

AN ANALYSIS OF INTERNATIONAL LAW, NATIONAL LEGISLATION, JUDGEMENTS, AND INSTITUTIONS AS THEY INTERRELATE WITH TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

REPORT NO. 11

SURINAME



Stockholm Resilience Centre
Research for Governance of Social-Ecological Systems



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Environmental
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NATURAL JUSTICE



“Land is the foundation of the lives and cultures of Indigenous peoples all over the world... Without access to and respect for their rights over their lands, territories and natural resources, the survival of Indigenous peoples’ particular distinct cultures is threatened.”

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Cover Photo: Part of the biodiversity rich Kaboeri Creek in West Suriname
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ACRONYMS

ACTO	Amazon Cooperation Treaty Organization
ADEKUS	Anton de Kom University of Suriname
ATM	Ministry of Labor, Technological Development and Environment (<i>Arbeid, Technologische Ontwikkeling en Milieu</i>)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBD	Convention on Biological Diversity
CEESP	(IUCN) Commission on Environmental, Economic and Social Policy
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CSNR	Central Suriname Nature Reserve (<i>Centraal Suriname Natuur Reservaat</i>)
CRPD	Convention on the Rights of Persons with Disabilities
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
GEF	Global Environment Facility
IACHR	Inter-American Commission on Human Rights
ICCA	Indigenous Peoples' and Local Communities' Conserved Territories and Areas
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDB	Inter-American Development Bank
IUCN	International Union for Conservation of Nature
JUSPOL	Ministry of Justice and Police (<i>Justitie en Politie</i>)
KLIM	Organization of Kali'na and Lokono in Lower Marowijne (<i>Organisatie van Kali'na en Lokono van Beneden Marowijne</i>)
LBB	Forest Service (<i>'s Lands Bosbeheer</i>) (Ministry of RGB)
LVV	Ministry of Agriculture, Husbandry and Fisheries (<i>Landbouw, Veeteelt en Visserij</i>)
MUMA	Multiple Use Management Area (<i>Bijzondere Beheersgebieden</i>)
NB	Nature Conservation Division (<i>Afdeling Natuur Beheer</i>)
NBC	Nature Conservation Commission (<i>Natuur Beschermingscommissie</i>)
NBS	National Biodiversity Strategy
NBSAP	National Biodiversity Strategy and Action Plan
NGO	Non Governmental Organization
NH	Ministry of Natural Resources (<i>Natuurlijke Hulpbronnen</i>)
NIMOS	National Institute for Environment and Development in Suriname (<i>Nationaal Instituut voor Milieu en Ontwikkeling in Suriname</i>)
NMR	National Council for the Environment (<i>Nationale Milieu Raad</i>)

NR	Nature Reserve (<i>Natuur Reservaat</i>)
OAS	Organization of American States
OHCHR	(UN) Office of the High Commissioner for Human Rights
OSIP	Organization of Cooperating Indigenous Villages in Para (<i>Organisatie van Samenwerkende Inheemse Organisaties in Para</i>)
PoW-PA	Programme of Work on Protected Areas
RGB	Ministry of Physical Planning, Land and Forest Management (<i>Ruimtelijke Ordening, Grond- en Bosbeheer</i>)
RO	Regional Development (<i>Regionale Ontwikkeling</i>)
SBB	Foundation for Forest Management and Monitoring (<i>Stichting Bosbeheer en Bostoezicht</i>)
SGP	Small Grants Programme
SNR	Sipaliwini Nature Reserve
SRIP	UN Special Rapporteur on the Rights of Indigenous Peoples
STIDUNAL	Foundation Sustainable Nature Management Alusiaka (<i>Stichting Duurzaam Natuurbeheer Alusiaka</i>)
STINASU	Foundation for Nature Conservation in Suriname (<i>Stichting Natuurbehoud Suriname</i>)
UN	United Nations
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
UNDRIP	United Declaration on the Rights of Indigenous Peoples
UNHRC	UN Human Rights Commission
UPR	Universal Periodic Review
VIDS	Association of Indigenous Village Leaders in Suriname (<i>Vereniging van Inheemse Dorpshoofden in Suriname</i>)
VSG	Association of Saamaka Authorities (<i>Vereniging van Saramakaanse Gezagsdragers</i>)
WHC	World Heritage Convention
WIPO	World Intellectual Property Organization
WWF	World Wildlife Fund

SUMMARY

The legal review of Indigenous Peoples and Local Communities Conserved Territories and Areas (ICCAs) is a follow-up of the Recognition and Support review, which has been carried out earlier this year in Suriname by VIDS (*Vereniging van Inheemse Dorpshoofden in Suriname*; Association of Indigenous Village Leaders in Suriname). The aim of the legal review is to look beyond whether the protected areas system recognizes ICCAs, and consider a range of laws and policies that also affect the ability of peoples and communities to traditionally govern and conserve their territories and resources. An overriding conclusion from the earlier Recognition report is indeed that the holistic perspective and management by indigenous peoples of their territories, inherently results in effective conservation and sustainable use of nature. This holistic management is based on cultural and spiritual values and traditional knowledge, combined with very practical skills, techniques and actions forthcoming from the continuous interaction of community members with nature and natural resources. Effective conservation is therefore directly dependent on effective legal recognition of indigenous peoples' rights, to formally and practically enable and enforce them to exercise their holistic and respectful nature management, not just for the sake of conservation but for their survival and life in dignity and equality.

This current legal review concludes that indigenous peoples (and tribal peoples) are not legally recognized as peoples or collectivities in Surinamese legislation, nor are their (collective) rights, among others their rights to their traditional lands, territories and resources, the right to free, prior and informed consent, the right to participation and consultation and of their traditional authorities and governance structures. There are some governmental resolutions that include a reference to '*traditional rights*' or '*customary rights*'. But there are no further provisions or specification which rights these exactly are and how they can be enforced. Where such legal instruments make a reference to '*the rights of amerindians and bushnegroes*', these '*rights*' are made subject to the '*public interest*' and other unilateral formulated conditions by the State (e.g. the Decree on the Principles of Land Policy; in Dutch *L-Decreet Beginselen Grondbeleid 1982*). This is considered discriminatory since other people's rights are not restricted in such a way. Furthermore, given the frequent overlap between indigenous traditional territories and protected areas, traditional livelihood practices such as hunting and fishing are illegal in those areas, thus legally restricting indigenous peoples' rights to life and lifestyle. Access to justice for indigenous peoples and their communities is fundamentally restricted because, in addition to the absence of relevant legislation on indigenous peoples' rights, they are not legally recognized as such, making it procedurally impossible to start a legal case for the collectivity.

These and other legislative weaknesses and discriminatory situations in Suriname regarding indigenous (and tribal) peoples have been acknowledged by various regional and international bodies, and these institutes as well as many other governments have repeatedly requested Suriname to implement legislation in favor of indigenous peoples' rights. Concrete action has not been undertaken. The landmark judgment of the Inter-American Court of Human Rights in the Saramaka People versus Suriname case has also not been implemented yet.

The legal environment is thus very unfavorable and uncertain for indigenous and tribal peoples in Suriname, severely affecting their ability to conserve and manage their territories and resources in their own holistic, sustainable manner. It is therefore strongly recommended to, with the full and effective participation of indigenous and tribal peoples of Suriname, implement a process towards the full recognition of indigenous peoples' rights in accordance with international standards, in particular the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and discriminatory provisions in the legislation, as identified in this report, need to be immediately revised.

INTRODUCTION

Across the world, areas with high or important biodiversity are often located within Indigenous peoples' and local communities' conserved territories and areas (ICCAs). Traditional and contemporary systems of stewardship embedded within cultural practices enable the conservation, restoration and connectivity of ecosystems, habitats, and specific species in accordance with indigenous and local worldviews. In spite of the benefits ICCAs have for maintaining the integrity of ecosystems, cultures and human wellbeing, they are under increasing threat. These threats are compounded because very few states adequately and appropriately value, support or recognize ICCAs and the crucial contribution of Indigenous peoples and local communities to their stewardship, governance and maintenance.

In this context, the ICCA Consortium conducted two studies from 2011-2012. The first (the *Legal Review*) analyses the interaction between ICCAs and international and national laws, judgements, and institutional frameworks. The second (the *Recognition Study*) considers various legal, administrative, social, and other ways of recognizing and supporting ICCAs. Both also explored the ways in which Indigenous peoples and local communities are working within international and national legal frameworks to secure their rights and maintain the resilience of their ICCAs. The box below sets out the full body of work.

1. Legal Review

- An analysis of international law and jurisprudence relevant to ICCAs
- Regional overviews and 15 country level reports:
 - *Africa*: Kenya, Namibia and Senegal
 - *Americas*: Bolivia, Canada, Chile, Panama, and Suriname
 - *Asia*: India, Iran, Malaysia, the Philippines, and Taiwan
 - *Pacific*: Australia and Fiji

2. Recognition Study

- An analysis of the legal and non-legal forms of recognizing and supporting ICCAs
- 19 country level reports:
 - *Africa*: Kenya, Namibia and Senegal
 - *Americas*: Bolivia, Canada, Chile, Costa Rica, Panama, and Suriname
 - *Asia*: India, Iran, the Philippines, and Russia
 - *Europe*: Croatia, Italy, Spain, and United Kingdom (England)
 - *Pacific*: Australia and Fiji

The *Legal Review* and *Recognition Study*, including research methodology, international analysis, and regional and country reports, are available at: www.iccaconsortium.org.

This report is part of the legal review and focuses on Suriname. It is authored by staff members of Bureau VIDS (*Vereniging van Inheemse Dorpschoufden in Suriname*; Association of Indigenous Village Leaders in Suriname).

