 Colombia
1.4 Guyana
1.5 India
1.6 The UN Expert Seminar on Indigenous Self-Government (Nuuk 1991)
1.7 Indigenous Self-Government and Economic Development – Conclusions of a Harvard Study
1.8 Concluding Remarks

Chapter 3: Conclusions and Recommendations

Bibliography

List of Cases, Reports and Decisions of Inter-Governmental Bodies

Annex: Report of Consultation Meeting With Traditional Authorities of Indigenous Peoples and Maroons (February 2007)

TABLE OF FIGURES AND BOXES

Fig. 1 Population by Ethnic Background (Census 2004)

Box 2.1 Constitution Act of Canada (1982)

Box 2.2 Panama

Box 2.3 Colombia Constitution (1991)

Box 2.4 Constitution of India (1950)

Box 3.1 Proposal for Creating Indigenous and Maroon Autonomous Regions in Suriname

About the Author

Ellen-Rose Kambel obtained her law degree and a PhD in Social Sciences from the University of Leiden in the Netherlands. She has over ten years of experience working with indigenous peoples in Suriname and has (co) authored and translated several books and reports on indigenous and maroon rights in Suriname. She is currently based in Amsterdam as an independent researcher and consultant, specialising in human rights and development.

ABBREVIATIONS

Introduction

Suriname is inhabited by four indigenous peoples and six Maroon tribes, who live in approximately 230 villages spread across Suriname. According to the latest census, the total number of indigenous persons living in Suriname is 18.037 (or 3,7% of the total population) and 72.553 Maroons (14,7%). This means that indigenous and tribal peoples now make up almost 20% of the total population (see figure 1).

Indigenous peoples and Maroons may be distinguished from other population groups in Suriname because of their centuries-old governance systems that are still functioning, and because as indigenous and tribal peoples they enjoy a special international legal status. This includes rights to autonomous self-government through their own institutions, as well as rights to own and control lands, territories and resources that they have traditionally owned or otherwise occupied and used.

The indigenous and maroon governance systems are *de facto* recognized by the government, which follows, among others, from a monthly stipend the *granmans*, captains and *basyas* receive from the government and from their official installation by the government after their appointment by their respective constituencies. This status however, has never been legally recognized.

In 1987, a new regional government system was introduced in Suriname through the adoption of the Constitution and the Law on the Regional Organs (SB 1989, no. 44) with the aim of decentralizing the government. According to the law, Suriname is divided into ten districts, which are in turn subdivided into *ressorts*. The highest regional decision making bodies are the District Council (*districtsraad*) and the Ressort Council (*ressortsraad*), which are directly and indirectly elected by inhabitants of the district and the *ressort*, respectively. The day-to-day decisions of the two councils are executed by a District Executive Board (*districtsbestuur*) which consists of representatives of line ministries and is headed by a Districts-Commissioner ("DC"), a government appointee.

The traditional governments of indigenous peoples and maroons are not mentioned in the Constitution or in the Law on Regional Organs. Yet, there are indigenous and maroon peoples and communities with their own government structures and norms in almost every district (the exceptions are Paramaribo and possibly Coronie). The existence of two governance systems - the regional organs and the traditional authorities - within the same jurisdiction, is a source of conflict and the traditional authorities have indicated the

	<i>No.</i>	<i>%</i>
Amerindian	18.037	3,7
Maroon	72.553	14,7
Creole	87.202	17,7
Hindustani	135.117	27,4
Javanese	71.879	14,6
Chinese	8.775	1,8
Caucasian	2.899	0,6
Mixed	61.524	12,5
Other	2.264	0,5
Doesn't know	1.261	0,3
No answer	31.318	6,4
Total	492.829	100

need for clarity concerning their status, most recently during an IDB consultation meeting with indigenous peoples and maroons held on 6-7 December 2005.¹

BACKGROUND AND OBJECTIVE OF THIS STUDY

This study is undertaken at the request of the *Decentralization and Local Government Strengthening Program* (Decentralization Programme or DLPG). This Program, established in 1998 with financial support from the Inter-American Development Bank (IDB), is aimed at strengthening the regional decision making bodies, mainly to enable them to raise their own income through revenues and to formulate and implement their own development plans.² The Decentralization Program is executed in phases: five pilot districts (Nickerie, Wanica, Para, Commewijne and Marowijne) have recently been certified which enables them to apply for funding to execute their own development plans (mainly public works, such as rehabilitation of roads). The other districts will follow soon.

So far, indigenous and maroon governing institutions have not been formally included in the Decentralization Program. This study was commissioned with the following objectives:

- 1) to provide insight into the (inter)national legal status of the traditional authorities of the indigenous peoples and maroons in Suriname within the framework of the Decentralization Program and;

- 2) to formulate recommendations for the legal regulation of the position and powers of the traditional authorities based on examples from other countries in the region, and to discuss these with the relevant government bodies, traditional authorities and civil society.

METHODOLOGY AND STRUCTURE OF THE REPORT

For this report, I have reviewed academic literature, international legal instruments and decisions by international and regional human rights bodies, and other written sources relevant to the subject. I have not interviewed or spoken to government, indigenous or maroon representatives.³ Their comments on the draft report will be included separately

¹ Kambel, E.R., *IDB Consultation Meeting with The Traditional Authorities of the Indigenous Peoples and Maroons of Suriname, 6-7 December 2005, North Resort, Paramaribo, Report Prepared for the Inter-American Development Bank*, Paramaribo, 16 January 2006. In 1995 and 1996, this issue was also raised during Gran Krutus (Great Gatherings) of Indigenous and Maroon leaders. At the Gran Krutu held in Galibi in 1996, the leaders adopted a resolution stating that 'As part of our right to self-determination, in particular the right to freely determine our own forms of government, we demand from the government to legally incorporate the status of our traditional authorities.' (art. 7) See VIDS/PARS, *Report of the Gran Krutu at Galibi 20, 21 and 22 November 1996*, Paramaribo, 1997, at pg. 32. The issue is also discussed by the indigenous village leaders during their tri-annual general conferences; see VIDS *Informatiepakket, Vierde VIDS Conferentie, Powakka, 21-23 september 2001* and VIDS, *Report of the Vijfde VIDS Conferentie, 3-5 November 2005 held in Washabo*, Paramaribo, 2006.

² Ministerie van Regionale Ontwikkeling/DLGP, *Guideline Decentralization 2003-2006, Project Information Document IX*, September 2005, pg. 9.

³ The ToR includes the possibility of a more elaborate field study as a follow-up to this study, which would be aimed at gathering the views from relevant stakeholders and indigenous peoples and maroons regarding actual and potential conflicts and possible solutions on this topic.

as an annex to the final version of this report. The Terms of Reference also did not include a desk review of the *de facto* powers and functioning of both government systems, which would clarify where the actual conflicts lie and may point to solutions.⁴ Nevertheless, I have provided a rough outline of how the traditional government structures could be incorporated into the existing structure, which is mostly inspired by the examples of Colombia and Guyana (see chapter 3).

The report is divided into three chapters. Chapter 1 focuses on Suriname's international human rights obligations to recognize, guarantee and protect indigenous peoples and maroons' right to autonomously govern their own internal and local affairs through their own traditional or other self-identified institutions and in accordance with their own customary or other freely determined laws and norms. These rights include the right to informed participation in external affairs that may affect them through their own freely chosen representatives. Chapter 2 provides examples from different countries: Canada, Panama, Colombia, Guyana and India. Finally, in chapter 3, the main conclusions of this study and a number of preliminary recommendations for the Surinamese context are drawn. This is also based on discussions following a presentation of a first draft of this report in December 2006.⁵

⁴ Ivonne P. Meulenhof, *Het traditionele gezag en de decentralisatie in Suriname, scriptie ter verkrijging van de hoedanigheid Meester in de Rechten*, Anton de Kom Universiteit, Paramaribo, augustus 2002.

⁵ The presentation was attended by the Minister of Regional Development, Mr. Felisi, the director of the Decentralization Programme, Mr. Ahmadali and other members of the DLPG-team, two Districts Commissioners (from Marowijne and Sipaliwini) and other representatives of regional organs. A representative of the IDB Mission in Suriname was also present.

Chapter 1. International Legal Framework

The central question in this chapter is: *What are Suriname's legal obligations under international law regarding the traditional government systems of the indigenous peoples and maroons?* Before reviewing the relevant international instruments and case law, a few remarks about the status of international law in Suriname and who is considered to be indigenous and tribal for the purposes of international law.

1.1 THE STATUS OF INTERNATIONAL LAW IN SURINAME

According to the Constitution of Suriname (1987, as amended in 1992), international treaties ratified by Suriname, which may be directly applicable to anyone, shall have binding effect as from the time of publication (art. 105). The Constitution further provides that international instruments which are directly applicable shall supercede conflicting national laws (art. 106). This means that international treaties do not have to be converted into national legislation before they can be invoked by victims of human rights violations.

Further, through its ratification of the American Convention on Human Rights (see below), Suriname is required 'to adopt, if necessary, such legislative or other measures as may be necessary to give effect to those rights and freedoms' contained in the Convention⁶ This basic principle is expressed explicitly in articles 1 and 2 of the American Convention.⁷

In other words, since international law is higher than national law in Suriname, the State is required to amend all existing national legislation, including the Constitution, if these are contrary to the international norms, or if necessary, to adopt new legislation. Apart from legislation, Suriname is also required to adopt all other measures where necessary, to fulfil its international legal obligations including through the organization of its institutions of governance.

A question that frequently arises during discussions of international human rights law, is: what happens if a state does not comply with its international obligations?

Suriname is a member of the United Nations and the OAS and is to be commended for ratifying a large number of binding human rights treaties that have been elaborated by these organisations. By doing so, Suriname has voluntarily accepted the obligations and the monitoring system established by these conventions. Within the UN human rights system, monitoring of state obligations is done through committees of independent experts. These committees review reports submitted by states on what they have done to comply with the obligations of the human rights convention in question. Based on the

⁶ Inter-American Court of Human Rights, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, OC-14/94, December 9, 1994, Series A. No. 14, at para. 35.

⁷ Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

state report, as well as other information provided by other sources, including UN organs and non-governmental organisations (NGOs), the committees engage in a 'constructive dialogue' with state representatives and issue their views in so-called '**concluding observations**'. In certain cases, individuals may also submit complaints about human rights violations. Suriname for example, has accepted the authority of the UN Human Rights Committee (HRC) to review individual complaints regarding the International Covenant on Civil and Political Rights (ICCPR). While the decisions of the HRC and the concluding observations technically are non-binding recommendations, they nonetheless explain the obligations of the state. If a state refuses to carry out the recommendations, there is not much the UN committees can do. However, continuing negative human rights reports of a particular state, may have an impact on its international and bilateral relations.

Within the OAS, two organs are in charge with monitoring compliance of the Inter-American human rights conventions and declarations: the Inter-American Commission on Human Rights (IACHR, or Commission) and the Inter-American Court of Human Rights ('Court').

The main human rights treaty, the American Convention on Human Rights, is monitored by the Commission who may receive complaints by individuals or groups about violations of the treaty. The Commission, headquartered in Washington DC, is composed of seven, independent experts of recognized competence in the field of human rights. If violations are found, the Commission may adopt a set of recommendations to the state in question. In case of non-compliance with these recommendations, the Commission may then submit the case to the Inter-American Court of Human Rights ('the Court') for a binding decision if the state in question has accepted the Court's jurisdiction. The Court was established by the Convention and is located in San José, Costa Rica. It has seven judges that are elected by the state-parties to the Convention for six-year terms. Suriname has accepted the jurisdiction of the Court and so far has been found in violation of the Convention in three cases, among others the Moiwana case.

While neither the UN nor the OAS is able to enforce human rights obligations of its member states through police or military force, the monitoring system of the Inter-American human rights system, is stronger than the UN human rights system. An important difference with the non-binding views and recommendations of the UN committees, is that the judgments of the Court are binding and are executable in national courts. So far, this has not been necessary, as all states have – in some cases, eventually – complied with the Court's decisions.

Non-compliance with Court judgments may also have economic implications. In August 2006, the Operational Policy on Indigenous Peoples of the Inter-American Development Bank (IDB) entered into force. This policy incorporates the jurisprudence of the Inter-American Court in the IDB's policy as part of safeguarding 'indigenous peoples and their rights against adverse impacts and exclusion in Bank-funded development projects'.⁸ The IDB is therefore constrained from funding certain activities that conflict with the norms expressed in the Court's judgments.

⁸ Inter-American Development Bank, *Operational Policy on Indigenous Peoples*, 22 February 2006. See art. 1.2: **Indigenous rights** include the rights of indigenous peoples and individuals, whether originating in the indigenous legislation issued by States, in other relevant national legislation, in applicable international norms in force for each country or in the indigenous juridical systems⁵ of each people, hereinafter collectively referred to as the "applicable legal norms". The 'applicable international norms' include the corresponding international jurisprudence of the Inter-American Court of Human Rights or similar bodies whose jurisdiction has been accepted by the relevant country (footnote 4).

1.2 DEFINITION OF INDIGENOUS AND TRIBAL PEOPLES

Although many studies have been undertaken to determine who should be regarded as 'indigenous' or 'tribal' for the purposes of international law, there are no generally accepted legal definitions. According to a UN study on the issue of definition, the following factors may be taken into consideration:

- priority in time, in relation to a specific territory ('they were there first')
- voluntary perpetuation of cultural distinctiveness
- self-identification as a distinct collectivity
- experience of subjugation, marginalisation, dispossession, exclusion or discrimination.⁹

The study emphasized that this is not a definition, but that one or more of the factors could be present, in different areas, in different contexts. The study concludes that there is no meaningful distinction between indigenous and tribal peoples. The only binding treaty dealing exclusively with indigenous rights, ILO Convention no. 169 provides the following definitions, which may be useful in Suriname to distinguish between indigenous peoples (Amerindians) and Maroons (or Bush Negroes):

Article 1(1). This Convention applies to:

- (a) **Tribal peoples** in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
- (b) Peoples in independent countries who are regarded as **indigenous** on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. [emphasis added]

The final section of article 1 is important, which provides that 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply'. In other words, if the groups in question identify themselves as indigenous or tribal, this will be one of the most important factors to take into consideration.

The IDB defines indigenous peoples as follows: peoples who meet the following three criteria: (i) they are descendants from populations inhabiting Latin America and the Caribbean at the time of the conquest or colonization; (ii) irrespective of their legal status or current residence, they retain some or all of their own social, economic, political, linguistic and cultural institutions and practices; and (iii) they recognize themselves as belonging to indigenous or precolonial cultural or peoples.¹⁰

There are no disputes in Suriname as to who is regarded to be indigenous: there are four indigenous peoples in Suriname – the Kali'na or Caribs, the Lokono or Arawaks, the Trio and the Wayana – would fall under the category of 'indigenous peoples', while the Aukaners, Saramakaners, Kwinti, Matawai, Paramakaners and Aluku may be regarded as 'tribal peoples'. The fundamental difference between the two groups is the factor of

⁹ Working paper by the Chairperson-rapporteur, Mrs. Erica Irene Daes, *On the Concept of Indigenous people*, Working Group on Indigenous Populations, UN Doc E/CN.2/Ac.4/1996/2, 1996, §69. Zie: <http://www.iwgia.org/graphics/Synkron-Library/Documents/IndigenousIssues/Definitions/EIDaespaperonDefinitionofIP.htm>.

¹⁰ Inter-American Development Bank, *Operational Policy on Indigenous Peoples*, 22 February 2006, art. 1.1.

priority in time; indigenous peoples were the first to occupy the territory of Suriname. However, under international law, the two groups enjoy similar rights¹¹ and in the rest of this report I will treat them the same, except when expressly provided otherwise.

1.3 INTERNATIONAL INSTRUMENTS AND CASE LAW

Suriname has ratified a large number of international human rights treaties which pertain to the rights of indigenous and tribal peoples. Over the past 20-30 years, the human rights bodies in charge with monitoring compliance of these instruments have issued numerous observations and decisions in which they interpret these instruments to protect the rights of indigenous and tribal peoples. In addition to this expanding body of jurisprudence, the United Nations (UN) and the Organization of American States (OAS) are in the process of developing legal instruments that focus solely on the rights of indigenous and tribal peoples (the UN and OAS Draft Declarations on the Rights of Indigenous Peoples). The wide variety of issues that form the subject of international indigenous rights may be grouped under the following headings:

- Non-Discrimination and special protection measures
- Territorial rights
- Rights to self-determination and self-government
- Participation rights
- Environmental rights
- Social, cultural and economic rights

Although all human rights are interlinked and interdependent, for the purposes of this study, I will highlight rights to **self-government**, **participation** and **territorial rights**.

Below, I have outlined the relevant provisions and some of the jurisprudence, as well as the provisions of several other instruments, such as the Convention on Biological Diversity (CBD) and ILO Convention no. 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries ("ILO 169"). The latter has not been ratified by Suriname, but is included here because it is the only international treaty dealing exclusively with the rights of indigenous peoples and is as such an important statement of international norms.

- The United Nations Human Rights System -

The International Covenant on Civil and Political Rights (ICCPR, 1966, ratified by Suriname in 1976)

This convention is monitored by the UN Human Rights Committee ('HRC'). Relevant provisions are article 1 (right to self-determination) and 27 (rights of minorities).

The International Covenant on Economic, Social and Cultural Rights (ICESC, 1966, ratified by Suriname in 1976)

Common **article 1** of the ICCPR and the ICESCR provides:

- (1) *All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue the economic, social and cultural development.*
- (2) *All peoples may, for their own ends, freely dispose of their natural wealth and*

¹¹ See also Inter-American Court of Human Rights, *Community of Moiwana v Suriname*. Judgment of June 15, 2005. Series C No. 124, in which the Court has affirmed that the Maroons and their forms of land ownership are protected under Article 21 in the same way as indigenous peoples (paras 131-134).

resources... In no case may a people be deprived of its own means of subsistence.

In recent years, the committees overseeing compliance with these treaties have applied the right to self-determination in article 1 to indigenous peoples:

*The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant. (...)*¹²

*The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence (...).*¹³

Article 27 of the ICCPR reads:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The HRC elaborated on its interpretation of Article 27 and stated that:

*One or other of the aspects of the rights of individuals protected [under Article 27] - for example to enjoy a particular culture - may consist in a way of life which is closely associated with a territory and its use of resources. This may particularly be true of members of indigenous communities constituting a minority With regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, specifically in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to **ensure the effective participation of members of minority communities in decisions which affect them** The Committee concludes that Article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole"*¹⁴

In relation to Suriname, the HRC observed in 2004 that:

The Committee is concerned at the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources. It regrets that logging and mining concessions in many instances were granted without consulting or even informing indigenous and tribal groups, in particular the Maroon and Amerindian communities (...).

¹² Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*. 12/12/2003. UN Doc. E/C.12/1/Add.94, para 11. See also the concluding observations of the Human Rights Committee: Canada, 20/04/2006. UN Doc. CCPR/C/CAN/CO/5; Brazil, 01/12/2005. UN Doc. CCPR/C/BRA/CO/2; and, Norway, 25/04/2006. UN Doc. CCPR/C/NOR/CO/5.

¹³ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*. 12/12/2003. UN Doc. E/C.12/1/Add.94, at para 39.

¹⁴ Note of the Human Rights Committee on Article 27 of the ICCPR, CCPR/1994.

*The State party should guarantee to members of indigenous communities the full enjoyment of all the rights recognized by article 27 of the Covenant, and adopt specific legislation for this purpose. **A mechanism to allow for indigenous and tribal peoples to be consulted and to participate in decisions that affect them** should be established. The State party should take the necessary steps to prevent mercury poisoning of waters, and thereby of inhabitants, in the interior of the State party's territory.¹⁵*

The International Convention on the Elimination of All Forms of Racial Discrimination (1965, ratified by Suriname in 1984)

Article 5 (c) and (d) (v), respectively, provide that:

State-parties are obligated to respect and observe the right "to own property alone as well as in association with others" and "the right to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service".

In its **General Recommendation on Indigenous Peoples** (1997), the monitoring body of this convention, the UN Committee on the Elimination of Racial Discrimination (CERD) clarified how the convention should be read in connection with indigenous peoples:

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous People commencing on 10 December 1994, reaffirms the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to:

- a. recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;*
- b. ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;*
- c. provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;*
- d. ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions***

¹⁵ Human Rights Committee, *Concluding observations: Suriname*, CCPR/CO/80/SUR, 4 May 2004, para 21.

directly relating to their rights and interests are taken without their informed consent;

- e. *ensure that indigenous communities can exercise their rights to practice and revitalize their cultural traditions and customs, to preserve and to practice their languages.*

5. *The Committee especially calls upon States parties to recognise and protect the rights of indigenous **peoples to own, develop, control and use their communal lands, territories and resources** and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories....*¹⁶ [emphasis added]

In relation to Suriname, CERD has on several occasions expressed its "deep concern about information alleging that Suriname is actively disregarding the Committee's prior recommendations, issued in 2003, 2004 and March 2005, by authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent."¹⁷ The Committee urged Suriname, among others, to:

- elaborate a framework law on the rights of indigenous and tribal peoples (. . .) and to take advantage of the technical assistance available under the advisory services and technical assistance Programme of the Office of the United Nations High Commissioner for Human Rights for that purpose;
- Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, **develop, control** and use their communal lands and to **participate** in the exploitation, management and conservation of the associated natural resources;
- Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;
- Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage. [emphasis added]

The Committee also requested that the UN Secretary General draw "the attention of the competent United Nations bodies to the particularly alarming situation in relation to the rights of indigenous peoples in Suriname, and to request them to take all appropriate measures in this regard".

The Convention on the Rights of the Child (CRC, 1989, ratified by Suriname in 1993)

Article 30 repeats almost verbatim the same language as article 27 of the ICCPR and the interpretation by the Human Rights Committee of article 27 should be applied accordingly:

In those States in which ethnic, linguistic or religious minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall

¹⁶ CERD General Recommendation XXIII (51) concerning Indigenous Peoples Adopted at the Committee's 1235th meeting, on 18 August 1997 (CERD/C/51/Misc.13/Rev.4).

¹⁷ CERD, *Prevention Of Racial Discrimination, Including Early Warning Measures And Urgent Action Procedures Decision 1 (67) Suriname*, CERD/C/Dec/Sur/2, 18 August 2005.

not be denied the right in community with other members of the group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

The Draft United Nations Declaration on the Rights of Indigenous Peoples (2006)

This instrument has been elaborated with the full participation of indigenous peoples from around the world during over a 20 year-long period. It was approved by the UN Human Rights Council in June 2006 and will be submitted for approval to the UN General Assembly in 2007.¹⁸

Article 3

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

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.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

- 1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*
- 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.*

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

¹⁸ United Nations Declaration on the Rights of Indigenous Peoples, approved by the Human Rights Council. UN Doc. A/HRC/1/L.3, 23 June 2006.

Article 26

1. *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
2. *Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess 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 the 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 recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, 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.

Article 32

1. *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
2. *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.*
3. *States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*

Article 33

1. *Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.*
2. *Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.*

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

- The Inter-American Human Rights System -

The American Convention on Human Rights (1969, ratified by Suriname in 1987)

Article 21. Right to Property

1. *Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.*

2. *No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.*

The Inter-American Court of Human Rights has now considered several cases involving indigenous peoples and property rights. In its latest decision (the ***Sawhoyamaya v Paraguay*** case of 29 March 2006), the Court summarized its jurisprudence:

118. *On the basis of this criteria, this Tribunal has deemed that the close relationship of the indigenous peoples with their traditional lands and natural resources, bound to their culture and found therein, as well as the incorporeal elements derived therefrom, must be safeguarded by article 21 of the American Convention.¹⁹ The culture of the indigenous peoples forms an integral part of their way of life, being, seeing and behaving in the world, and is founded on the basis of their intimate relationship with their traditional lands and natural resources, not only because these represent their main source of subsistence, but also because they represent an integral component of their cosmovision, religious beliefs, and consequently, their cultural identity²⁰.*

127. *In the exercise of its contentious competence, the Court has had the opportunity to pronounce itself with respect to the ownership of indigenous lands in three previous and different situations. In the Case of the Community of Meagan (Sumo) Awas Tingni, the Tribunal pointed out that the possession of lands should suffice for the indigenous community members to obtain official recognition of such ownership and its respective registration²¹. In the Case of the Community of Moiwana, the Court considered that the members of the town of N'djuka were the "legitimate owners of their traditional lands" (unofficial translation) although they were not occupying them because they had been forced to leave them as a result of the acts of violence perpetrated against them. In this case, the traditional lands were not occupied by third parties²². Finally in the Case of the indigenous Community of Yakye Axa, the Tribunal considered that the Community members were empowered, even by internal law, to present restitution claims for their traditional lands and ordered the State to identify these lands and return them at no charge, as a form of redress²³.*

128. *From the above, it is concluded that: 1) traditional indigenous land ownership is equally effective as holding the title of full dominion granted by the State; 2) traditional ownership grants the indigenous people the right to demand official recognition of their property and its respective registration; 3) the indigenous peoples who have been forced to leave their traditional lands against their wishes or who have otherwise lost possession of their traditional lands, still hold the right to property over these lands, even in the absence of legal title, except when the lands in question have been legally transferred to third parties in good faith; and 4) the indigenous peoples who have suffered the involuntary expropriation of their lands and these have been legally transferred to unknowing third parties, have the right to recover them or be compensated with other lands of the same extension and quality. This means that ownership is not a pre-*

¹⁹ Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005. Series C No. 125, par. 137, and Inter-American Court of Human Rights, *(Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001. Series C No. 79, par. 149.