1. COUNTRY, COMMUNITIES & ICCAS

1.1 Country

The Republic of Suriname is situated on the north coast of South America and is bordered by the Atlantic Ocean, French Guiana, Guyana and Brazil. Its total area is approximately 164,000 km². The capital city is Paramaribo. Suriname became independent from the Netherlands in November 1975. Politically, Suriname has a semi-presidential system with an executive president who is not elected directly but by the democratically elected, unicameral National Assembly (parliament). Its main economic sectors are mining (gold, bauxite, oil), trade, agriculture and increasingly tourism. The climate is typical of tropical rainforest, with two rainy seasons and two dry seasons, although seasons have become less predictable. The interior covers approximately 80% of the land surface, and is predominantly tropical rainforest. 'Interior' is also used as a geopolitical term to characterize the traditional areas of indigenous peoples and maroons; often remote and difficultly accessible regions with substandard public services.

The total population of Suriname is approximately 492,000 (census 2004/2007). The population is ethnically and religiously very diverse, consisting of Hindustani (27.4%), Creoles (17.7%), Maroons ('Bushnegroes', 14.7%), Javanese (14.6%), mixed (12.5%), indigenous peoples ('Amerindians', 3.7%) and Chinese (1.8%) (ICCA Consortium/VIDS, 2012).

1.2 Communities and Environmental Change

The four most numerous indigenous peoples are the Kali'na (Caribs), Lokono (Arawak), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian indigenous peoples in the south-west and south of Suriname, including the Akurio, Wai Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kaliña and Lokono live mainly in the northern part of the country and are sometimes referred to as 'lowland' indigenous peoples, whereas the Trio, Wayana and other Amazonian peoples live in the South and are referred to as 'highland' indigenous peoples (ICCA Consortium/VIDS, 2012).

Suriname also has a substantial (almost 15%) population of 'maroons' or 'Bushnegroes', which are descendants of African slaves who fought themselves free in colonial times and were able to establish communities in the Interior. They live tribally, according to ancestral cultures and traditions, under comparable circumstances as the indigenous peoples¹. There are six maroon tribal peoples in Suriname: the Saamaka, Okanisi, Paamaka, Matawai, Kwinti and Aluku.

1.3 Community-level Livelihood Strategies

The livelihood strategies of indigenous peoples are diverse. In general, fishing, hunting, logging, agriculture and the collecting and harvesting of non-timber forest products are the

¹ Although many circumstances, particularly in terms of legal provisions, are similar for indigenous peoples and the tribal maroons, this review will refer mainly to the situation of indigenous peoples

most important means of subsistence. Increasingly villagers also sell part of their harvest or catch, depending on the availability of infrastructure, transport facilities and/or visitors to their region. Community members can also be employed by companies operating in the region, e.g. mining and logging companies, or by the government, as local employees of public service providers. Villagers close to urban areas increasingly choose for city-based jobs, commuting between their village and city. Tourism is another increasing contribution to the livelihood of many communities, e.g. by selling agricultural crops, fruits and handicrafts, or running guesthouses and other recreational facilities.



Non-timber forest products on display during a VIDS organized mini market on International Women's Day. © VIDS.

1.4 Indigenous Peoples and Biodiversity

Indigenous peoples' communities have played the first and foremost role in environmental management and nature conservation over many centuries. As elsewhere in the world, the areas identified as most rich in biodiversity and containing unique ecosystems in Suriname, are almost always located within the traditional territories of indigenous peoples. Through traditional land management practices that are holistic and very much aligned with the environment, indigenous peoples have conserved and further enriched ecosystems, biodiversity and other natural resources in their ancestral territories. In spite of increasing threats and absence of effective support, this holistic management of indigenous territories is continued by the involved communities through traditional knowledge and ancestral

management systems and practices. This crucial role and contribution of indigenous peoples in ecosystem and biodiversity management, however, has not been legally nor practically recognized in the nature conservation regulatory framework in Suriname (VIDS 2006; ICCA Consortium/VIDS, 2012).

Threats to biodiversity and land/resource appropriation are very similar to the threats to indigenous peoples' lands and territories and will be discussed in the next paragraphs.

1.5 Indigenous Peoples' and Local Communities' Conserved Territories and Areas

1.5.1 General remarks

Indigenous communities throughout Suriname first and foremost consider their entire traditional indigenous territories as a 'protected' or 'conservation' area that is protected and conserved for future use and future generations, while respecting life and everything that has a spirit. The whole traditional territory is therefore managed by the communities in a holistic manner, and spirituality and sustainability considerations play major roles in management rules and traditions (interview respondents; VIDS 2006; VIDS 2009; ICCA/VIDS, Consortium 2012). Although, as the ICCA concept² clearly points out as well, conservation is not always the conscious objective, this research confirmed that indigenous territorial management does result in protection and conservation of ecosystems, habitats and species. As such, all traditional lands of the involved indigenous peoples or communities could be considered to be 'ICCAs' but also the other way around; all 'ICCAs' are in this view (part of) indigenous territories, and there are no ICCAs outside of the traditional territories since indigenous and tribal communities do not control areas outside of their traditional territories.

Critical question marks on the ICCA concept itself however, must also be put forward, namely whether the holistic use and management of indigenous territories, which traditionally inherently have nature conservation and enrichment as a result, are now

² Three general features characterize an ICCA (CEESP 2008):

- A well-defined people or community possesses a close and profound relation with an equally well-defined site (such as territory, area, or habitat) and/or species. This relation is embedded in local culture, sense of identity, and/or dependence for livelihood and wellbeing.
- The people or community is the primary player in decision-making and implementation regarding the management of the site and/or species. Community-level institutions thus have the capacity to develop and enforce decisions, *de facto* and/or *de jure* (including according to both customary and state law). Other stakeholders may collaborate as partners, especially when the land is owned by the state, but decisions and management efforts are predominantly by the people or community.
- The people's or community's management decisions and efforts lead to the conservation of habitats, species, genetic diversity, ecological functions/benefits, and associated cultural values, whether or not the conscious objective of management is conservation *per se*. For example, primary objectives may be livelihoods, security, religious piety, safeguarding cultural and spiritual places, etc., with conservation being an additional outcome.

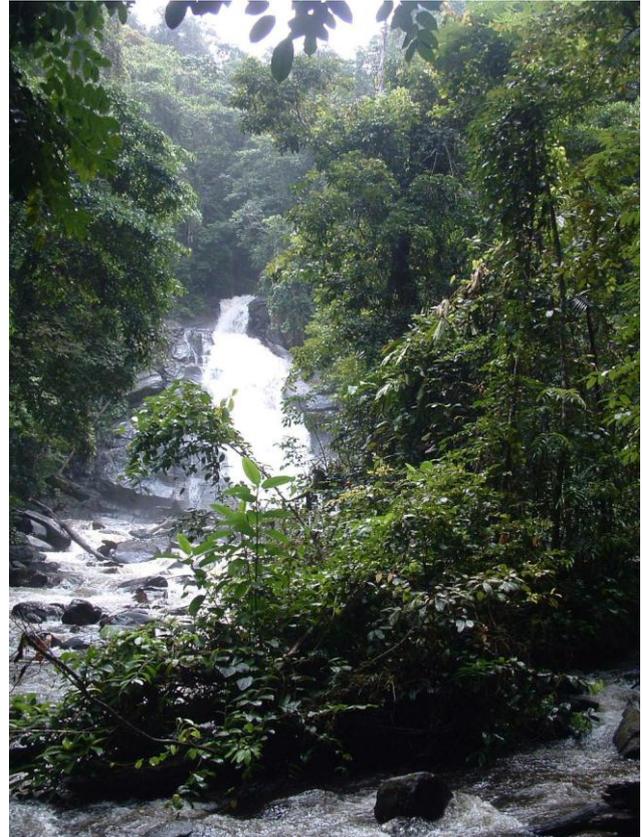
'pushed into' contemporary conservation frameworks for the sake of species and ecosystem conservation and protection, or for the sake of conserving monetary and commercial values, or governmental and enterprise powers. The formal conservation frameworks are delinked from traditional indigenous concepts of life, spirituality and sustainability, also delinked from the essential relation with having legal rights over these indigenous lands and territories, and they sometimes serve very different purposes than those of the traditional indigenous concepts of territorial management. If it were the case that indigenous territories or certain areas therein are given other designative names such as 'ICCA' only to be able to fit them into these existing frameworks, this could then even be considered a risk to indigenous peoples' rights, diluting the real issues of legally recognizing and respecting indigenous peoples' rights, and trying to take a too pragmatic approach to essential matters.

1.5.2 Range, Diversity and Extent of ICCAs

While the designation 'ICCA' is not well-known (even unknown) or used in Suriname, there are many examples of cases/situations throughout the whole country that in practice match the criteria of an ICCA. These examples range from management of entire traditional indigenous territories to specific specie or area protection, always as a result of the traditional concepts of territorial management and using customary (including cultural and spiritual) rules of the involved indigenous communities. Following are the 'categories' which we have identified:

- a. Collective indigenous areas inhabited and managed by multiple indigenous villages and sometimes multiple indigenous peoples in accordance with their customary rules and traditions. Such collective indigenous areas can be found in different regions in Suriname: North east, West Suriname, South Suriname, Wayambo area and Para area. Within the collective indigenous areas, individual villages also holistically manage their village territory. Thus, this type of 'ICCA' exists in virtually all individual indigenous villages.
- b. More recently, some indigenous communities have identified and designated certain areas within their territory as conservation areas. In such areas the community undertakes extra efforts for nature or species protection, in addition to the customary rules and practices. The incentive for the community to do so can be income-generation and employment opportunities from tourism. The area or site is managed by the community and the rules, agreed through community decision-making structures and mechanisms, are enforced by the responsible body from the community itself (see also Case I, Galibi, Case II Kaboeri Creek in Part X of this report).
- c. A third example, widely occurring in various indigenous regions in Suriname, is that of a specific species protection. This is most often linked to historical or spiritual beliefs. Well-known examples are the sacredness of the *takini* tree (*Brosimum acutifolium*), of which only the sap under the bark may be used by someone who has the potential to communicate with the supernatural world; the powers and spirits that are housed within the *kankantrie* (*Ceiba pentandra*) (cotton tree) and may not be disturbed; the human spirit that is housed within certain animal species which can therefore not be harmed, e.g. the river dolphin and manatee; the spiritual messenger function of certain bird species.