²⁰ Cfr. Case of the Indigenous Community of Yakye Axa, *op cit*, par. 135.

²¹ Cfr. Case of the Community of Mayagna (Sumo) Awas Tingni, *op cit*, par. 151.

²² Cfr. *Case of the Community of Moiwana*, *op cit*, par. 134.

²³ Cfr. Case of the indigenous Community of Yakye Axa, *op cit*, par. 124 to 131.

*requisite that conditions the existence of the right to restitution of indigenous lands. (...).*²⁴

As stated above, on 15 June 2005, the Court found Suriname in violation of numerous provisions of the American Convention on Human Rights, including article 21 (the right to property) in relation to the killing of members of the Maroon community of **Moiwana**.²⁵ In addition to financial compensation measures, the Court ordered, that Suriname:

*adopt such legislative, administrative, and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories (...).*²⁶

The Court further ordered that these measures be taken with the informed consent of the Moiwana community, the other Cottica N'djuka villages and the neighboring indigenous communities.²⁷

Article 23(1) of the American Convention (Right to participate in government):

Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections... (c) to have access, under general conditions of equality, to the public service of his country.

In the context of indigenous peoples, this article was elaborated on in the **Yatama case**, where the Inter-American Court considered that states-parties to the Convention have the obligation to adopt special measures to ensure that indigenous peoples

*can participate, in conditions of equality, in decision-making on matters that affect or could affect their rights and the development of their communities, ... and that they are able to do so through their own institutions and in accordance with their values, uses, customs and forms of organization.*²⁸

The Inter-American Commission on Human Rights in its **Report on the Situation of Human Rights in Ecuador (1997)** also elaborated on the participation of indigenous peoples in decision making processes:

*...the State take the measures necessary to ensure the meaningful and effective participation of indigenous representatives in the decision-making processes about development and other issues which affect them and their cultural survival. "Meaningful" in this sense necessarily implies that indigenous representatives have full access to the information which will facilitate their participation.*²⁹

²⁴ Inter-American Court, *Sawhoymaxa Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146.

²⁵ Inter-American Court of Human Rights, *Case of Moiwana Village v. Suriname*, op cit.

²⁶ Idem, para 209.

²⁷ Idem, para 210.

²⁸ Inter-American Court of Human Rights, *Yatama v. Nicaragua*, Judgement of 23 June 2005. Series C No. 127, at para. 225 (unofficial translation).

²⁹ Inter-American Human Rights Commission, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 doc.10, rev.1.

The American Declaration on the Rights and Duties of Man (1948)

This Declaration, although not legally binding, is monitored by the Inter-American Commission.

Article XXIII – Right to property

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

In the **Mary and Carrie Dann** case, the Inter-American Commission considered:

that general international legal principles applicable in the context of indigenous human right to include:

- *the right of indigenous peoples to legal recognition of their varied and specific forms and modalities of their **control**, ownership, use and enjoyment of **territories** and property;*
- *the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied; and*
- *where property and user rights of indigenous peoples arise from rights existing prior to the creation of a state, recognition by that state of the permanent and inalienable title of indigenous peoples relative thereto and to have such title changed only by mutual consent between the state and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property. This also implies the right to fair compensation in the event that such property and user rights are irrevocably lost. (footnotes omitted, emphasis added).³⁰*

The OAS Draft Declaration on the Rights of Indigenous Peoples (1997)

This draft declaration was approved by the Inter-American Human Rights Commission in 1997 and is currently being discussed by a working group of the OAS. According to the Commission, the "Proposed Declaration should be understood to provide guiding principles for inter-American progress in the area of indigenous rights."³¹

(Preamble) 1. Indigenous institutions and the strengthening of nations

*The Member States of the Organization of American States (hereafter the States);
Recalling that the indigenous peoples of the Americas constitute an organized, distinctive and integral segment of their population and are entitled to be part of the national identities of the countries of the Americas, and have a special role to play in strengthening the institutions of the State and in establishing national unity based on democratic principles; and*

Further recalling that some of the democratic institutions and concepts embodied in the Constitutions of American states originate from institutions of the indigenous peoples, and that in many instances their present participatory systems for decision-making and for authority contribute to improving democracies in the Americas.

Recalling the need to develop their national juridical systems to consolidate the pluricultural nature of our societies.

Art. XV Right to self-government

1. Indigenous peoples have the right to freely determine their political status and freely pursue their economic, social, spiritual and cultural development, and accordingly, they have the right to autonomy and self-government with regard to

³⁰ Inter-American Commission on Human Rights, *Report N° 75/02*, Case N° 11.140, *Mary and Carrie Dann (United States)*, Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46, para. 129-31

³¹ Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1 (26 February 1999), Ch. X, at para. 9.

inter alia culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, the environment and entry by non-members; and to determine ways and means for financing these autonomous functions.

2. Indigenous peoples have the right to participate without discrimination, if they so decide, in all decision-making, at all levels, with regard to matters that might affect their rights, lives and destiny. They may do so directly or through representatives chosen by them in accordance with their own procedures. They shall also have the right to maintain and develop their own indigenous decision-making institutions, as well as equal opportunities to access and participate in all state institutions and fora.

Art. XVI Indigenous law

1. Indigenous law shall be recognized as a part of the states' legal system and of the framework in which the social and economic development of the states takes place.

2. Indigenous peoples have the right to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems related to such matters as conflict resolution, crime prevention and maintenance of peace and harmony.

3. In the jurisdiction of any State, procedures concerning indigenous peoples or their interests shall be conducted in such a way as to ensure the right of indigenous peoples to full representation with dignity and equality before the law. This shall include observance of indigenous law and custom and, where necessary, use of their language.

Art. XVII National incorporation of indigenous legal and organizational systems

1. The States shall facilitate the inclusion in their organizational structures, the institutions and traditional practices of indigenous peoples, and in consultation and with the consent of the peoples concerned.

2) State institutions relevant to and serving indigenous peoples shall be designed in consultation and with the participation of the peoples concerned so as to reinforce and promote the identity, cultures, traditions, organization and values of those peoples.

Art. XVIII Traditional forms of ownership and ethnic survival. Rights to lands and territories.

1. Indigenous peoples have the right to the legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories.

2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.

Art. XXI Right to development

1. The states recognize the right of indigenous peoples to decide democratically what values, objectives, priorities and strategies will govern and steer their development course, even where they are different from those adopted by the national government and other segments of society. Indigenous peoples shall be entitled to obtain on a non-discriminatory basis appropriate means for their own development according to their preferences and values, and to contribute by their own means, as distinct societies, to national development and international cooperation.

2. Unless exceptional circumstances so warrant in the public interest the states shall take necessary measures to ensure that decisions regarding any plan, program or proposal affecting the rights or living conditions of indigenous people are not made without the free and informed consent and participation of those peoples, that their

preferences are recognized and that no such plan, program or proposal that could have harmful effects on those peoples is adopted.

- OTHER INSTRUMENTS -

The Convention on Biological Diversity (CBD, 1992, ratified in 1996)

Article 10(c) of the CBD provides that state parties shall:

protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

The Secretariat of the CBD said the following about Article 10(c):

*In order to protect and encourage, the necessary conditions may be in place, namely, security of tenure over traditional terrestrial and marine estates; **control over and use of traditional natural resources**; and respect for the heritage, languages and cultures of indigenous and local communities, best evidenced by appropriate legislative protection (which includes protection of intellectual property, sacred places, and so on). Discussions on these issues in other United Nations forums have also dealt with the issue of respect for the right to self-determination, which is often interpreted to mean the exercise of self government.³²[emphasis added]*

International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989)

ILO Convention 169 has not been ratified by Suriname. The government of Suriname has however committed itself to discuss ratification, among others in the Lelydorp Peace Accord of 1992 and more recently by President Venetiaan during the celebration of Indigenous Day in 2005.³³

As of November 2006, the following 17 States have ratified ILO 169: Mexico, Norway, Costa Rica, Colombia, Denmark, Ecuador, Fiji, Guatemala, The Netherlands, Dominica, Peru, Bolivia, Honduras, Venezuela, Argentina, Brazil and Paraguay. Further, there are an additional 9 States that are currently discussing ratification or have submitted the Convention to their national legislatures for ratification: Chile, The Philippines, Finland, El Salvador, Russian Federation, Panama, South Africa, Sweden and Sri Lanka.

Article 2

- 1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.*

Article 6

³² Secretariat of the CBD, *Note on Traditional Knowledge and Biological Diversity*, UNEP/CBD/TKBD/1/2, 18 October 1997.

³³ Art. 11 of the Agreement for National Reconciliation and Development ('Peace Accord of Lelydorp') provides that 'the government shall encourage the commencement of a national discussion on ILO Convention no. 169 to thus learn about the feelings of the community on the contents of that convention.' In August 2005, President Venetiaan stated that he hoped that with regard to the land rights issue a good and perfect solution would be available and that this solution would flow from the ILO Convention (*Dagblad Suriname*, 10 augustus 2005, 'Conceptwet Inheemse dag binnenkort naar DNA')

1. *In applying the provisions of this Convention, governments shall:*

(a) *consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*

(b) *establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;*

(c) *establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.*

2. *The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.*

Article 7 (1):

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

Article 8 (2)

These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

Article 9

1. *To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.*

2. *The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.*

1.4 SUMMARY OF INTERNATIONAL STANDARDS

Discrimination and Special Measures

One of the fundamental human rights problems facing indigenous and tribal peoples is discrimination. As stated by the Inter-Agency Support group on Indigenous Issues regarding Indigenous Peoples and the Millennium Development Goals:

"...the information available – both statistics that do exist and experience acquired in the course of our work – indicates that these peoples rank at the bottom of the social indicators in virtually every respect."³⁴

³⁴ Statement of the Inter-Agency Support group on Indigenous Issues regarding Indigenous Peoples and the Millennium Development Goals, Annex II, in: *Report of the Inter-Agency Support on Indigenous Issues to the UN Permanent Forum on Indigenous Issues*, February 2005.

Discrimination may be evident through legislation that directly excludes indigenous and tribal peoples from human rights that other groups in society enjoy. For example, in Suriname, under the Draft Mining Act, indigenous peoples and maroons would be the only groups that would be excluded from the right to appeal to a judge if they disagree with the compensation offered for damages resulting from mining activities taking place on their lands.³⁵

However, discrimination does not have to be immediately apparent, or even intentional. In most cases laws and policies are not drafted with the aim of excluding or discriminating against indigenous and tribal peoples but by applying criteria that seem neutral on their face, but disproportionately affect indigenous and tribal peoples. An example is education. For historic reasons, the majority of schools in indigenous and maroon areas in Suriname are denominational schools, which request higher parental contributions than public schools. Indigenous and maroon parents do not have a choice between public or denominational schools, and are therefore required to pay more for the education of their children than parents of other ethnic groups living in rural and urban areas.³⁶

In order to remedy historical and contemporary discrimination and to account for their special circumstances, the Inter-American Commission on Human Rights has held that "special legal protection" is required for indigenous languages, cultures, economies, ecosystems and natural resource base, religious practices, "ancestral and communal lands," and the establishment of an institutional order that facilitates indigenous participation through their freely chosen representatives.³⁷ Similarly, the Inter-American Court has observed that "it is indispensable that States grant effective protection that takes into account [indigenous peoples'] particularities, their economic and social characteristics, as well as their especially vulnerable situation, their customary law, values, customs and mores."³⁸

States therefore not only have a negative obligation (they must refrain from discriminating against indigenous and tribal peoples), but also a positive obligation (they must do something) to ensure that indigenous and tribal peoples are able to enjoy all their human rights and freedoms on equal footing with other sectors of society. International human rights law provides that when such measures are taken, these measures shall not be considered discrimination against other groups in society. It is in this context that the following should be read.