- d. A fourth type of 'ICCAs' in Suriname is that of areas which are restricted in access (e.g. no human settlements, but passing-through or hunting is allowed), or restricted in activity and use (e.g. agriculture is allowed but no hunting) or avoided at all (no entry). This can be an area with a special historic significance such as the Akijo Ituru waterfalls in the Trio territory (photo), or an area which is known to house bad spirits, or an area that has been 'set aside' upon instruction of elders or shamans. The specific reason of restricted access or activity differs from community to community, but the commonality of this type lies in the restricted use and/or access with the clear effect of area and/or ecosystem conservation.



- e. Intensifying nature and/or biodiversity conservation practices by an indigenous community, sometimes on instigation and/or with the (financial) support of environment organizations (often international environment NGOs). The specificity of this 'type' lies in the conscious focus and selection of a species or practice or ecosystem with support by environmental organizations.

Akijo Ituru waterfalls, a place of historic significance for the Trio. Access to, and use of the area is restricted. © Ministry of Social Affairs, Sipaliwini Department

- f. Finally, a more transient and reactive type of 'ICCA', very pragmatic in origin but with the clear effect of nature protection, results from a temporary ban or reducing the use of certain areas or species if the community notices a decrease in its population. Community members make a conscious decision to stop hunting a certain species, or cutting certain tree species, or moving to other areas, if they notice these species become scarce. Such a decision is agreed among the community members who use these species, e.g. hunters, collectors of roof materials, collectors of palm fruits.

1.5.3 Governance and Management of ICCAs

The governance of 'ICCAs' (using the term but remembering the critical note made earlier, that in fact we are talking about indigenous territories or certain areas or species therein, and that the concept has not yet been adequately discussed in Suriname) forms part of traditional governance systems and bodies over the indigenous territories and villages. This will be discussed in more detail in Part II of this report. Within the collaboration between indigenous communities and (international) conservation organizations on protected area management there may be additional management structures, which would still abide by the community governance system.

1.5.4 Threats to Communities' Local Governance of Territories, Areas, and Natural Resources

The main threats to communities' local governance of their territories, areas and natural resources and to indigenous peoples' cultures, are in our view very similar to the threats to biodiversity and ecosystems.

- a. The most important threat is the non-recognition of indigenous peoples' rights in Suriname's legislation. The absence of legal recognition of these rights allows for the issuance by government of concession rights over natural resources without meaningful participation in decision-taking, management or monitoring by the affected indigenous communities. This leads to (over-)exploitation of these resources by the concession holders, with the accompanying impacts on the livelihoods, cultures and traditions of indigenous peoples and on biodiversity, ecosystems and environment in general. These violations of indigenous peoples' rights have increased in recent years due to the intensified focus on natural resources (gold, oil, forest and water resources, etc.) in the Interior of Suriname. This creates an environment of uncertainty, fear and indecisiveness in indigenous communities who have no recourse mechanisms and are marginalized in legal and political policy-making and decision-making.
- b. Closely linked to this non-recognition of Indigenous peoples' rights is the unilateral character of the existing nature conservation legislation. Legally, all environmental decisions are taken only by governmental bodies without a prescribed participation in decision-taking and shared responsibilities. The establishment and management of protected areas (which are almost always located within or overlapping with the traditional territories of Indigenous peoples) conflicts with traditional land and resource management, as there are two different and sometimes conflicting frameworks of rules and regulations (the traditional and the governmental/legal one) that the communities have to deal with. In the atmosphere of legal uncertainty and sometimes forceful enforcement of governmental rules, the communities may put less effort in conserving and sustainably use biodiversity and ecosystems. This goes hand-in-hand with a corresponding loss of certain traditional knowledge, customs and traditions, but also to the loss of traditional custodianship over these areas and species, making them prone to 'lawlessness' and unsustainable use or depletion.
- c. Again linked with the non-recognition of land and other rights, uncertainty over the ownership and use of their territories and natural resources, and the invasion by companies or individuals, and also under pressure of the growing importance of the monetary economy at local level (increasing need for cash) various members of the Indigenous communities make narrower and shorter-term decisions with regards to their natural environment, increasingly focusing on short-term, unsustainable 'modern' uses of natural resources instead of long-term traditional use.
- d. Another threat is the lack of legal recognition of the traditional authorities of the Indigenous and tribal peoples. The official administrative system formally only knows political representative structures (Resort and District Councils) and local government structures (local government service or '*bestuursdienst*') and officials (government supervisors or '*bestuursopzichters*'), who do not necessarily represent

the opinions and aspirations of the communities and are often affiliated to and influenced by political parties. It is therefore easy for outsiders to 'consult' with those structures and obtain their agreement, instead of with the legitimate traditional authorities. This has substantial impacts and constitutes a threat to traditional community governance, including governance related to territorial and resource management.

- e. The transmission of traditional knowledge and rules relating to nature conservation and management to the younger generation is decreasing, as a result of the lack of culturally appropriate education and economic opportunities in the communities, forcing school kids to leave their village early to go to school in urban areas. Christianization and assimilative education methods also lead to decreased use and transmission of culture, language and traditional customs, beliefs and rules.
- f. There is an increasing pressure to have monetary income e.g. cash to pay for school fees and living expenses of school children in the city, and for transport facilities. This can result in the use of less sustainable methods for more or faster utilization of natural resources to have a monetary income.
- g. The intrusion of extractive industries is in itself also posing a threat to local governance, biodiversity, the environment and on human health, security and safety of the indigenous communities.

1.5.5 Initiatives to Address the Threats

- a. As the traditional authority structure of the indigenous communities in Suriname, VIDS is strongly advocating for the legal recognition of indigenous peoples' rights, particularly land rights as the basis for indigenous peoples' lives, livelihoods, cultures, survival and identity. This will secure indigenous peoples' governance and management over their lands, territories and natural resources. VIDS participates proactively in all relevant national policy processes to advocate for legal recognition of indigenous and tribal peoples' rights in Suriname.
- b. Within its long term strategy VIDS has an explicit focus on local empowerment. A project is being implemented for the support of Indigenous women to set up small enterprises from a rights-based approach and rooted in Indigenous cultural visions and mechanisms. Various villages are also undertaking initiatives towards culturally appropriate and sustainable economic income generation, under their own control and management.
- c. VIDS is also doing research and making publications on holistic customary territorial management including environmental conservation and sustainable use of nature by indigenous peoples' communities. This ICCA review is a perfect example. Research on mining and the effects on indigenous communities have also been carried out. These activities are also aimed at increasing awareness.
- d. VIDS has started to develop and test bilingual education in indigenous languages in several indigenous villages. Education in Indigenous languages and on issues that relate to the local environment and related knowledge and practices can be vital to maintain customary sustainable use and traditional knowledge.



Project on economic empowerment of indigenous women from a rights-based and indigenous perspective. © VIDS

2. LAND, FRESHWATER AND MARINE LAWS & POLICIES

Indigenous (and tribal maroon³) peoples' land and resource rights are not recognized in the Surinamese legislation. Some laws make only very brief reference to 'the rights of Amerindians and Bushnegroes', none to indigenous or tribal peoples as such (as peoples or collectivities), and there are no further provisions or specification which rights these exactly are and how they can be enforced, as will be further discussed below.

2.1 Land Rights

The Surinamese legal system and legislation in general very much reflect, sometimes literally, the colonial Dutch legislation but has evolved slower, also after Suriname's independence from the Netherlands in November 1975. Various laws relating to environment, nature conservation and natural resources date back to the 50s and 60s of last century and have since been only modified in some articles but have not undergone fundamental revisions or changes.

With regard to land rights of indigenous peoples, colonial legislation, as early as 1629 in the West Indian Order Regulations and in land titles dating back to 1667, has consistently made

³ The juridical situation in Suriname concerning the (lack of recognition of) rights of the tribal maroon peoples, also called 'Bushnegroes' is practically identical with that of the indigenous peoples ('Amerindians'), and in Surinamese legislation, if there is any mentioning of indigenous and tribal maroon peoples, no distinction is made between those. Most common is reference in relevant laws and governmental resolutions to the 'population of the Interior' (*'bevolking van het binnenland'*), 'Amerindians and Bushnegroes' (*'Indianen en Bosnegers'*) or 'forest inhabitants' (*'boslandbewoners'*). The law does not mention 'indigenous peoples' or 'tribal peoples' as such, although some laws talk about people living tribally.

reference to the 'rights and freedom' of 'the natives', more particularly in colonial 'land letters' issued by the colonial government. The specific formulation of this so-called 'guarantee clause' or 'exclusion clause' changed over time, but basically always mentioned that the recipients of land titles or concessions for resource exploitation should 'not disturb', 'not force them to relocate' or 'not infringe on the rights of the Amerindians over their traditional villages, settlements and livelihood plots' (Kanhai and Nelson 1993; Kambel and Mackay 2003). Which 'rights' were referred to, however, has not been specified in any legal document, nor were (are) there procedures to enforce their observance.

Peace agreements were also made, both with the indigenous peoples of Suriname (around 1684 and 1685 after the so-called 'Amerindian War', 1678 – 1686) as well as with the tribal Maroons in 1760, 1762, 1769, 1809, 1835, 1837, 1838, 1839 and 1860 (Kambel and Mackay 2003). All these agreements to lesser or greater degree acknowledged the Amerindians and Bushnegroes as free peoples within their respective territories and with their autonomous traditional governance structures, and promised to not disturb them in exchange for no further attacks on the plantations and colonists.

A major reform of the Surinamese land legislation took place in 1982 with the issuance of the Decree⁴ on the Principles of Land Policy (L-Decreet Beginselen Grondbeleid 1982⁵). This decree intended to consolidate various previous forms of land titles into one single title namely land lease (*grondhuur*), based on the so-called 'domain principle', which is described in article 1 of that decree as '*all land, of which others cannot prove their right of property, is domain of the State*'. This principle is apparently copied from the identical clause in land legislation dating back to 1870 of the colonial Dutch East Indies (modern-day Indonesia). What exactly 'domain' is has not been defined in Surinamese legislation, but in practice it is interpreted by the government to be the State's property over all land over which no one else can prove property rights (Kambel and Mackay 2003).