Territorial Rights

As will be clear in the next chapter dealing with self-government and autonomy models in different countries, there are many variations of the way self-government and participation rights have been incorporated in law and how they are applied in practice.

³⁵ Art. 68 (3) of the Draft Revised Mining Act (16 October 2003) offers the right to appeal to parties who disagree with the compensation offered for damages due to mining activities. In the case of 'residents of community lands' [indigenous people and maroons], the Act provides that the State will make a binding proposal for compensation (art. 76 (2)).

³⁶ E.R. Kambel, *Indigenous Peoples and Maroons in Suriname*, Inter-American Development Bank, Economic and Sector Study Series, RE3-06-005, Washington D.C., August 2006, pg. 20

³⁷ *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26. (1984), at 76-78, 81

³⁸ Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, op cit, at para. 63. See, also, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 doc.10, rev.1, at 115 - "Within international law generally, and Inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population;" Inter-American Commission on Human Rights, *Case 7615 (Brazil)*, OEA/Ser.L/V/II.66, doc 10 rev 1 (1985), at 24, 31; and, Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in The Republic of Guatemala* OEA/Ser.I/V/II. 67, doc. 9 (1986), at 114.

Both however are related to lands, territories and natural resources occupied and used by indigenous and tribal peoples.

Territorial rights relate to all rights pertaining to the total environment that is occupied and used by indigenous and tribal peoples. Whereas 'land rights' may be limited to the material relationship of a group with a certain parcel of land, the term 'territorial rights' is broader, and also encompasses the spiritual relationship that indigenous and tribal peoples have with their ancestral territory, including rivers, creeks, savannahs, air, and all the resources found within this territory.

In the Maya Indigenous Communities Case, the Inter-American Commission explained the importance of territories for indigenous peoples, and the relationship with the right to govern and develop these lands and resources: for the "organs of the inter-American system, the protection of the right to property of the indigenous people to their ancestral territories is a matter of particular importance, because the effective protection of ancestral territories implies not only the protection of an economic unit but the protection of the human rights of a collective that bases its economic, social and cultural development upon their relationship with the land."³⁹

Under what has now been crystallized into customary international law, which is binding for all states (regardless of whether they have ratified certain conventions), indigenous peoples have the right to 'legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property' [emphasis added]; and 'to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied'.⁴⁰

It is further acknowledged under the Inter-American human rights system, that traditional indigenous land ownership is equal to a title of full ownership granted by the state.⁴¹ Based on their traditional ownership of the land, indigenous peoples have a right to demand recognition of their property from the state, which includes the corresponding obligation from states to make legislation that recognizes indigenous land ownership, to demarcate the areas in question and to provide indigenous peoples with the title as evidence of their property. Further, these measures must be taken with the full participation and consent of the indigenous groups in question.⁴²

The Right to Self-Government and Autonomy

The right to self-government is understood to be a specific form of exercising indigenous peoples' right to self-determination. For indigenous and tribal peoples the right to self-determination is the overarching framework within which they can exercise and enjoy all their other human rights. Indigenous peoples see themselves as self-determining peoples, who governed their own territory and population, before their colonization by other nations and who have never given up this status.

Internal Self-Determination

The jurisprudence of UN bodies shows that it is accepted that indigenous peoples have, like all other peoples, the right to self-determination. This was also recognized by the Human Rights Council through the adoption of the UN Draft Declaration on Indigenous Peoples in June 2006, which includes the right to self-determination. In the Proposed American Declaration on the Rights of Indigenous Peoples these rights are also recognized (see Art. XV Right to Self-Government provided above).

³⁹ Inter-American Human Rights Commission, Report No. 40/04, *Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize)*, 12 October 2004, at para. 120.

⁴⁰ Inter-American Commission on Human Rights, *Mary and Carrie Dann case*, op cit.

⁴¹ Inter-American Court of Human Rights, *Sawhoyamaya case*, op cit.

⁴² Inter-American Court of Human Rights, *Moiwana case*, op cit..

The consensus is that the right of indigenous and tribal peoples to self-determination is to be exercised within existing States and does not entail the right to secede. For this reason it is often referred to as a right to 'internal' self-determination.

The Right to Participate in Decision-Making

The right of indigenous and tribal peoples to participate in and consent to decisions, including legislation, which affect them may also be viewed as a form of exercising their right to self-determination. As provided above, this right has been affirmed by numerous human rights organs.

In particular, in its general recommendation, the UN Committee on the Elimination of Racial Discrimination (CERD) observed that States-Parties should '*ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent*'.⁴³

1.5 INTERNATIONAL LEGAL OBLIGATIONS OF SURINAME

From the above, it follows that as part of its international commitments, Suriname is required to:

1. Legally recognize indigenous and tribal peoples' right to own, control, use and develop the lands, territories and natural resources they have traditionally occupied and used. This includes the obligation to delimit, demarcate and title these areas.
2. Legally recognize indigenous and maroon forms of governance and customary law.
3. Establish effective mechanisms to allow indigenous peoples and maroons to participate in decision making processes that affect them.
4. All of this must be undertaken in full participation with and the consent of indigenous peoples and maroons.

⁴³ CERD General Recommendation XXIII (51) concerning Indigenous Peoples, art. 4 (d) op cit. See also the decisions of the Inter-American Court in the *Moiwana*-case and the *Yatama* case, op cit.

Chapter 2: Models of Self-Government and Autonomy in Different Countries

INTRODUCTION

In the previous chapter we have seen that Suriname, as part of its international legal obligations, is required to legally recognize indigenous and maroon forms of government and governance. International law provides the basic framework of the right to self-government (the state must legally recognize indigenous and maroon forms of governance and do this with their participation and consent), but there is no blueprint of what self-government or autonomy of indigenous and tribal peoples should look like. As we shall see in this chapter, different concepts are used in different contexts. Even within Suriname, there may be different forms of regulation necessary depending on the local or regional context. This does not need to be a problem. As Natalia Loukacheva points out, the lack of clarity may in fact provide the flexibility necessary to meet the aspirations of different groups.⁴⁴

In this chapter, I will discuss the indigenous self-government arrangements of Canada (particularly the Nunavut territory occupied by the Inuit), Panama, Colombia, Guyana and India. This is followed by some of the conclusions and recommendations of the United Nations experts who gathered at a meeting on indigenous self-government in Greenland in 1991. Finally, I present the findings of a study undertaken at Harvard University (U.S.A.) which shows that there exists an important link between successful economic development and self-government of indigenous peoples.

2.1 CANADA (NUNAVUT)

In 2001, approximately 1.3 million people reported having at least some Aboriginal ancestry, representing 4.4 % of the total population. The Constitution of Canada recognizes aboriginal and treaty rights (see box below). 'Aboriginal rights' are rights in lands and resources which are based, among others on traditional occupation and use that predate colonial intervention. 'Treaty rights' refer to treaties that were signed between indigenous peoples and Canada in the 1850s and before, as well as modern treaties. Through the historical treaties, indigenous peoples exchanged certain undefined land rights for guaranteed rights as defined by the treaty. In 1973, the Canadian government decided that the definition of aboriginal rights should be determined through formal negotiations to settle land claims with indigenous peoples. These modern land claims agreements are aimed at providing clear, certain and long lasting definition of rights to lands and resources. So far, a number of land claim settlements have been concluded, the most famous is the Nunavut Land Claim Agreement of 1993. In addition, the Canadian government committed itself to negotiate separate self-government agreements that define the political rights and freedoms of indigenous peoples.

Box 2.1 Constitution Act of Canada 1982

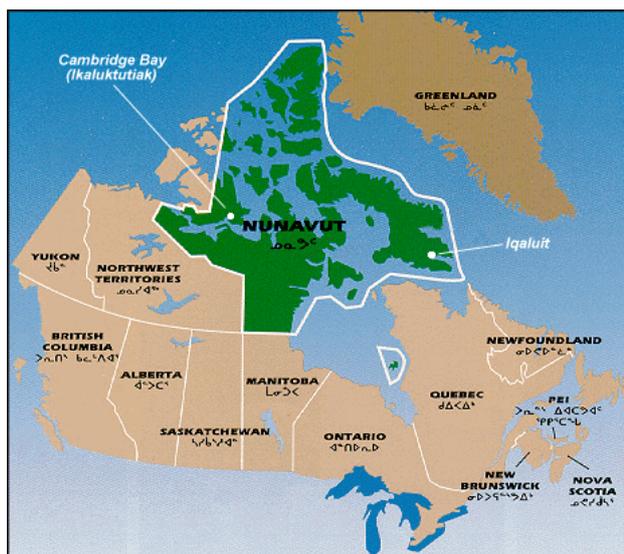
Article 35

- (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, 'aboriginal peoples of Canada' includes the Indian, Inuit and Metis people of Canada.
- (3) ... 'treaty rights' includes rights that now exist by way of land claims agreements or may be so acquired.

⁴⁴ Loukacheva, Natalia, *On Autonomy and Law*. Institute on Globalization and the Human Condition, Working Paper Series, University of Toronto, June 2005.

Through the **Nunavut Land Claim Agreement** – which was negotiated during a period of 16 years - the Inuit (Eskimos) of Northwest Canada became the collective owners of an area of 350,000 square kilometres. The Agreement also established a new political territory, equal to other provinces and territories in Canada, with Inuit forming the majority population and with far reaching powers of autonomy and self-government.

The total area covered by the agreement is 2.2 million square kilometres (or one-fifth of Canada), which is about the size of continental Europe. The total population is less than 30,000 people. The Inuit hold collective ownership of 18% of the surface, and 2% of the subsurface. The Canadian government therefore reserves 98% of the subsurface rights. However, the 2% chosen by the Inuit contains 80% of the known deposits of gold, diamonds, copper, silver, lead and zinc. The Inuit hold rights to hunt and fish and conduct other traditional economic activities over the entire area. In addition, the Federal Canadian government will pay the Inuit 1.1 billion Canadian dollars over a 14 year period in compensation for lost Inuit land. The Inuit will also receive royalties on mineral exploitation operations.



With regard to the provisions of the Agreement relating to self-government, it was agreed that Nunavut would have its own government in which all residents (Inuit and non-Inuit) can participate. Inuit are over 80% of the population, so they will effectively be able to control the decision making in their ancestral territory. The political structure of Nunavut was designed by a Nunavut Implementation Commission, consisting of 10 members, 9 of which were Inuit. The Implementation Commission proposed a 'public government with a democratically elected Legislative Assembly which will respect individual and collective rights as defined in the Canadian Charter of Rights and Freedoms'.⁴⁵

Alongside the government, a series of co-management boards have been established, which consist of equal numbers of Inuit-appointed and (Canadian) government-appointed members. The boards have been established to manage wildlife, land use planning, environmental and social impacts and other issues.

In exchange for the benefits acquired under the territorial and self-government provisions in the Agreement, the Inuit surrender all (undefined) rights to land and resources that may they have as aboriginal peoples ('aboriginal rights').⁴⁶

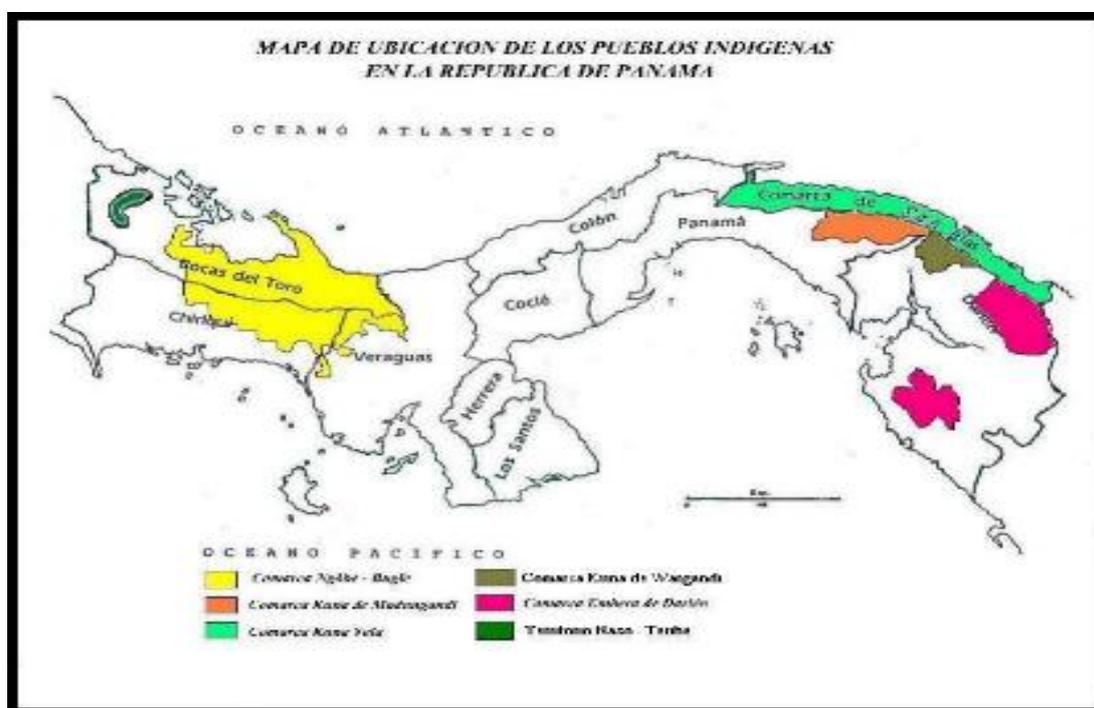
⁴⁵ Jack Hicks and Graham White, Nunavut: Inuit Self Determination Through a Land Claim and Public Government? In: Jens Dahl, Jack Hicks and Peter Jull (eds.), *Nunavut. Inuit Regain Control of Their Lands and Their Lives*, IWGIA Document No. 102, Copenhagen 2000, pg. 64

⁴⁶ See generally: Garth Nettheim, Gary Meyers and Donna Craig, Indigenous Resource Management in Canada: Development and Current Practices. In: Garth Nettheim, Gary Meyers and Donna Craig, *Indigenous Peoples and Governance Structures. A Comparative Analysis of Land and Resource Management Rights*, Aboriginal Studies Press/Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2002, pg. 79-118 and Jens Dahl, Jack Hicks and Peter Jull (eds.), *Nunavut. Inuit Regain Control of Their Lands and Their Lives*, IWGIA Document No. 102, Copenhagen 2000. See also: Website of the Government of Nunavut: <http://www.gov.nu.ca/>

2.2 PANAMA

The Republic of Panama is divided into nine provinces. Its Indigenous population (some 10 percent of the total population) is formed by seven distinct groups (the Ngöbe, Kuna, Emberá, Buglé or Bokata, Wounaan, Naso (Teribes or Tlorios) and Bri-Bri). Presently, 15,103.4 square km (20 per cent) of Panamanian territory is made up of indigenous territories that are recognized by law (*"comarcas"*).

There are currently five comarcas (see map). The oldest, the San Blas Comarca, was legally recognized in 1870 by the Colombian government (before the creation of the Panamanian state). In 1925, after an uprising of the Kuna, the Panamanian government concluded a treaty with the Kuna, recognizing their cultural and political autonomy. In 1938, the Comarca of San Blas – named 'Kuna Yala' by the indigenous peoples - was officially created and in 1945 an Organic Charter, which details the political organization and the legal system of the Comarca, was developed. The Kuna Yala Comarca is currently governed by the Law of 1953 (see box below).



A comarca can be described as a special administrative subdivision within the state of Panama. It is governed by the traditional decision making structures of the indigenous peoples inhabiting the area. In addition to the autonomy the indigenous peoples enjoy, the law also recognizes that the comarca is collectively owned by the indigenous population. The laws establishing the different comarcas are not identical, partly because they were elaborated in different periods, reflecting the state of thinking at that time. Work is currently underway to update the 1953 Law on the Kuna Yala Comarca. In the Kuna Yala Comarca, the General Kuna Congress meets twice a year with the village leaders of every community to discuss the concerns and needs of the region. The Congress is led by three village leaders (caciques) who are responsible for the execution of the decisions of the Congress and they are accountable to the General Congress. The General Congress is also responsible for relationships and negotiations between the Kuna people and the Panamanian government. Tourist taxes currently form an important source of income for the Kuna Yala Comarca, which is a popular tourist destination (there are currently some 160,000 tourists visiting the region each year).

The Comarca Emberá-Wounaan was established in 1983 through Law No. 22 of 1983. This Law recognizes the General Congress of the Embera People as the highest traditional decision making body. It also recognizes regional and local indigenous congresses and the traditional authorities governing and advising these bodies. An Organic Charter, which codified the traditional laws, was developed by the General Embera Congress and recognized by law through Executive Decree No. 84 of 1999. The Law of 1983 provides that all exploitation of subsoil resources, requires the express written consent of the Embera General Congress and also provides that the State will transfer a certain percentage of the income generated by the exploitation, to the Comarca (see Article 20).⁴⁷

(To translate)

Box 2.2 Panama

Constitution (1972)

Artículo 5. El territorio del Estado panameño se divide políticamente en Provincias, éstas a su vez en Distritos y los Distritos en Corregimientos. La Ley podrá crear otras divisiones políticas, ya sea para sujetarlas a regímenes especiales o por razones de conveniencia administrativa o de servicio público.

Artículo 86. El Estado reconoce y respeta la identidad étnica de las comunidades indígenas nacionales, realizará programas tendientes a desarrollar los valores materiales, sociales y espirituales propios de cada una de sus culturas y creará una institución para el estudio, conservación, divulgación de las mismas y de sus lenguas, así como la promoción del desarrollo integral de dichos grupos humanos.

Artículo 141. La Asamblea Legislativa se compondrá de los Legisladores que resulten elegidos en cada Circuito Electoral, de conformidad con las bases siguientes:

1. Cada Provincia y la Comarca de San Blas se dividirán en Circuitos Electorales.
2. La Provincia de Darién y la Comarca de San Blas tendrán dos Circuitos Electorales cada una, y en éstos se elegirá un Legislador por cada Circuito Electoral.

Ley No.16 de Febrero 19 de 1953 - Por la cual se organiza la Comarca de San Blas

Artículo 12. El Estado reconoce la existencia y jurisdicción en los asuntos concernientes a infracciones legales, exceptuando lo referente a la aplicación de las leyes penales del Congreso general Kuna, de los Congresos de Pueblos y tribus y de las demás autoridades establecidas conforme a la tradición indígena y de la Carta Orgánica del Régimen Comunal Indígena de San Blas. Dicha Carta tendrá fuerza de Ley una vez que la apruebe el Organo Ejecutivo, luego de establecer que no pugna con la Constitución y las Leyes de la República.

⁴⁷ See generally: A. Turpana, 'The Dule Nation of the San Blas Comarca: between the government and self-government'. In: W.J. Assies and A.J. Hoekema (eds.), *Indigenous Peoples' Experiences with Self-Government*, IWGIA Document no. 76, Copenhagen 1994, pg. 149-156; Marcial Arias Garcia, *Forests, Indigenous Peoples and Forestry Policy in Panama: an assessment of national implementation of international standards and commitments on traditional forest related knowledge and forest related issues*. Draft case study prepared for the Expert Meeting on Traditional Forest-Related Knowledge, 6 - 10th December 2004 in San Jose, Costa Rica (2004), http://www.international-alliance.org/documents/panama_eng_full.doc; Chapin, M. 2000. *Defending Kuna Yala: PEMASKY, The Study Project for the Management of the Wildlands of Kuna Yala, Panama*. A case study for *Shifting the power: Decentralization and biodiversity conservation*. Washington, D.C.: Biodiversity Support Program; and Aresio Valiente Lopez (ed), *Derechos de los Pueblos Indígenas de Panamá*, International Labour Organization/Centro de Asistencia Legal Popular Panamá, San José, 2002.

Artículo 13. El Estado reconoce la existencia del Congreso General Kuna y de los Congresos del Pueblo y Tribus con arreglo a su tradición y a su Carta Orgánica, con las salvedades pertinentes para evitar incompatibilidades con la Constitución y las leyes de la República.

LEY N° 22 de 8 de noviembre de 1983 - LEY POR LA CUAL SE CREA LA COMARCA EMBERA DE DARIEN

Artículo 2. Las tierras delimitadas en esta Ley, con excepción de las que sean propiedad privada, constituyen patrimonio de la Comarca Emberá para el uso colectivo de los grupos indígenas Emberá y Wounan, con objeto de dedicarlas a las actividades agropecuarias e industriales, así como a otros programas con que se promueva su desarrollo integral; por lo tanto se prohíbe la apropiación privada o enajenación de dichas tierras a cualquier título.

Artículo 10. Se instituye como máximo organismo tradicional de decisión y expresión del pueblo Emberá, al Congreso General de la Comarca, cuyos pronunciamientos se darán a conocer por medio de Resoluciones suscritas por la Directiva del Congreso, las que entrarán en vigencia a partir de su debida promulgación. Igualmente se instituyen los Congresos Regionales y los Congresos Locales como organismos tradicionales de expresión y decisión. Se establece además el Consejo de Nokoes como organismo de consulta de los Congresos y de los Caciques de la Comarca.

Artículo 20. La explotación de los recursos del subsuelo, las salinas, las minas, las aguas subterráneas y termales, las canteras y los yacimientos de minerales de cualquier clase que se encuentren dentro de los límites de la Comarca Emberá sólo podrá llevarse a cabo mediante autorización expresa otorgada por el Organo Ejecutivo, el que garantizará la participación de esa comunidad en los beneficios económicos y sociales que se deriven de cada explotación y asegurará el cumplimiento de los principios constitucionales sobre régimen ecológico. Para el cumplimiento de lo aquí dispuesto, en cada contrato se establecerá el porcentaje de los ingresos percibidos que el Estado destinará a la Comarca el cual será determinado en cada caso particular, de acuerdo con la clase de mineral objeto de la explotación y sus niveles de rentabilidad. El uso de tales ingresos se decidirá conforme lo establezca la Carta Orgánica. En el proceso de negociación de la contratación respectiva habrá un representante de la Comarca Emberá, el cual será designado por el Cacique General con anuencia del Consejo de Nokoes, quien podrá presentar las aspiraciones de la Comarca al respecto de las materias que las autoridades negocien con las partes interesadas.

2.3 COLOMBIA

Colombia has 81 different indigenous peoples numbering approximately 800,000 persons who speak 64 languages. In 1991 Colombia adopted a revised Constitution which revised the territorial division of the country. The Constitution recognizes three 'territorial entities' which are of equal legal status: departments, municipalities and indigenous territories. The indigenous territories are self-governing, they are authorised to develop, implement and administer internal social, economic and political policies. Within the territories, indigenous customary law is applied. *Resguardos* (reserves) form part of the indigenous territories. *Resguardos* are collectively owned lands, which are inalienable. There are now over 250 indigenous owned *resguardos* in Colombia.

The ownership of lands belonging to black communities (Maroons) is also recognized in the Constitution (art. 55, see box) and joint government/maroon procedures have been put in place to address the land rights of Maroons. Included in these policies are 'support for a process of socio-economic development in keeping with their world view'; 'recognition of the right to territory and to natural resources' and 'equitable participation in all the country's goal setting and steering bodies'.⁴⁸

⁴⁸ Inter-American Human Rights Commission, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999, at para 108.

The Constitution provides for indigenous participation in the National Congress, by reserving two seats for indigenous representatives which are elected by indigenous communities.

Box 2.3 Colombia Constitution (1991)

Title II - On Human Rights, Guarantees and Responsibilities

Article 55. The ownership by black communities [*cimmarones* or Maroons] of their ancestral possessions is recognized

Article 63. Goods for public use, natural parks, communal lands of ethnic groups, *resguardo* lands, the archaeological patrimony of the Nation, and other goods determined by the law, cannot be sold, mortgaged or taken.

Article 68. ... members of ethnic groups will have the right to organize and develop their cultural identity.

Title IX - On Territorial Organization

Article 329. The conformation of the Indigenous territorial entities will be subject to the approval of the Organic Law of Territorial Order, and its delimitation will be through the National Government, with participation of the representatives of the indigenous communities, a prior conception of the Commission on Territorial Order.

The *resguardos* are collective property and are not transferable. The law will define the relations and coordination between these entities and those of which they form a part.

Article 330. In conformity with the Constitution and its laws, the indigenous territories will be governed by councils and regulations formed in accordance with the uses and customs of their communities and exercising the following functions:

1. To watch over the application of legal norms with respect to the use of land and population of their territories.
2. To design the policies, plans and programmes of economic and social development in their territories, in harmony with the National Plan of Development.
3. To promote public investment in their territories and to watch over its responsible execution.
4. To observe and distribute their resources.
5. To watch over the preservation of their resources.
6. To coordinate programmes and projects put forward by the different communities in their territories.
7. To collaborate with the maintenance of public order within their territory in accordance with the instructions and dispositions of the National Government.
8. To represent the territories before the National Government and the remaining entities in which they are integrated; and
9. Those functions as directed by the Constitution and by law.