This decree also contains the exclusion clause in its article 4 but has weakened it:

Article 4.1.: 'When deciding over domain land, the rights of tribally living Bushnegroes and Amerindians on their villages, settlements and livelihood plots will be respected in as far as this does not conflict with the public interest'

Article 4.2.: 'Under public interest is also included the execution of any project within the framework of an approved development plan'.

What is understood by 'public interest' is not described, other than in article 4.2 cited above. The decree obliges the person who receives the title, which is issued by the minister of Physical Planning, Land and Forest management (minister of RGB by its abbreviation in Dutch) to utilize it in accordance with the objective for which it has been issued (article 8), e.g. agriculture or (home) construction. Failure to do so could result in withdrawal of the land lease right, which means that the land becomes full State property again. In practice, this provision is not strictly enforced and it is not an exception that leased land remains unused for many years. It is possible that the lease title is given for conservation purposes,

⁴ In the period after the military coup of February 1980, the Military Council governed with decrees rather than laws given the fact that the Parliament was suspended in the period 1980 – 1985.

⁵ <http://www.dna.sr/files/docs/decreet-beginselen-grondbeleid.pdf>

for example the land lease title provided in 1970 to the quasi-governmental Foundation for Nature Preservation (STINASU) which was given explicitly to sustainably manage the Brownsberg Nature Park.

As mentioned these 'rights' of tribally living Bushnegroes and Amerindians are not further specified and are made subject to the 'public interest' which is subsequently said to include any project within an approved development plan. The Explanatory Memorandum accompanying the decree states on this article that issuance of domain land will 'take their [inhabitants of the interior] factual rights on these lands into account as much as possible', and also says that this principle will be temporarily applicable during a transition period in which the interior population will 'gradually be integrated into the general socioeconomic life'.

Taking into account the historic legal context, including the similarities with the colonial legislation in the Dutch East Indies, it may be considered that the land rights of indigenous and tribal peoples in Suriname would be neither public nor private ownership rights but ownership rights based on a slightly modified aboriginal title (Kambel and Mackay, 2003). However, this has not been acknowledged as such in Surinamese legislation as discussed above, and discussions over the relevance and applicability of 'aboriginal title' in Suriname have not been held.

Other land titles which are still in vigor but not issued any longer, are leasehold (*erfpacht*) and allodial property (*allodiaal eigendom*). The other land title still in use is absolute or civil code property (*BW eigendom*). In 2009 a new law was published that makes it possible for the government to sell cultivated or built-up domain land of up to 2,500 square meter to Surinamese citizens (*Wet Verkoop Domeingrond*).

With regard to land rights, the Peace Accord 1992 and the Buskondre Dey Protocol can also be mentioned although their legal status and legal effects are not fully clear. The Peace Accord (or Peace Agreement) of August 1992 was signed between the civil government that came into power after elections in 1991 and the rebel groups that were active during the military regime before aforementioned elections. The agreement was mainly a cease-fire and disarmament agreement but did mention the issue of land rights, which has (as always) been a hot topic in the peace negotiations. The agreement mentioned that 'citizens living tribally' could apply for land titles and that a 'collective zone' would be established, based on a study yet to be done, and procedures to be defined by the traditional authorities. Also, a discussion on the ratification of ILO Convention 169 would be initiated. These (and other) articles have not been implemented and their interpretation remains unclear (Kambel and Mackay, 2003).

The Buskondre Dey Protocol of February 2000⁶, accompanied by a Presidential Resolution of the then president Wijdenbosch, was an initiative of the government shortly before elections in May 2000, to 'solve' the land rights' issue. A meeting with traditional authorities was called and concluded with a 'Basic Orientation Agreement' in which, among others, the government 'recognizes the collective rights of indigenous and maroons'. The

⁶ Translation available at <http://www.forestpeoples.org/fr/node/1224>

subsequent presidential resolution furthermore stated that their ‘living areas’ (*woongebieden*) would be mapped according to ‘natural boundaries’ and be ‘made available for free use’ to the respective traditional leaders. At the same time however, the protocol and resolution upheld the applicability of the Constitution, all relevant laws and ‘general interest’, all of which do not recognize the collective rights of indigenous and tribal peoples, thus making their status and value debatable (Kambel and Mackay, 2003). The provisions in these documents have also not been implemented.

2.2 Natural Resources

The Constitution of Suriname⁷ states in article 41 that natural riches and resources are the property of the nation and that the nation has the inalienable right to take full possession of those for the economic, social and economic development of Suriname. The Constitution does not acknowledge the existence or rights of indigenous or tribal peoples in Suriname. It includes a number of articles on human rights, non-discrimination and equality. According to article 103 of the Constitution, international agreements can take effect in Suriname only after approval by the National Assembly (parliament) of Suriname, ratification by the president if so stipulated in the agreement, and publishing of the agreement. If they contain provisions that are binding ‘for everyone’ such as human rights instruments, they become directly applicable once published in Suriname (article 105). Also, provisions in Surinamese legislation that are inconsistent with provisions that are binding to everyone in international agreements, are inapplicable (article 106).

New or revisions of laws can be initiated by either the government or the National Assembly (Suriname’s unicameral parliament). It are usually the government ministries which have the thematic responsibility over a certain policy area that will initiate legislative products, by submitting a draft bill first to the Council of Ministers, and then to the National Assembly for public discussion and eventual approval. In the case of natural resource management (among others mining, including oil drilling, and fresh water resources), the initiative would come from the Ministry of Natural Resources (NH by its abbreviation in Dutch), for land and forests from the Ministry of Physical Planning, Land and Forest Management (RGB), for sea water resources, game and fish stock from the Ministry of Agriculture, Husbandry and Fisheries (LVV), and for environmental protection from the Ministry of Labor, Technological Development and Environment (ATM)⁸.

The guarantee or exclusion clause requiring concession and land title holders to respect the rights of Bushnegroes and Amerindians was repeated in laws on natural resource exploitation such as the Gold Regulation 1882 revised in 1932, the Balata Regulation 1914, the Agriculture Regulation 1937⁹ and the Logging Regulation 1947, and more recently the Forest Management Law 1992¹⁰. Also in the case of issuing permission for other commercial

⁷ http://www.oas.org/juridico/mla/en/sur/en_sur-int-text-const.pdf (English) or original in Dutch at <http://www.dna.sr/files/docs/grondwet-suriname.pdf>

⁸

<http://www.dna.sr/files/docs/besluit-taakomschrijving-departementen-1991.pdf>

⁹ <http://dna.sr/wetten/13---Milieuwetgeving-en-Ruimtelijke-Ordening/agrarisch-wet-gb-1937-no.-53.pdf>

¹⁰

activities, e.g. establishing a supermarket or wood processing factory, it is practice that the indigenous and tribal leadership of communities potentially affected by such activities are heard by the District Commissioner which is the highest government authority in the districts system of Suriname. Their opinion is only advisory however, and it can happen that there has not been a meaningful consultation. There are no regulations on how such advice should be obtained and how it is verified that a consultation process has been undertaken, with effective participation of the involved communities in decision-taking. Domestic court cases against such situations have been submitted by indigenous communities but have not been successful since the judge's decisions were, as the legal system prescribes, based on what is written in law where community rights are not clearly established (see also chapter 6, Judgments).

The **Forest Management Law** stipulates that the customary rights of tribally living forest dwellers on their villages, settlements and livelihood plots will be respected 'as much as possible'. In case of perceived violation of those rights, the traditional authorities of the tribally living people may submit a written complaint to the president of Suriname, who will then appoint a commission to advise him on the case. Similar to what has been mentioned above, such customary rights are not specified, they must be respected only 'as much as possible' which is open to diverse interpretations, and the aforementioned complaint procedure (complaint to the president who will appoint an advisory committee) mentioned in the Forest Management Law is a rather unique one without further procedural specifications to guarantee a fair and thorough process.

The Forest Management Law foresees in the establishment of 'community forests', which are described as certain forest areas around community lands and that have been designed as such (community forest) for the benefit of forest inhabitants living in villages or settlements and living tribally, to be used for their own benefits (e.g. food and forest production and potential commercial timber utilization, collection of non-timber forest products and use for agriculture). These community forest titles are to replace the previous 'wood cutting licenses' given to village chiefs. What rights can be derived from such establishment of community forests, however, is unclear, and the implementing legislation regulating the use and management of community forests has not been made yet. The position of the Association of Indigenous Village Leaders in Suriname (VIDS) is that community forests as described in the Forest Management Law are not a way of recognizing the collective property rights of the indigenous communities over their customary lands and territories; to the contrary they reinforce the notion that communities must request permission to use their own lands from the government as if acknowledging that their customary lands are part of State's domain, and the permission can be withdrawn any moment as prerogative of the minister of RGB (VIDS brochure on community forests, 2008).

The **Mining Decree 1986**¹¹ dealing with subsoil resources does not, surprisingly given the fact that all other relevant legislation does, include the exclusion or safeguard clause. The decree stipulates that mineral resources are not included in the property of the land in or on which they are present, and that the State has property over all mineral resources within

<http://www.dna.sr/files/docs/wet-bosbeheer.pdf>

11

<http://www.dna.sr/files/docs/decreet-mijnbouw.pdf>

the territory of the State, including its territorial sea. Mineral resources can be in solid, liquid or gas form, but do not include water resources. According to the decree, holders of land rights are **obliged** to permit mining rights holders to undertake activities on their land. They do not need to give permission or consent to mining on their land, and may only ask for compensation. The holder of the mining title is required to ‘take into reasonable account the interests of rights-holders and interested third parties’, and implements its activities with at least harm as possible to the interests of those. It is unclear whether or not indigenous and tribal peoples are considered to be rights-holder or ‘interested third parties’; there is no mentioning of indigenous and tribal peoples’ rights in the decree. It only requires the requester of a mining permit to provide details of tribal villages that may be within the concession area, however, without specifying why such information must be given or what is done with that information.