2.4 GUYANA

Guyana is home to about 70-80,000 Indigenous peoples, forming 8-10% of the total population. The Amerindian Act recognizes the traditional authorities (*touchaos*, or chiefs) and sets out the powers and authority of the village councils. It also regulates the collective land ownership of Amerindian communities. Although the recent revision of the Amerindian Act contained some improvements over the older text, it was heavily criticized for vesting 'arbitrary and overly broad' powers in the Minister of Amerindian Affairs, which do not apply to non-indigenous village councils.⁴⁹ In a recent report, the

⁴⁹ Amerindian Peoples Association of Guyana and the Forest Peoples Programme, *Request for Adoption of a Decision under the Urgent Action/Early Warning Procedure in Connection with the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Guyana and Comments*

UN Committee on the Elimination of Racial Discrimination (CERD) reprimanded Guyana for making the decisions of the Village Council subject to Ministerial approval and urged the State to:

recognize and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.⁵⁰

The Amerindian Act provides that village councils, which are comprised of *toshaos* and councillors are, among others to act as the representative of the community, to provide for 'the good governance and development of the community', to hold all rights, titles and interests in community lands, to manage and regulate the use and occupation of Community lands, promote sustainable use, protection and conservation of community lands, protect the intellectual property and traditional knowledge of the community (art. 13).

The Amerindian Act (art. 14) determines the legislative powers of the village council, which is allowed to make rules relating to:

- (a) qualification as a resident;
- (b) the occupation and use of Community lands;
- (c) access to sites of sacred or cultural significance;
- (d) the management, use, occupation, preservation, protection and conservation of Community lands and resources or any part thereof;
- (e) the protection and sustainable management of wildlife including restrictions on hunting, fishing, trapping, poisoning, setting fires and other interference with wildlife;
- (f) the development and regulation of agriculture;
- (g) the control, maintenance, protection and use of water supplies including the construction and regulation of wells which are owned by the Community or for which the Community is responsible;
- (h) the construction and maintenance of roads, bridges, ditches, fences and other local works;
- (i) the construction and maintenance of sewerage systems and other sanitary facilities; the regulation of the conduct of non-residents when within Community lands;
- (j) the regulation of the conduct of non-residents when within Community lands;
- (k) maintaining discipline, good order, the prevention of disorderly conduct and nuisance;
- (l) the granting of permission for business or trade on Community lands;
- (m) subject to the law governing intellectual property, access to research into and recording and publication of intellectual property and traditional knowledge which belongs to the Community.

Breaches of village councils rules may be fined by the village council for up to 19.000 Guyanese dollars. Rules can only come into effect if two thirds of the members of the community have given their approval, and if the Minister has approved the rule (art. 15). Village councils are allowed to levy taxes, in cash or in goods or services, but, again the tax is subject to the approval of the Minister.

on Guyana's State Party Report (CERD/C/446/Add.1) submitted by the Amerindian Peoples Association of Guyana and the Forest Peoples Programme, 20 January 2006.

⁵⁰ CERD, *Concluding Observations, Guyana*, CERD/C/GUY/CO/14, March 2006, para 15.

2.5 INDIA

There are 67,7 million people in India who are considered to be 'Adivasis' (7% of the total population), which means 'indigenous people' or 'original inhabitants'. Like other indigenous peoples around the world, Adivasis perceive themselves to "belong to their territories, which are the essence of their existence; the abode of the spirits and their dead and the source of their science, technology, way of life, their religion and culture".⁵¹ For thousands of years, the adivasis were self-governing nations which kept themselves apart from feudal states. They are not part of the Hindu caste system. They were considered to be lower than the untouchable castes:

"Adivasis are not, as a general rule, regarded as unclean by caste Hindus in the same way as Dalits are. But they continue to face prejudice (as lesser humans), they are socially distanced and often face violence from society. They are at the lowest point in every socioeconomic indicator. Today the majority of the population regards them as primitive and aims at decimating them as peoples or at best integrating them with the mainstream at the lowest rung in the ladder."⁵²

Adivasis are also called "Scheduled Tribes". This refers to the administrative system laid down in Schedule V and VI of the 1950 Constitution of India, which recognizes the autonomy of tribal areas. Under the 1996 Panchayats (Extension to Scheduled Areas) Act, greater authority was given to the adivasi to control activities within their *panchayats* (village level sub-district). The Act authorizes village assemblies (*gram sabha*) to make decisions on behalf of the village. The village assemblies are also empowered to safeguard and preserve the traditions of the people, community resources and customary modes of dispute resolution.⁵³ Finally, the Constitution reserves seats in Parliament and Assemblies for the Scheduled Tribes to allow them to participate in decision-making at the national and regional levels.

Box 2.4 Constitution of India (1950)

Schedule V Fifth Schedule (Article 244 (1)) Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

Paragraph 1 Autonomous districts and autonomous regions

(1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.(...)

Paragraph 2 Constitution of District Councils and Regional Councils

(1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

⁵¹ C.R. Bijoy, Core Committee of the All India Coordinating Forum of Adivasis/Indigenous Peoples, *The Adivasis of India, A History of Discrimination, Conflict, and Resistance*, in: PUCL Bulletin, February 2003, <http://www.pucl.org/Topics/Dalit-tribal/2003/adivasi.htm>.

⁵² Idem.

⁵³ Marcus Colchester and Fergus MacKay, *In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*. Paper for the 10th Conference of the International Association for the Study of Common Property, Oaxaca, August 2004, pg. 17.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of district)" and "the Regional Council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(...)

Paragraph 3 Powers of the District Councils and Regional Councils to make laws

(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to -

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of hum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs.

Paragraph 6 Powers of the District Council to establish primary schools, etc.

(1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district. (...)

Paragraph 7 District and Regional Funds

(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution. (...)

Paragraph 8 Powers to assess and collect land revenue and to impose taxes

(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say -

(a) taxes on professions, trades, callings and employments;

(b) taxes on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods

carried in ferries; and
(d) taxes for the maintenance of schools, dispensaries or roads. (...)

2.6 UN EXPERT MEETING ON INDIGENOUS SELF-GOVERNMENT (NUUK 1991)

In 1991, United Nations experts gathered at a meeting on Indigenous Self-Government in Nuuk (Greenland) and described indigenous self-government and autonomy to include, inter alia:

"jurisdiction over or active and effective participation in decision-making on matters concerning their land, resources, environment, development, justice, education, information, communications, culture, religion, health, housing, social welfare, trade, traditional economic systems, including hunting, fishing, herding, trapping and gathering, and other economic and management activities, as well as the right to guaranteed financial arrangements and, where applicable, to levy taxes for financing these functions."⁵⁴

The experts also adopted the following conclusions and recommendations:

Self-Government Arrangements Are No Threat to Territorial Integrity of the State

"Rights to self-government should not pose a threat to the territorial integrity of the State".⁵⁵

The examples discussed in this chapter are a clear indication that formal autonomy arrangements of different groups are possible, and are in fact practiced widely without leading to the break up of states. In fact, as the UNDP has pointed out, it is more often the *lack* of recognition of different cultures and the forceful assimilation of indigenous and tribal peoples that triggers violence.⁵⁶

Territorial Rights and Indigenous and Tribal Self-Government

"Indigenous territory and the resources that it contains are essential to the physical, cultural and spiritual existence of indigenous peoples and to the construction and effective exercise of indigenous autonomy and self-government. This territorial and resource base must be guaranteed to these peoples for their subsistence and the ongoing development of indigenous societies and cultures."⁵⁷

Indigenous Autonomy is Beneficial for the Protection of the Natural Environment

"The autonomy and self-government of indigenous peoples are beneficial to the protection of the natural environment and the maintenance of ecological balance which helps to ensure sustainable development."⁵⁸

Indigenous Self-Government Must Assure Respect For All Human Rights

⁵⁴ *The Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991*. UN Doc. E/CN.4/1992/42, at para. 12.

⁵⁵ *Idem*, para 3.

⁵⁶ UNDP Human Development Report 2004, *Cultural Liberty in Today's Diverse World*, New York, 2004.

⁵⁷ *The Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991*. UN Doc. E/CN.4/1992/42, at para 5.

⁵⁸ *Id.*, para 6.

"Indigenous autonomies and self-governments must, within their jurisdiction, assure the full respect of all human rights and fundamental freedoms and popular participation in the conduct of public affairs."⁵⁹

This point is also underscored by the UNDP, which emphasized that respect for cultural diversity, "should not be confused with the defence of tradition..." and that '[c]ulture', 'tradition' and 'authenticity' [...] are not acceptable reasons for allowing practices that deny individuals equality of opportunity and violate their human rights..."⁶⁰ Indigenous and tribal peoples operating within self-government structures, must abide by the same human rights and freedoms that require states to respect theirs.

Self-Government through Treaties, Constitutions or Laws

"Autonomy and self-government can be built on treaties, constitutional recognition or statutory provisions recognizing indigenous rights. Further, it is necessary for the treaties, conventions and other constructive arrangements entered into in various historical circumstances to be honoured, in so far as such instruments establish and confirm the institutional and territorial basis for guaranteeing the right of indigenous peoples to autonomy and self-government."⁶¹

Although the scope of this study does not allow for detailed observations on the Surinamese situation, it should be pointed out that Maroons in Suriname have negotiated peace treaties with the Dutch colonial government during the 18th and 19th centuries recognizing the rights of the Maroons to an autonomous self-governing existence.⁶² The Peace Accord of Lelydorp, which was concluded in 1992 between the government and indigenous and maroon guerrilla groups to end the Interior War, also includes provisions for formal recognition of traditional authorities.⁶³ These treaties and provisions may be used as a basis for more comprehensive constitutional and/or legal arrangements.

2.7 SELF-GOVERNMENT AND SUCCESSFUL SUSTAINABLE DEVELOPMENT OF INDIGENOUS NATIONS: RESULTS OF A HARVARD STUDY

For over fifteen years, researchers of the Harvard Project on American Indian Economic Development at Harvard University and the Native Nations Institute (University of

⁵⁹ Id., para 7.

⁶⁰ UNDP Human Development Report 2004, op cit, pg. 4.

⁶¹ Ibid., para 8.

⁶² Scholtens, B., *Bosnegers en overheid in Suriname. De ontwikkeling van de politieke verhouding 1651-1992*, diss. Nijmegen, Afdeling Cultuurstudies/Minov, Paramaribo, 1994, at pg. 26. See also Kambel, E.R. and F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, IWGIA Document no. 96, Copenhagen, 1999, pg. 66-70.

⁶³ Article 13 of the Agreement for National Reconciliation and Development ('Peace Accord of Lelydorp') provides that the legal status, authority and the stipend paid to the traditional authorities of the Interior must be strengthened and increased and that the government will do so by enacting legal regulations after consultation with those concerned.

Arizona) have studied indigenous peoples in North-America. In particular, they have studied the question why some indigenous nations in the United States and Canada have managed to achieve sustainable successful economic development. These Native Nations have taken over the administration and management of education, health and other services, they have reorganized their tribal government, attracted investors, eliminated unemployment and achieved continuing economic growth. The results of the studies are particularly relevant for the subject matter of this report:

Sustainable economic development, it turns out, is dependent not so much on economic factors such as education or natural resources or location as it is on a set of distinctly political factors. Three are of particular importance:

- **Self-rule.** *Native nations have to have genuine decisionmaking power over their own affairs, from the organization of their governments to the management of their resources, from mechanisms of dispute resolution such as courts to the administration of community programs. This doesn't mean they have to control everything themselves. Some decisions may be made jointly with outsiders, from other Native nations to nonindigenous governments. But where Native nations are excluded from decision-making, they cannot be held accountable for the outcomes of those decisions. Where they are included, the responsibility for outcomes becomes theirs, and performance typically improves accordingly.*
- **Capable institutions of self-governance.** *But decisionmaking power is not enough. They have to back up this power with capable governing institutions that keep politics in its place, deliver on promises, administer programs and manage resources efficiently, and send a message to investors—from community citizens considering taking a job with a tribal or First Nation government to those thinking of starting a small business on indigenous lands—that they will be treated fairly and that their investments of time, energy, ideas, or money will not be hostage to politics.*
 - **Cultural match.** *But not just any institutions will do the job. The formal institutions of governance have to have the support of the people. The community has to have a sense of ownership about the institutions themselves. This means those institutions cannot simply be imposed from outside according to someone else's model. They have to fit indigenous conceptions of how authority should be organized and exercised."⁶⁴*

⁶⁴ S. Cornell, C. Curtis and M. Jorensen, *Seizing the Future: Why Some Nations Do and Others Don't*, Joint Occasional Papers on Native Affairs, no. 2005-01. Available at http://www.jopna.net/pubs/jopna_2005-01_Seizing.pdf

CONCLUDING REMARKS

The examples presented in this chapter, show that state recognized self-government arrangements for indigenous and tribal peoples are not a recent phenomenon; some, such as the Kuna Yala Comarca in Panama go back to the 19th century and even predate the state. They are also not only a feature of rich countries such as Canada, but are widely adopted in developing countries (Colombia, Guyana, Panama, and to some extent India). And finally, autonomy and self-government of indigenous peoples may be found in 'white settler' societies with a relatively small indigenous minority population (such as Canada), but also in multicultural nations, which may consist of hundreds of different ethnic groups, such as India and Guyana.