In 2005, after various years of preparations, a draft was finalized for a new Mining Law. The draft was criticized by VIDS, among others because of its weak or absent provisions on respecting and safeguards for indigenous and tribal peoples’ rights and substandard requirements for environmental and social impact assessments (Del Prado, 2006). The draft was submitted to the National Assembly in January 2005 but has not been discussed since and remains in draft.

2.3 Environmental Protection

The **Nature Protection Law 1954** (revised last in 1992)¹² does not contain any protection clause on respecting the rights of Amerindians and Bushnegroes although the resolutions that are based on this law, establishing nature reserves in 1986 (Boven-Coesewijne, Copi, Peruvia and Wanekreek Nature Reserves) and 1998 (Central Suriname Nature Reserve, CSNR) did include one. Both resolutions however, make restrictions of these (unspecified) rights. The resolution of 1986 says in its Explanatory Memorandum that *“the forest inhabitants that live in or around the reserves will maintain their rights and interests in the newly established nature reserves (a) as long as the national objective of the proposed nature reserves is not prejudiced, (b) as long as the rationale for those “traditional” rights and interests remains valid, and (c) during the process of growing toward one Surinamese citizenship”*. The resolution of 1998 establishing the CSNR similarly says: *“In as far as there are villages and settlements of tribally living forest dwellers present in the nature reserve established by this State Resolution, the rights derived from that will be respected, unless (a) the general interest or the national objective of the established nature reserve is negatively affected; (b) otherwise has been decided”* (art. 2, Nature Protection Resolution 1998).

The Nature Protection Law of 1954 which is the basis for those resolutions, does not contain any clause as mentioned above, and for the 10 nature reserves established prior to the ones of 1986 and 1998 (often without prior knowledge of the affected communities) it is thus not required to ‘respect the rights of Amerindians and Bushnegroes’. According to this law it is forbidden to hunt, fish and even carry materials to hunt or fish, and dogs are not allowed. It is also forbidden to cut wood, camp or make a fire, unless a person has received written

¹²

<http://www.dna.sr/files/docs/natuurbescherminswet-1954.pdf>

permission from the Forest Service to do so. Since many protected areas are within the traditional livelihood territories of indigenous and tribal peoples, this means that their normal subsistence activities are, formally speaking, against the law. However, government has not enforced this law against the interior communities and the former head of the Nature Management Division of the ministry of Physical Planning, Land and Forest Management (RGB) has expressed in a memo that the 'traditional rights' of the community will be respected, including their right to hunt, fish, agriculture, and logging for own use (memo LBB, 1978). Still, such memo is not law and indeed it has sometimes come to conflicts and tensions between indigenous villagers and governmental forest rangers in the field.

The **Hunting Law 1954** (revised last in 1997)¹³, the **Fish Protection Law 1965** (revised last in 1981)¹⁴ and the **Sea Fishing Law 1980**¹⁵ (revised last in 2001) similarly make no reference to indigenous and tribal peoples, thus making their customary livelihood practices illegal. Also the **Planning Law 1973** (GB 1973 no. 89) can be the basis for the establishment of protected areas or multiple use management areas (MUMAs; *bijzondere beheersgebieden*) as a means to achieve the national objective of utilizing natural resources for the socioeconomic development of the country (Kanhai and Nelson, 1993; World Conservation Monitoring Center 1992).

A draft environment framework law was developed by the National Institute for Environment and Development in Suriname (NIMOS) which is a technical body of the government for environmental issues. The draft, which contains directives on undertaking ESIA's, among others, was submitted to the Council of Ministers for discussion in 2001 but has not been discussed in parliament yet and thus also remains in draft. Similarly, a new draft Mining Law has been developed in 2005 which also remains in draft. This draft has some provisions on local communities, among others that an environmental impact assessment must be submitted in case impacts are expected on local communities; that the inhabitants of communal land are obliged to allow holders of mining rights to carry out mining activities on land that they use on the basis of their traditional rights, provided that they have been timely informed in advance and compensated. VIDS has pointed out that this is a very vague provision, does not constitute any form of consultation and that the draft Mining Act contravenes international norms and standards on the rights of indigenous peoples (Del Prado, 2006).

2.4 Comments

As described there are some intrinsic flaws or even discriminatory provisions in the land tenure and natural resource rights system of Suriname as it relates to the rights of indigenous and tribal peoples. In addition to what has been described above under specific legislative products, some other issues relating to the land and resource rights of indigenous peoples can be mentioned as follows:

¹³ <http://www.dna.sr/files/docs/jachtwet-1954.pdf>

¹⁴ <http://www.dna.sr/files/docs/visstandsbeschermingswet.pdf>

¹⁵ <http://www.dna.sr/files/docs/zeevisserijwet-1980.pdf>

- a. Various laws, if at all they make reference to the ‘rights of Amerindians and Bushnegroes’, state either in their articles and/or in the Explanatory Memorandum, that those rights are expected to be relevant only during a transition period, or as long as the situation requires, clearly assuming (or even stating) that it is expected that indigenous and maroon tribal peoples will be assimilated into mainstream society and/or that their lifestyle will not survive. This is an assimilatory approach and does not respect indigenous peoples’ and maroon rights to, among others, culture, lifestyle and identity. The legislation on land titles, while it has mentioned indigenous and tribal peoples’ rights over their lands and livelihood resources for more than three centuries, does not specify and protect these rights in the law, offers no means to enforce these rights, oblige indigenous and tribal peoples to prove their ownership due to the domain principle, and makes their rights subject to public interest that can include any project in an approved development plan. Such limitations and qualifications are not used for the rights of any other group of people or other categories of land titles in Suriname but only and systematically for ‘Amerindians and Bushnegroes’, and are thus considered discriminatory and a legal entrenchment of racial inequality. This will be discussed in more detail in chapter 5, Human Rights.
- b. There are no compulsory legal provisions for meaningful participation or consultation in decisions affecting indigenous peoples, nor is their right to free, prior and informed consent (FPIC) recognized. In practice it can therefore easily happen that indigenous peoples are only notified of decisions that have already been taken, even months or years after the decision as in the case of the establishment of many protected areas in indigenous territories . There are also many examples of superficial consultations, e.g. in the form of one participant on behalf of all indigenous peoples in Suriname in a one-time ‘stakeholders workshop’, without clarity on how the input or comments received during the workshop are incorporated or not in the final decisions or documents (personal communication VIDS, April 2012).
- c. The legislation process in Suriname is rather slow (with a few exceptions if it concerns urgent matters that enjoy high political priority). Reasons for the slow process of legislation can vary from limited knowledge or capacity on the topic, e.g. technical details or insufficient comparative examples, to political priority for the topic and conflicting interests which make lawmakers to keep postponing certain issues. Sometimes societal sensitivities, e.g. the need to balance among ethnic group interests and potential perceptions of discrimination or inequalities, can also be a reason to delay the discussion and adoption of legislation. Legislation on indigenous and tribal peoples’ rights probably falls in all of these categories.
- d. There is a limited awareness in general on indigenous and tribal peoples’ rights in Suriname, including by lawmakers. Although there is a general recognition that there are such rights, there is limited clarity what exactly those are, if and how they should be recognized legally, and how this would affect other rights such as the rights of concession holders, individual ownership rights, and rights of other communities. This limited awareness, combined with long-held prejudices and discrimination against indigenous and tribal peoples make this topic a difficult one to discuss in a constructive and structured manner.
- e. There is a persistent top-down governance attitude in Suriname, where the government and its officials often act as the know-betters towards indigenous and maroon communities, not to be challenged by critical groups or persons who, if they do, can face

consequences in the form of exclusion from the improvement of public services (e.g. electricity and water supply). Such attitudes again make it difficult to have constructive and meaningful discussions over topics such as community governance over territories, areas and resources.

3. PROTECTED AREAS, ICCAS AND SACRED NATURAL SITES

3.1 Protected Areas

Laws and policies that constitute the protected area framework

Protected areas in Suriname are formally regulated by a mix of legislation, policies and guidelines that have been developed over the years, to directly or indirectly influence plans and actions affecting biodiversity and biological resources. Article 6 of the Constitution states that, “the social objective of the state is directed towards the creation and stimulation of conditions necessary for the protection of nature and the maintenance of ecological balance”. International conventions and agreements, to which Suriname is a party, provide further rules, namely:

- The Convention on Biological Diversity (1996),
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1980),
- The Wetlands (or Ramsar) Convention (1985), and
- The World Heritage Convention (WHC) (1997) (NBS 2006).

Within the Government Declaration ‘Kruispunt 2010-2015’ the government has identified the protection of the environment as one of the essential sectors for national development. This is also stated in the National Biodiversity Strategy 2006 – 2020, which aims at ensuring that the use of renewable natural resources and the conservation of the biological diversity are managed in a sustainable way, including the equitable sharing of benefits derived from products and services (NBS 2006).

The legal instruments that are the basis of the protected area framework of Suriname are the following:

- Nature Protection Law (1954): Rules for the protection and preservation of natural monuments. This law is also the legal basis for the establishment and management of Nature Reserves (NR), as protected areas are generally called in Suriname;
- Game Resolution (1954): is the legal basis for the protection of fauna and regulates hunting in Suriname;
- Forest Management Law (1992): provides provisions for forest management and exploitation, but also for the primary wood-processing industry.

With the enactment of the Nature Protection Law in 1954, ‘land and waters pertaining to the State’s domain’ (article 1) could from that time be designated to be a nature reserve, by Government Resolution (*‘Staatsbesluit’*, a decision by the Executive – President and Council of Ministers – for the implementation of an existing law). The requirement to designate a

region as nature reserve (NR) is the presence in that region of diverse nature and landscapes and/or the occurrence of scientifically or culturally important flora, fauna and geological objects (article 2). The law does not give a definition of what a protected area or nature reserve is, nor of other areas that are also considered forms of protected area, namely 'nature park' and 'multiple use management area' (MUMA). Such areas are also designated by Government Resolution, based on the same Nature Protection Law (LBB/NB 2004).



Map of protected areas in Suriname.
Source: www.stinasu.com

In comparison with the definitions of the CBD and IUCN there are a few differences. First, as mentioned, the Surinamese law does not give a definition but defines certain criteria for the potential designation of an area. The law does not oblige to designate a circumscribed area, but in practice this is nevertheless done, and all nature reserves are clearly geographically defined. According to the law, only the president can designate an area as protected area, and it has to be part of the State's domain. Finally, the description of criteria in the Nature Preservation Act does not refer to management elements (although in the rest of the law there are various management aspects).

Table: Protected areas in Suriname

Nature Reserves	Established	Area (ha)	District
1 Galibi	1969	4,000	Marowijne
2 Wia-Wia	1966	36,000	Marowijne
3 Coppenamemonding	1966	12,000	Saramacca
4 Hertenrits	1972	100	Nickerie
5 Peruvia	1986	31,000	Coronie
6 Wane Kreek	1986	45,000	Marowijne
7 Copi	1986	28,000	Para
8 Boven Coesewijne	1986	27,000	Saramacca, Para
9 Brinckheuvel	1966	6,000	Brokopondo
10 Centraal Suriname	1998	1,600.000	Sipaliwini
11 Sipaliwini	1972	100,000	Sipaliwini
Nature Park			
12 Brownsberg	1970	12,200	Brokopondo
Proposed Nature Reserves			
13 Nanni			
14 Kaburi			
Proposed Forest Reserves			
15 Mac Clemen			
16 Snake Creek			
Multiple Use Management Area			
17 Bigi Pan	1987	67,900	Nickerie, Coronie
18 Noord Coronie	2001	27,200	Coronie
19 Noord Saramacca	2001	88,400	Saramacca
20 Noord Commewijne/ Marowijne	2002	61,500	Commewijne, Marowijne

The government entities responsible for environmental management with focus on nature conservation include:

- The Ministry of Labor, Technological Development and Environment (*Ministerie van Arbeid, Technologische Ontwikkeling en Milieu – ATM*);
- The Ministry of Physical Planning, Land and Forest Management (*Ministerie van Ruimtelijke Ordening, Grond- en Bosbeheer, RGB*);
- The National Council for the Environment (*Nationale Milieuraad*); and
- The National Institute for Environment and Development in Suriname (*Nationale Instituut voor Milieu en Ontwikkeling in Suriname – NIMOS*)

The Ministry of Labor, Technology Development and Environment

The responsibility for environmental policies, including biodiversity, is entrusted to the Ministry of Labor, Technology Development and Environment (ATM, by its abbreviation in

Dutch). The Environment Directorate within this Ministry has coordinated the formulation of the National Biodiversity Strategy (NBS, 2006) and National Biodiversity Action Plan (NBAP). These documents describe in general how Suriname's biodiversity will be valued and protected by the Surinamese people. This vision is supported by seven goals. One of these goals is focused on increasing the potentials for the establishment and management of protected areas.

The Ministry of Physical Planning, Land and Forest Management

The Ministry of Physical Planning, Land and Forest Management (RGB) is responsible for the management of all forested areas and has the authority to classify forests for different purposes as part of the physical planning of the country. Formulation of laws and policies regarding conservation and protected areas is the responsibility of the Department of Forest Management. Within this Directorate the following institutions operate:

- Forest Service (*'s Lands Bosbeheer, LBB*), established in 1947: According to article 3 of the 1954 Nature Protection Law, the general management of the nature reserves in Suriname is in the hands of the head of Suriname's Forest Service.
- Nature Conservation Division (*Afdeling Natuur Beheer, NB*) 1963: the daily management of nature reserves is entrusted to the head of the Nature Conservation Division of LBB.
- Nature Conservation Commission (*Natuurbeschermingscommissie, NBC*) 1948: this body was established to analyze conservation issues and advice the government on legal conservation provisions. There are no indigenous or maroon representatives in this body.
- Foundation for Nature Conservation in Suriname (*Stichting Natuurbehoud Suriname, STINASU*) 1969: STINASU was established to contribute to the realization of the goals of the nature protection policies. STINASU carries out several tasks, such as promoting nature tourism to and in the reserves, carrying out educational programmes and scientific natural management research.
- The Foundation for Forest Management and Monitoring (*Stichting Bosbeheer en Bostoezicht, SBB*) is tasked with the sustainable exploitation of forests, including the development and enforcement of forestry rules and regulations, and the undertaking of forest inventories.

The implementation of the CBD Programme of Work on Protected Areas (PoW-PA) in Suriname is weak (VIDS/FPP 2009). Specifically on Element 2 (good governance, equity, full and effective participation, and benefit-sharing) the Forest Service stated that this has not yet been incorporated in their policy and amendments of the legal provisions are inevitable. But the pace of change is dependent on the policymakers and government priorities (personal communication LBB). The Nature Protection Law (1954) does not mention indigenous peoples nor respecting their rights to lands, territories and resources, and according to the law, all restrictions such as hunting, fishing and even having a dog apply to the indigenous villagers that live in, or close-by protected areas. The same goes for the Game Law 1954 and the Forest Management Law 1992. In practice these rules are not enforced against the indigenous and maroon communities but they remain discriminatory legal provisions. This has been discussed in more detail in Part II of this review.

3.1.1 The Protected Area Framework and Recognition of ICCAs

Within the protected area framework of Suriname there are no provisions for the governance and management by indigenous peoples over their territories and resources. The protected area framework does not recognize ICCAs. In the absence of legal provisions for participation and co-management, the Nature Conservation Division has created a mechanism that allows for some participation, namely the possibility to establish a 'consultation commission' (*'overlegcommissie'*) in relation to protected areas (Memorandum Establishment Galibi Consultation Commission, 2000). Such commission would consist of representatives of LBB and STINASU, the District Commissioner, and representatives of the involved village(s). The size of a commission can vary between reserves, also depending on the activities and natural resources within the area. In terms of the composition of the commission, the local representatives are in the minority, and the head of NB/LBB is always the chairperson, which does not ensure an equitable distribution of authority and responsibilities. The commission is, moreover, an advisory body, and thus the communities' views or recommendations are not binding and are certainly not always taken into account. During a VIDS/FPP research in 2009 the Nature Conservation Division acknowledged that the consultation commission is not a co-management mechanism. This has so far been piloted in three cases where protected areas overlap with Indigenous territories (VIDS/FPP 2009).

Provisions for indigenous peoples' governance of sacred natural sites are also absent within the legal framework. In practice, sacred natural sites are managed by the indigenous community through customary rules and traditions within the overall framework of the community decision-making structures, institutions, and processes.

3.2 Other Protected Area-related Designations

As mentioned, Suriname also knows 'nature parks', 'multiple-use management areas' (MUMAs) and 'forest reserves' (the latter have not yet been formally established; only proposed). The legal basis for these areas is the same Nature Protection Law 1954 which does not provide for a strict classification. In addition, Suriname has two World Heritage Sites, namely:

- Cultural: Historic Inner City of Paramaribo (2002)
- Natural: Central Suriname Nature Reserve (CSNR, 2000).

The Joden Savanne and nearby Cassipora Cemetery (1998) have been submitted to the Tentative List of World Heritage Sites (www.unesco.org).

The CSNR is surrounded and overlaps indigenous and maroon territories. The communities were not informed nor gave their consent to the establishment of this reserve (VIDS/FPP 2009). They were, however, consulted during the development of the management plans for this and another nature reserve, namely the Sipaliwini Nature Reserve (SNR), 'along the principles of the CBD' (interview SCF, 2008). Although the SNR was established in 1972, it has gained renewed attention since the establishment of the CSNR, because management plans for both NRs were to be developed simultaneously under a GEF-funded project.

Indigenous and Maroon representatives have said that their input, which was reflected in an earlier version of the draft management plans, was later removed and is not reflected in the final plan (VIDS/FPP 2009, IDB 2005).

There is one site designated as a Wetland of International Importance under the Ramsar Convention, with a surface area of 12,000 hectares, namely the 'Coppename Monding' (estuary of the Coppename River). It is registered as Ramsar site no. 304, with designation date 22 July 1985, as a Western Hemisphere Shorebird Reserve and internationally important area for breeding birds species such as herons, egrets, and passage and wintering waterbirds (www.ramsar.org). The Coppename Monding is also a national nature reserve since 1966. Unlike other nature reserves there are no indigenous communities within the vicinity.

Suriname has no biosphere reserves.

4. LOCAL GOVERNANCE, TRADITIONAL KNOWLEDGE, CULTURE AND HERITAGE

Indigenous peoples' villages in Suriname and their lands, territories and resources are governed by their traditional authority structures and governance mechanisms that function at village, regional and national level. Apart from the traditional governance structures there are also legal administrative systems for local government in place at national, district and 'resort' (comparable with municipal) level. This chapter will briefly describe the traditional governance system, focusing mainly on territorial and resource management, and then the formal administrative system. Issues related to traditional knowledge, culture and heritage are then passing the review.

4.1 Traditional Governance

Indigenous lands and territories are managed through customary rules and traditions within the overall framework of the national indigenous authority structure VIDS, and each village's decision-making structures, institutions, and processes. The Association of Indigenous Village Leaders in Suriname, VIDS (*Vereniging van Inheemse Dorpshoofden in Suriname*) is the traditional authority structure at the national level. The VIDS board is composed of representatives from the various regions in which VIDS is organized, namely East, West and Wayambo, South Trio, South Wayana and Central/Para. VIDS deals with larger policy and political issues, in particular the legal recognition of Indigenous peoples' rights (especially land rights and formal recognition of traditional authorities), facilitates transitions in village leadership, and moderates, where requested, in cases of governance problems at village level. VIDS is also the intermediary, if so requested by the communities, when communities or regions want to make agreements with companies or NGOs, or in cases of conflicts particularly regarding land use concessions that conflict with community's traditional territories. The 'working arm' of VIDS is its bureau (Bureau VIDS), located in the capital Paramaribo and staffed by indigenous personnel including technical academics.