Most importantly, the examples presented here– and they are just a small sample of the wide variation of self-governing arrangements through the world – make it clear that there is no one-size-fits-all solution when it comes to self-government and autonomy arrangements. There are however international norms that must be followed and important lessons to learn from the experiences of other countries, if only to prevent the same mistakes and to avoid reinventing the wheel.

Chapter 3: Conclusions and Recommendations

With funding from the Inter-American Development Bank, Suriname has started a process of realizing the decentralization of its government as initially provided for in 1987. The DLGP-programme was set up to strengthen the capacity of the regional organs (*districtsraden* and *ressortraden*), which are the highest political organs within their jurisdictions (the district and the ressort, respectively), enabling them to administer and carry out local development projects.

Unfortunately, the regional organ system was introduced without taking into account the existing governance structures that are in place in most of the districts in Suriname. These are the traditional government systems of the indigenous and tribal peoples, who for centuries, and - in the case of indigenous peoples, long before the creation of the State of Suriname - have occupied, used and managed their traditional lands, territories and resources in accordance with their own laws, traditions and customs. Their governance systems – including their traditional leaders such as Granmans, (head) captains and *basyas* – have largely functioned alongside the districts- and ressort councils, which have been established without meaningful consultation or their participation. In several cases, conflicts have arisen between the traditional governments and the regional organs of the State and now that the districts- and ressort councils are likely to become more powerful, such conflicts are likely to intensify.

This study was commissioned to look at the traditional governance systems of indigenous peoples and maroons in Suriname from an international legal perspective, and to suggest possible ways of approaching the problem, drawing inspiration from experiences elsewhere.

3.1 SURINAME'S INTERNATIONAL LEGAL OBLIGATIONS TO RECOGNIZE INDIGENOUS AND MAROON RIGHTS

In chapter 1, we have seen that as a member of numerous international human rights and other treaties, Suriname is committed – and legally bound - to recognize, respect, secure and protect the rights of the indigenous peoples and maroons who are within its jurisdiction, both within its national laws and in practice. For the purposes of this study, the relevant rights include:

- *territorial rights* (relating to the identification, demarcation and titling of indigenous and tribal ancestral lands, territories and resources);
- *participation rights* (allowing indigenous peoples and maroons to participate in decisions that affect them, including in some cases the right to consent);
- *self-governance rights* (relating to the right to govern their own affairs)

Under Surinamese constitutional law, internationally binding treaties are hierarchically higher than national law. Suriname is therefore obligated to incorporate these rights into its domestic laws and, if necessary, amend any existing laws (including the Constitution), which may infringe on these rights. Suriname is also required to take all necessary measures, including administrative and financial measures, to ensure that these rights are implemented in practice.

During the discussion of a first draft of this report, two important issues were raised: if Suriname recognizes indigenous peoples and maroons right to self-government, doesn't this infringe on the sovereignty of the Republic? And secondly, concerns were expressed

about potential conflicts between indigenous and maroon customary law and the rights of individuals belonging to those groups.

State Sovereignty and Indigenous Self-Government

First, under international law, the sovereignty of a state does not, and has never implied a *carte blanche* for states to do as they please with their population and resources. Human rights and – increasingly – international environmental law impose limits on what sovereign states are allowed to do within their boundaries, limits that the State has agreed to abide by in the exercise of its sovereign will.⁶⁵ Moreover, internal laws and regulations are made pursuant to the sovereignty of the people exercised through the National Assembly.

However, it is not necessary to juxtapose the sovereign rights of the state with the rights of indigenous peoples and maroons to govern their internal affairs. Indigenous peoples and maroons are part and parcel of what constitutes the Republic of Suriname; their welfare and their ability to sustain and develop themselves will reflect on the whole nation. Healthy, well educated indigenous and maroon citizens living in economically, culturally and socially thriving communities, will contribute to Suriname's national development. So it may well be in the interest of the state to promote greater participation of indigenous peoples and maroons in political decision making and according them greater control over their own affairs.

The question is whether granting self-government would in fact lead to improved development of indigenous and tribal peoples. It is widely perceived in Suriname that it is rather the *lack* of government intervention that has caused the existing gap between the coast and the interior in terms of economic and social development. The argument is that for varying reasons the state has not paid sufficient attention and resources to the Interior, which has resulted in a gap between the coast and the interior. So instead of less, *more* government intervention would be required.

In fact, long term studies at Harvard University suggest that successful economic development of indigenous peoples requires strong decision making power vested in the indigenous peoples themselves: in cases where a) indigenous peoples have genuine decision making power over their own affairs; b) have *good* governance systems which administer programs and manage resources effectively and c) have governance systems that fit with indigenous conceptions of how authority should be organized and exercised ('cultural fit'), a solid foundation is laid for sustainable economic and community development of indigenous peoples.

However, it is important to point out that recognizing indigenous and maroon self-government and providing for greater control over their lands and resources, does not relieve the government from its duty to ensure to all its citizens equal access to education, health care and other services.

Customary Law and the Rights of Individuals

Secondly, whereas indigenous and maroon customary law must be recognized and respected, there are limits: if the State is not allowed to infringe upon human rights, neither are indigenous peoples or maroons. This is clearly laid down in international instruments that recognize indigenous right to self-government and autonomy. See for example article 45 (2) of the UN Declaration on the Rights of Indigenous Peoples, as approved by the Human Rights Council:

⁶⁵ See N. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge Studies in International Law. Cambridge: Cambridge University Press (1997), at pg 391 and, at pg 9, where he states that "Various injunctions have been formulated according to which States have to exercise their right to permanent sovereignty in the interest of their populations and to respect the rights of indigenous peoples to the natural wealth and resources in their regions, where 'peoples' are objects rather than subjects of international law."

In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

In practice, there may well be conflicts between the rights of individual indigenous or maroon persons and the customary laws of the group to which they belong. Procedures and mechanisms for how such conflicts should be solved, could be provided for by law. For example, recourse to the ordinary courts or through Tribunals specifically established for that purpose or through a Constitutional Court.⁶⁶

3.2 OTHER ARGUMENTS FOR RECOGNIZING INDIGENOUS AND MAROON SELF-GOVERNMENT AND AUTONOMY IN SURINAME

In chapter 2 we have seen that self-government and autonomy arrangements exist in many different countries around the world. The chapter also pointed out that there are good reasons, other than being legally obligated, to promote indigenous and maroon self-governing arrangements in Suriname. Recognizing indigenous and maroon traditional governing systems as part of the Decentralization process may:

- increase the sense of inclusion of indigenous peoples and maroons in Suriname's process of nation building because it expresses respect for their centuries old governance structures and recognizes – in the case of Maroons - their heroic struggle to break free from slavery;
- facilitate and promote, arguably as a condition *sine qua non*, indigenous peoples and maroons' sustainable and successful economic, social and cultural development, thereby contributing to Suriname's national development;
- prevent conflicts between traditional and regional government systems.

Finally, the formal recognition of indigenous and maroon traditional governance systems and incorporation into the Decentralization Programme is likely to be cost efficient: instead of investing time, energy and money in a system which, at least in the past 20 years has proven extremely difficult and costly to implement, and is likely to create conflicts in indigenous and maroon territories, why not invest in the structures that are already in place and strengthen those?

3.3 RECOMMENDATIONS

Clearly there is lot of work that remains to be done, since there is no existing legislation relating to territorial rights, participation or self-governance that is specifically dealing with Indigenous peoples and maroons. This has several advantages however: first, it means that Suriname can start with a clean slate, there is no backlog of old laws or centuries of jurisprudence that must be overturned, as is the case in some countries. Another advantage is that Suriname can learn from the experiences gained in other countries over the past 30 years or so. Finally, territorial rights, participation and self-governance rights are all intimately connected; without a territory, or knowing where the borders are, what are indigenous peoples and maroons going to govern? Similarly, without a say in decisions that affect them, how can indigenous peoples and maroons draft and implement their own plans for the economic, social and cultural development of

⁶⁶ See for a fuller discussion on this issue: UNDP Human Development Report 2004, op cit, pg 47-59.

their communities? The lack of an existing legal framework, and the need to elaborate and enact such a framework, as recommended and even ordered by UN and Inter-American human rights bodies, provides the opportunity to address all of these issues at once.

In order to develop such legislation and identify the necessary measures, there is a need for good data and information, as well as increased awareness and capacity about the internationally guaranteed rights of indigenous peoples and maroons among policy makers, members of the district administration, but also among indigenous peoples and maroons themselves. Below, I have proposed a number of recommendations, most of which are fairly practical, which can be carried out relatively easily, in order to get the process started.

Recommendations for the Decentralization Programme

Set up and ensure an effective participation structure of indigenous peoples and maroons within the DLPG

- Sit down with indigenous and maroon representatives; make them formal partners of DLGP and engage in a constructive dialogue on how to go forward. This will comply with the international law requirement that indigenous peoples and maroons have to participate in decisions that affect them. But more importantly it will allow direct input and feedback on any proposed changes and will overall speed up the process of their formal recognition. The discussion of this report with the traditional authorities (planned for February 2007) should be used as a first step towards a partnership.

Start with what is already in place, adjust and strengthen that, instead of imposing new models

- Collect information at the local level: what is really happening, what are the actual problems at the local level and what are the proposed solutions of the various stakeholders involved in the decentralization process? This should include interviews with Districts-Commissioners, the traditional authorities, members of the regional organs, the DLGP-team and ordinary villagers. The study, preferably carried out in two districts, should result in two or three different models proposed by those directly involved based on the existing governance structures (the model provided in Box 3.1, below, could be one example). Ideally, train a group of local people (indigenous and maroons) to carry out this research (which will build local capacity) and ensure that the process of the research and the outcome is supervised by Indigenous and Maroon traditional authorities along with the DLGP-team.

Invite Technical Expertise

- Use expertise from international human rights bodies (there is a standing invitation for technical assistance from the UN Human rights Office), from international law specialists, and from indigenous traditional authorities and government Ministries responsible for indigenous affairs in different countries, to discuss the proposed models and work these out in more detail with close participation of IP&M and regional authorities;

Ensure Collaboration Between Relevant Partners

- Ensure that representatives of the Ministry of Regional Development, Natural Resources, Land Policy as well as the Presidential Land Rights Commission and preferably a relevant Working Group or Committee from the National Assembly are involved in the process to prevent conflicting initiatives, to create synergy and to build capacity.

Box 3.1 Creating Indigenous and Maroon Autonomous Regions in Suriname

Creation of Indigenous/Maroon Districts

- Following the example of Colombia, indigenous and maroon areas (the boundaries of which would have to be demarcated in accordance with internationally guaranteed rights) could be transformed into “Indigenous and Maroon Districts” or “Indigenous/Maroon Territories”.
- These Indigenous/Maroon Districts would be equivalent to and exist alongside the currently existing “Districts”;
- The Indigenous/ Maroon Districts may be different to the extent that they would be governed in accordance with indigenous and maroon customary law and through their own institutions (which may vary, depending on the indigenous and maroon group in question), and more generally in a manner consistent with the rights of indigenous and tribal peoples in international law. The powers and authorities of the Indigenous and Maroon District Councils would have to be set forth in the law.
- Within the Indigenous/Maroon Districts, there may be lower levels of government such as village councils (see below).