At 'macro-regional' level there are formal or informal traditional governance structures of the communities, in which collective decisions concerning the region are taken. In East Suriname there is KLIM (Organization of Kali'na and Lokono in Lower Marowijne) and in the

Central/Para region there is OSIP (Organization of Cooperating Indigenous Villages in Para). In addition to being regional bodies, they are also regional divisions and working arms of VIDS. They decide on regional matters, including regional projects. Similar, but less formal structures exist in the other regions.

These structures are the traditional governance framework within which the Indigenous territories are managed. There are also additional, more pragmatic and informal collaboration and monitoring mechanisms at regional level.



VIDS mini-conference in 2009. © VIDS

At village level there are the traditional authority structures consisting of the village leader (chief or 'captain') and *basjas* ('assistants'), jointly called the 'village council' (*dorpsbestuur*). Most communities have women, youth, culture, and sports organizations. In larger communities there may be regular or incidental village structure meetings in which all these organizations participate, to take organizational decisions. Issues concerning the larger community are always discussed and decided upon in open village meetings (*dorpsvergadering* or *krutu*) for which everyone is invited. Information relevant for everyone is also shared in village meetings. Depending on the issue, specific knowledge holders (expert resource users such as hunters or fishers, or elders) may play a special advisory role. Issues, problems, questions, planning of activities and such, related to the ongoing management of the community's territory would be discussed with the village council (chief and assistants). The village council is also responsible for enforcement of rules

and local agreements. As mentioned before, in difficult cases the assistance of the regional structures and/or VIDS is called upon.

In addition to these institutional structures there are the actual rules for managing the indigenous lands, territories and resources. Usually, these are customary rules that are not written down but are passed along orally, from elders to youngsters or from peers to peers (e.g. hunters among each other). Stories and descriptions of incidents and experiences are the most common ways to transmit the rules. The rules (do's and don'ts) could be categorized (although somewhat artificially; as these rules operate in a holistic context) into sustainability rules and spiritual requirements, ultimately based on respect for life and for supernatural powers. Overarching everything is also the deep-rooted binding with, and respect for the land and nature (in western words called 'Mother Earth'), which is expressed in many stories including on the genesis of humankind, and in traditional beliefs, customs and ceremonies to be undertaken to pay due respect to the earth.

Some of the customary rules related to nature management are as follows: a ban on mining and on clear-cutting of the forest, application of selective tree harvesting (cutting down a specific tree without others around it, or only trees of which the trunk is above a certain diameter), no large-scale hunting and fishing, no fishing and hunting in breeding seasons or in creeks where there are signs of fish roe or young offspring, using fishing nets with a certain width to avoid capturing young and small fish; not hunting on pregnant animals or animals with young offspring, no use of neku to stun (too many) fish. In addition, there is an active notion of conservation and protection with regard to slow reproducing species for which there are rules of not using more than strictly needed, a hunter may not shoot more than he can carry back to the village. Similarly, there are sustainable harvesting rules, e.g. not cutting down the whole tree but climbing in the palm to get the fruits, cutting trunks or vines only above a certain height of the stem and avoiding the roots in order to ensure re-growth. Certain species are forbidden to be killed because of spiritual beliefs, e.g. harming a sea turtle would elicit the anger of the guardian spirit of the turtles (interviews; VIDS 2006; VIDS 2010). In a few cases, rules are formalized (explicitly agreed during a meeting and/or written down), e.g. in projects with NGOs.

In addition to the many rules there are also the customary agricultural methods through which the land is managed, to ensure its long-term sustainability. The most common example of that is the rotational agriculture or shifting cultivation, whereby agricultural plots are used only for a certain period of time and are left alone for an extended time to allow for regeneration and revaluation of the soil. In addition, agricultural plots may not be too close to each other (VIDS 2010). Certain plant species are sowed in a certain order, as they are known to make the soil more or less fertile and should therefore be planted and harvested after or before the other species.

4.2 Local Governance

Suriname's National Assembly (the unicameral Parliament) is based on district representation, 51 seats from 10 districts. The distribution of seats over the 10 districts is not proportional to the number of inhabitants, which was a decision made in 1987 with the adoption of a new constitution after the military regime period, apparently aiming at

reforming Suriname into a decentralized unitary state (Hoever-Venoaks, 2003, . In addition to the 51 parliament representatives, there are also 10 District Councils (one for each district) and 62 Resort Councils for the various resorts in each district. The Resort and District Councils are the highest political-administrative bodies at resort respectively district level (Constitution, article 161; Law on Regional Bodies, 1989, last revised in 2002¹⁶), and are formally also the decisive bodies for planning and implementation of policies, including on district budgets. The members are elected from political party candidates. The decentralized system is not fully functional yet, and a large multi-year project funded with a more than 18 million dollar loan from the IDB is ongoing (since 2003), currently in its second phase (2009 – 2014)¹⁷. One project component of this program aims at designing relevant provisions for revisions of the Law on Regional Bodies 1989.

In spite of the centuries-old, vibrant and functional traditional governance systems in all indigenous and maroon communities, the administrative legislation of Suriname does not know traditional authorities. The only formal provision related to traditional authorities is the issuance of a ministerial decision (*beschikking*) of the Minister of Regional Development on behalf of the Government, in which the authorities, chiefs (*kapitein*) and assistants (*basja*), are individually ‘recognized’ and provided with a modest monthly stipend. This stipend is not a salary but considered to be a compensation of expenses made in relation to their governance tasks. Paramount chiefs (*granman*) are also ‘recognized’ through an investiture (*beëdiging*) before the minister of Regional Development, in accordance with the last peace agreement between the colonial government and the maroons in 1837 (Hoever-Venoaks, 2003). Nowhere are the tasks, powers and responsibilities of traditional authorities described in formal legislation. One of the few references to traditional authorities is in the enumeration of responsibilities of the Ministry of Regional Development, namely to “maintain relations between the central government and the dignitaries and inhabitants of the Interior”.

Thus, there are two systems in place regarding local governance, the functional traditional system and the not-so-functional administrative decentralized system based on political party representation. In practice, this dual system has caused and is still causing uncertainty and sometimes even conflicts, particularly if Resort Councils try to exert influence or claim to have authority over the village population, or if political parties try to influence traditional governance through their political representatives.

4.3 Traditional Knowledge, Intangible Heritage and Culture

There is no legislation in Suriname on traditional knowledge and collective intellectual property rights. Suriname has a **Law on Author Rights 1913** (revised last in 1981)¹⁸ which defines this right as the ‘*right of the creator of a work of literature, science or art to disclose and multiply this work, subject to limitations defined by law*’. There is also a **Law on**

¹⁶

<http://www.dna.sr/files/docs/wet-regionale-organen.pdf>

¹⁷ http://www.decentralisatie.org/20dlgp/a1_DLGP1_2_alg_projinfo.pdf

¹⁸

<http://www.dna.sr/files/docs/wet-auteursrecht-1913.pdf>

Trademarks 1931 (revised last in 1937)¹⁹ and a **Regulation on Industrial Property 1912**²⁰, revised by law of 2001²¹. These laws deal with individual or company rights over intellectual or industrial products and cannot be applied or used by indigenous peoples or communities over their collectively held traditional knowledge that evolved over many generations or other collective cultural or heritage expressions. Various workshops have been organized on traditional knowledge in Suriname, among others in cooperation with the World Intellectual Property Organization (WIPO) and the Amazon Cooperation Treaty Organization (ACTO) to which Suriname is member, but no concrete law proposals have been made so far. Responsibility for the development of laws and policies related to intellectual property is dispersed over three ministries, namely the Ministry of Justice and Police which has a Bureau for Intellectual Property, the Ministry of Trade and Industry (HI) dealing with industrial rights and trademarks, and the Ministry of Labor, Technological Development and Environment (ATM) with regard to traditional knowledge and other CBD-related policies. Also the Ministry of Regional Development (RO) has organized workshops related to traditional knowledge, acting on its role as ministry responsible for Interior development in relation to agreements within ACTO.

The National Biodiversity Strategy and Action Plan of Suriname (NBSAP 2006)²² stipulates as strategic direction under Goal 3 (Access to biological resources): *“Enact and enforce law and policy to protect the use and transfer of traditional knowledge and use pertaining to biological resources and biotechnology”*, and under Goal 4 (Access to genetic resources and the associated traditional knowledge and equitable benefit-sharing):

- *“Establish new legislation regarding the protection of traditional knowledge, lifestyles, innovations and practices of indigenous peoples and maroons communities and other local communities*
- *Develop a national strategy for fair and equitable sharing of the benefits arising from traditional knowledge use associated to biodiversity*
- *With the approval and involvement of the holders, develop a traditional knowledge databases for monitoring purposes”*.

Currently, the Ministry of ATM is conducting hearings with stakeholders whether or not Suriname should ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (CBD). Other actions in relation to the abovementioned policy intentions in the NBSAP have not been completed yet.

The Constitution provides for non-discrimination with regard to birth, gender, race, language, religion, background, education, political conviction, economic position, social circumstances or any other status (article 8). It does not specify culture. Article 38 affirms that everyone has the right to education and cultural experience. The Constitution also states in article 47 that the State guards and protects the cultural heritage of Suriname,

¹⁹

<http://www.dna.sr/files/docs/handelsnaamwet.pdf>

²⁰ <http://www.wipo.int/wipolex/en/details.jsp?id=8824>

²¹ http://www.wipo.int/wipolex/en/text.jsp?file_id=209784

²² <http://www.cbd.int/doc/world/sr/sr-nbsap-01-en.pdf>

stimulates its preservation and promotes the exercise of science and technology within the framework of the national development goals.

Suriname is party to the Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972 (World Heritage Convention 1972)²³ but not to the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) or to the Convention on the Protection of Cultural Diversity (2005). There are currently two World Heritage Sites in Suriname, one natural site (the Central Suriname Nature Reserve, CSNR) and one cultural site (the historic inner city of Paramaribo). Questions have been raised whether the neighboring indigenous communities were meaningfully consulted or only told that the CSNR would be established (personal communication VIDS).