Replace Ressor Councils with Traditional Village (or Local) Councils, where appropriate

- In the case of the Indigenous Districts, at least in the coastal area, following the example of Guyana, village councils could operate as local level governments, much the same way as the indigenous village councils presently operate. The law would formalize and detail their powers and put in place guarantees to avoid abuse of power. The traditional village councils would replace the ressort councils.
- In Maroon Districts and in the Southern Indigenous Districts, and elsewhere, where there may be no traditional village councils, but where traditional government is based on kinship (*beres* and *los*) or geographical location (river systems), the law should recognize such local traditional structures within the Indigenous/Maroon Districts.
- Within the regular (non-indigenous/maroon) districts, the ressort councils could continue to exist and exercise administrative and development functions (but see below).

Separate the Presidential Elective Role of the Ressor Council from the Development/Administrative Role

- If the boundaries of the districts are redrawn to accommodate for Indigenous and Maroon Districts, this may affect the boundaries of the ressort councils and thereby influence the role of the ressort councils in the election of the President (there could be more or less ressorts, affecting the number of people that eligible to elect the President).
- To avoid this, the two roles of the ressort councils should be separated. The role of the ressort councils in the regular districts should be limited only to development and administrative functions.
- For the Presidential election, the boundaries of the ressorts do not need to be redrawn, but could remain, including in the Indigenous and Maroon Districts. However, the persons elected for these electoral bodies, would only be elected for this purpose, they would not have any further role in the development or in the administration of the ressort, the village or the district.
- Elections for Ressor Councils or Traditional Village/Local Councils should be organized separately from the National Assembly elections.

Exceptions

- There may be a few areas where it may be practically unfeasible to form Indigenous and Maroon Districts, for example in cases of communities within urbanized areas, such as Bernharddorp, Santigrón and Píkin Poika in the District of Wanica. For these communities, different solutions will have to be found, based on extensive consultations with the community members. Village Councils with defined spheres of authority may be the most appropriate means of doing this.
- Other exceptions may be urban centers that are located within indigenous or maroon areas, such as Albina, Moengo or Apura. For these urban centers a separate administrative status could be created, such as a Town Council, making sure that formal cooperative linkages are made between the Town Councils and the Traditional District and Village Councils surrounding them.



BIBLIOGRAPHY

- Amerindian Peoples Association of Guyana and the Forest Peoples Programme, *Request for Adoption of a Decision under the Urgent Action/Early Warning Procedure in Connection with the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Guyana and Comments on Guyana's State Party Report (CERD/C/446/Add.1, 20 January 2006.*
- Arias Garcia, Marcial, *Forests, Indigenous Peoples and Forestry Policy in Panama: an assessment of national implementation of international standards and commitments on traditional forest related knowledge and forest related issues.* Draft case study prepared for the Expert Meeting on Traditional Forest-Related Knowledge, 6 - 10th December 2004 in San Jose, Costa Rica, 2004 [http://www.international-alliance.org/documents/panama_eng_full.doc]
- Assies, W., G. van der Haar, A. Hoekema (eds.), *The Challenge of Diversity. Indigenous Peoples and the Reform of the State in Latin America*, Thela Thesis, Amsterdam, 2000.
- Bijoy, C.R., Core Committee of the All India Coordinating Forum of Adivasis/Indigenous Peoples, *The Adivasis of India, A History of Discrimination, Conflict, and Resistance*, in: PUCL Bulletin, February 2003, <http://www.pucl.org/Topics/Dalit-tribal/2003/adivasi.htm>.
- Chapin, M., 'Defending Kuna Yala: PEMASKY, The Study Project for the Management of the Wildlands of Kuna Yala, Panama. A case study.' In: *Shifting the power: Decentralization and biodiversity conservation*. Washington, D.C.: Biodiversity Support Program, 2000.
- Colchester, Marcus and Fergus MacKay, *In Search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent. Paper for the 10th Conference of the International Association for the Study of Common Property, Oaxaca, August 2004.*
- Cook, C. and J. Lindau (eds.), *Aboriginal Rights and Self-Government. The Canadian and Mexican Experience in North American Perspective*, McGill-Queen's University Press, Québec, 2000.
- Cornell, S., C. Curtis and M. Jorensen, *Seizing the Future: Why Some Nations Do and Others Don't*, Joint Occasional Papers on Native Affairs, no. 2005-01, 2005 [http://www.jopna.net/pubs/jopna_2005-01_Seizing.pdf]
- Cornell, S. and J. P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, Joint Occasional Papers on Native Affairs, no. 2005-02, 2005.
- Daes, Erica Irene, Working paper by the Chairperson-rapporteur, Mrs. Erica Irene Daes, *On the Concept of Indigenous people*, Working Group on Indigenous Populations, UN Doc E/CN.2/Ac.4/1996/2, 1996.
- Dagblad Suriname*, 'Conceptwet Inheemse dag binnenkort naar DNA', 10 August 2005.
- Dahl, Jens, Jack Hicks and Peter Jull (eds.), *Nunavut. Inuit Regain Control of Their Lands and Their Lives*, IWGIA Document No. 102, Copenhagen 2000.

- Hicks, Jack and Graham White, 'Nunavut: Inuit Self Determination Through a Land Claim and Public Government?' In: Dahl, Jens, Jack Hicks and Peter Jull (eds.), *Nunavut. Inuit Regain Control of Their Lands and Their Lives*, IWGIA Document No. 102, Copenhagen 2000.
- Inter-Agency Support Group on Indigenous Issues, *Report of the Inter-Agency Support Group on Indigenous Issues to the UN Permanent Forum on Indigenous Issues*, February 2005.
- Inter-American Development Bank, *Operational Policy on Indigenous Peoples*, 22 February 2006.
- Jentoft, S., Henry Minde and Ragnar Nilsen (eds.), *Indigenous Peoples, Resource Management and Global Rights*, Eburon, Delft, 2003.
- Kambel, E.R. and F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*, IWGIA Document no. 96, Copenhagen, 1999.
- Kambel, E.R., *Indigenous Peoples and Maroons in Suriname*, Inter-American Development Bank, Economic and Sector Study Series, RE3-06-005, Washington D.C., August 2006.
- Kambel, E.R., *Resource Conflicts, Gender and Indigenous Rights in Suriname. Local, National and Global Perspectives*, diss. Leiden, 2002.
- Kambel, E.R., *IDB Consultation Meeting with The Traditional Authorities of the Indigenous Peoples and Maroons of Suriname, 6-7 December 2005, North Resort, Paramaribo, Report Prepared for the Inter-American Development Bank*, Paramaribo, 16 January 2006.
- Kreimer, O., *Study Of The Summary Of The Recommendations Made By The Indigenous Communities, Local And Foreign Legislation And International Law*. Study prepared for the Ministry of Amerindian Affairs and World Bank, February 2004.
- Loukacheva, Natalia, *On Autonomy and Law*. Institute on Globalization and the Human Condition, Working Paper Series, University of Toronto, June 2005.
- MacKay, F. and E.R. Kambel, *De internationale rechten van inheemse volken en marrons. Een compilatie van basisdocumenten*, Netherlands Institute of Human Rights, SIM Special no. 28, Utrecht, 2004.
- Meulenhof, Ivonne P., *Het traditionale gezag en de decentralisatie in Suriname, scriptie ter verkrijging van de hoedanigheid Meester in de Rechten*, Anton de Kom Universiteit, Paramaribo, augustus 2002.
- Ministerie van Regionale Ontwikkeling/DLGP, *Guideline Decentralization 2003-2006, Project Information Document IX*, September 2005.
- Nettheim, Garth, Gary Meyers and Donna Craig, 'Indigenous Resource Management in Canada: Development and Current Practices.' In: Garth Nettheim, Gary Meyers and Donna Craig, *Indigenous Peoples and Governance Structures. A Comparative Analysis of Land and Resource Management Rights*, Aboriginal Studies Press/Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2002, pg. 79-118.

Scholten, B., *Bosnegers en overheid in Suriname. De ontwikkeling van de politieke verhouding 1651-1992*, diss. Nijmegen, Afdeling Cultuurstudies/Minov, Paramaribo, 1994.

Schrijver, N., *Sovereignty over Natural Resources: Balancing Rights and Duties*. Cambridge Studies in International Law, Cambridge University Press, Cambridge, 1997.

Secretariat of the CBD, *Note on Traditional Knowledge and Biological Diversity*, UNEP/CBD/TKBD/1/2, 18 October 1997.

Report of the United Nations Expert Seminar on Indigenous Autonomy and Self-Government 28 September 1991. UN Doc. E/CN.4/1992/42, 1992.

Turpana, A., 'The Dule Nation of the San Blas Comarca: between the government and self-government'. In: W.J. Assies and A.J. Hoekema (eds.), *Indigenous Peoples' Experiences with Self-Government*, IWGIA Document no. 76, Copenhagen 1994, pg. 149-156.

UNDP, *Human Development Report 2004 Cultural Liberty in Today's Diverse World*, New York, 2004.

Valiente Lopez, A. (ed), *Derechos de los Pueblos Indígenas de Panamá*, International Labour Organization/Centro de Asistencia Legal Popular Panamá, San José, 2002.

VIDS/PARS, *Report of the Gran Krutu at Galibi 20, 21 and 22 November 1996*, Paramaribo, 1997.

VIDS *Informatiepakket, Vierde VIDS Conferentie, Powakka, 21-23 september 2001*.

VIDS, *Report of the Vijfde VIDS Conferentie, 3-5 November 2005 held in Washabo*, Paramaribo, 2006.

Cases, Reports and Decisions of Intergovernmental Organizations

Inter-American Court, *Sawhoyamaxa Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146.

Inter-American Court of Human Rights, *(Sumo) Awas Tingni Community Case*, Judgment of August 31, 2001. Series C No. 79

Inter-American Court of Human Rights, *Community of Moiwana v Suriname*. Judgment of June 15 , 2005. Series C No. 124.

Inter-American Court of Human Rights, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion, OC-14/94, December 9, 1994, Series A. No. 14.

Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005. Series C No. 125.

Inter-American Court of Human Rights, *Yatama v. Nicaragua*, Judgment 23 June 2005. Series C No. 127.

- Inter-American Human Rights Commission, *Case 7615 (Brazil)*, OEA/Ser.L/V/II.66, doc 10 rev 1 (1985).
- Inter-American Human Rights Commission, *Report N° 75/02, Case N° 11.140, Mary and Carrie Dann (United States)*, Dec. 27, 2002. OEA/Ser.L/V/II.116, Doc. 46.
- Inter-American Human Rights Commission, Report No. 40/04, *Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize)*, 12 October 2004.
- Inter-American Human Rights Commission, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26. (1984).
- Inter-American Human Rights Commission, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 doc.10, rev.1.
- Inter-American Human Rights Commission, *Third Report on the Human Rights Situation in Colombia*. OEA/Ser.L/V/II.102 Doc. 9 rev. 1, 26 February 1999.
- Inter-American Human Rights Commission, *Third Report on the Situation of Human Rights in The Republic of Guatemala* OEA/Ser.L/V/II. 67, doc. 9, 1986.
- UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*. 12/12/2003. UN Doc. E/C.12/1/Add.94.
- UN Committee on the Elimination of Racial Discrimination, *Concluding Observations: Guyana*, CERD/C/GUY/CO/14, March 2006.
- UN Committee on the Elimination of Racial Discrimination, General Recommendation XXIII (51) concerning Indigenous Peoples Adopted at the Committee's 1235th meeting, on 18 August 1997 (CERD/C/51/Misc.13/Rev.4).
- UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples Adopted at the Committee's 1235th meeting*, on 18 August 1997 (CERD/C/51/Misc.13/Rev.4).
- UN Committee on the Elimination of Racial Discrimination, *Ninth Periodic Report of States parties due in 1998: Colombia*. 17/11/98 CERD/C/332/Add.1. State Party Report.
- UN Committee on the Elimination of Racial Discrimination, *Prevention Of Racial Discrimination, Including Early Warning Measures And Urgent Action Procedures Decision 1 (67) Suriname*, CERD/C/Dec/Sur/2, 18 August 2005.
- UN Committee on the Elimination of Racial Discrimination, *Prevention Of Racial Discrimination, Including Early Warning Measures And Urgent Action Procedures Decision 1 (67) Suriname*, CERD/C/Dec/Sur/2, 18 August 2005.
- UN Human Rights Committee, *Concluding Observations: Brazil*, 01/12/2005. UN Doc. CCPR/C/BRA/CO/2.
- UN Human Rights Committee, *Concluding Observations: Canada*, 20/04/2006. UN Doc. CCPR/C/CAN/CO/5.
- UN Human Rights Committee, *Concluding Observations: Norway*, 25/04/2006. UN Doc. CCPR/C/NOR/CO/5.

UN Human Rights Committee, *Concluding observations: Suriname*, CCPR/CO/80/SUR, 4 May 2004.