4.4 Comments

In relation to the legal framework concerning local governance, traditional knowledge, culture and heritage some critical comments can be made, highlighting the facilitation or restriction that indigenous communities in Suriname experience in local management of their territories, areas and natural resources:

- a. The non-recognition of indigenous peoples' rights in Suriname, in particular legal recognition of land rights and traditional governance structures, is also a big issue in relation to governance and management. It results in ambiguous situations where indigenous communities cannot legally enforce their ownership, rules and control if the government issues exploitative concessions and other permits in their territories. The communities cannot make long-term planning in accordance with their own visions and aspirations; customary rules and traditions are overruled with force or court decisions if necessary; traditional leadership seems to be actively undermined in favor of party-political exponents (including in decentralized government structures); and communities suffer from general legal uncertainty and marginalization – in the words of an indigenous resource user: “as if we simply do not count and exist; the animals have more rights than us”.
- b. Conflicting rules, namely between customary and statutory legal rules, are another issue in governing and managing indigenous territories. An example is the difference of formal and customary hunting seasons. The villagers are supposed to observe the legal hunting calendar that does not always correspond to the actual mating or breeding season that the indigenous resource users see in reality. Conversely, individuals who, for personal benefit, do not want to comply with customary rules, can claim that they are not obliged to follow customary laws and rules set by the community (leaders).
- c. As mentioned earlier, there are increasing pressures to adopt a monetary lifestyle which leads to pressures on the maintenance and enforcement of traditional rules. For example, sometimes local village members are contracted by a logging concessionary and are subsequently required to clear-cut forests and/or protected species, even those which belong to a (non-legally recognized) indigenous territory.

²³ <http://whc.unesco.org/en/statesparties/sr>

- d. Traditional knowledge is not protected in Suriname, and there are sufficient examples of biopiracy including by well-known international organizations who are well aware of international standards and best practices but simply claim that they are acting in accordance with Surinamese legislation and ‘do nothing illegal’.

The Inter-American Commission and Court of Human Rights have both acknowledged and rejected the insufficiency of Surinamese legislation and violation of the human rights of indigenous and tribal peoples by not legally recognizing their self-governance structures, self-determination and right to legal representation through their own freely chosen representative institutions. In conclusion therefore, similar to other situations mentioned in previous chapters, the legal environment in Suriname related to the recognition of indigenous (and tribal) peoples’ traditional governance mechanisms, traditional knowledge and intellectual property and culture, is discriminatory, a violation of the human rights of indigenous peoples and far behind international norms and standards, to the detriment of the affected peoples. It does not seem to occur to the responsible government authorities that this in turn is seriously undermining Suriname’s global responsibilities, with respect to upholding human rights and rule of law, but also in relation to the conservation, management and sustainable use of biological diversity as legally agreed in multiple international instruments including the CBD.

5. HUMAN RIGHTS

Suriname has ratified five of the nine core human rights treaties²⁴:

Ratified:

1. ICERD International Convention on the Elimination of All Forms of Racial Discrimination
2. ICCPR International Covenant on Civil and Political Rights and its Optional Protocol of 1966 on communications (but not its Optional Protocol of 1989 on abolishment of the death penalty)
3. ICESCR International Covenant on Economic, Social and Cultural Rights (but not its Optional Protocol on communications)
4. CEDAW Convention on the Elimination of All Forms of Discrimination against Women (but not its Optional Protocol on petitions)
5. CRC Convention on the Rights of the Child (but not its Optional Protocols on children in armed conflicts, sale, prostitution and porno).

Signed, not ratified:

6. CRPD, Convention on the Rights of Persons with Disabilities.

Not ratified:

7. CAT, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

²⁴ <http://www2.ohchr.org/english/law/>; <http://www2.ohchr.org/english/law/docs/StatusRatif.xls>; <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

8. ICRMW, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
9. CPED, International Convention for the Protection of All Persons from Enforced Disappearance.

According to the Constitution of Suriname in articles 105 and 106, provisions of international treaties that are binding to everyone, are directly applicable after they have been published in Suriname, and Surinamese legal provisions would not be applicable if they are against such international treaties. Human rights treaties are considered to be such international treaties. The Constitution also specifically mentions personal rights and freedoms in Chapter V, Basic Rights, including the principles of non-discrimination, equal legal protection and fair process.

There is a Bureau for Human Rights under the Ministry of Justice and Police, which is a governmental entity that supports the State in juridical processes concerning human rights' violations, in regional and international forums. The Bureau provides advice to the government and is not intended to provide direct service to the public (website Ministry of Justice, 2012²⁵). Suriname does not have an Ombudsperson. There is a human rights committee within the National Assembly of Suriname which is since January 2012 in the process of drafting a workplan (news item Apintie Television 26 January 2012).

Furthermore, Suriname has ratified the American Convention on Human Rights in 1987 and accepted the jurisdiction of the Inter-American Court of Human Rights²⁶. Suriname has not ratified ILO Convention 169 and has not lived up to the promise of 1992, in the cease-fire agreement with armed groups in the so-called 'Interior War' that it would start a discussion on the ratification of this convention. Suriname has voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) during the decision in the UN General Assembly on 13 September 2007.

Non-governmental organizations dealing with human rights are various in Suriname, among others women, children, homosexuals, disabled and elderly, as well as NGOs that were established after human rights' violations against political opponents in 1982 and against the Moiwana maroon settlement in 1986.

The legislation does not contain specific provisions on the (human) rights of indigenous peoples, as mentioned before. In various cases, described in chapter VI, this has led to judgments disregarding indigenous peoples' rights since the judge had to base his/her ruling on explicit legal provisions rather than on customary practices. An important procedural matter in this regard is the impossibility of indigenous peoples and communities to defend their collective rights and interests before court, as they do not have any legal standing before the law. If individuals try to make a case against injustices, they can be inadmissible since there are also no formal legislative rules on representation of communities.

²⁵ <http://www.gov.sr/sr/ministerie-van-juspol/over-justitie-en-politie/departementen/bureau-van-de-minister/bureau-mensenrechten.aspx>

²⁶ <http://www.oas.org/juridico/english/sigs/b-32.html>

In addition, there is persistent, systematic disregard and substantially lower quality of education (which is also not free in the interior where most schools are 'special schools' managed by Christian organizations who require a 'family contribution', contrary to public schools in urban areas), health and other public services for indigenous and tribal peoples in Suriname, and thus discriminatory, and of their cultural and linguistic rights (VIDS/Sanomaro Esa/VSG/FPP-submission to CERD, 2002).

The discriminatory provisions in Surinamese legislation, non-recognition of indigenous peoples' rights and subsequent violations of those rights have been criticized and weighted in strongly in the conclusions and decisions of the Committee on the Elimination of Racial Discrimination (CERD), the UN Special Rapporteur on the Rights of Indigenous Peoples, and the Inter-American Court of Human Rights (CERD 2003, 2004, 2005, 2006, 2009, 2011; SRIP 2011; IACHR 2007, 2008). In summary, the rights of indigenous peoples being disrespected and/or violated, as formally acknowledged by these regional (OAS) and international (UN) human rights bodies, can be listed as follows:

- The right to juridical personality (Article 3 of the American Convention on Human Rights²⁷)
- Discrimination with regard to education, health, cultural integrity and linguistic rights
- The right to life (Article 4(1) of the American Convention)
- The right to humane treatment (Article 5(1) of the American Convention)
- The right to freedom of information (Article 13 of the American Convention)
- The right to property (Article 21 of the American Convention) in particular collective property rights over traditional lands, territories and natural resources
- The right to judicial protection (Article 25 of the American Convention)
- No possibility to contest discriminatory provisions in laws due to the absence of a Constitutional Court that has the power to examine law provisions on their constitutionality and concordance with international (human rights') standards;
- Right to life with dignity
- Right to have physical, mental, and moral integrity.

The Government of Suriname has stated during the Universal Periodic Review (UPR) of the human rights' situation in Suriname at the 18th session in May 2011 of the UN Human Rights Commission (HRC) that " the situation in Suriname was somewhat different from other Latin American countries which had indigenous peoples. The Maroon community in Suriname was not small and in fact larger than indigenous communities, and they had been living in the interior for more than three hundred years. The judgment of the Inter-American Court of Human Rights stated that they should have the same rights as indigenous peoples. In some areas, there was a clear overlap of land rights matters. Therefore, it was just not a matter of copying what had happened in other countries in the region. Suriname needed to find a Surinamese solution, and that was why Suriname would ask for some time to deal with this matter" (OHCHR 2011)²⁸. The state delegation explicitly stated that various recommendations made during the UPR related to indigenous peoples' rights cannot be supported²⁹, namely:

²⁷ http://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf

²⁸ http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-12_en.pdf

²⁹ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-12-Add1.pdf>

- Continue efforts to recognize and uphold the collective rights of the indigenous people (Trinidad and Tobago);
- Recognize the collective rights of indigenous people to their lands and resources, giving the matter priority when the issue of land rights is raised in Parliament as indicated in the government's statement last October (Canada);
- Acknowledge legally the rights of indigenous and tribal peoples to own, develop, control and use their lands, resources and communal territories according to customary law and traditional land-tenure system (Hungary);
- Take the necessary steps to act in compliance with the verdict rendered in 2007 by the Inter-American Court of Human Rights in the "Saramaka People Case" and to respect Indigenous People and Maroons right to land (Norway);
- Ensure that indigenous communities, as far as possible, benefit fully from the provision of public services and that their land rights are legally recognized, including via implementation of the 2008 decision of the Inter-American Court of Human Rights (United Kingdom);
- Execute fully the judgment of the Inter-American Court of Human Rights regarding logging and mining concessions in the territory of the Saramaccan people and enshrine land rights of Indigenous and Maroon groups in the Surinamese legal framework (Netherlands).

In addition to violation of the substantial rights, there are also practical limitations for indigenous peoples to claim and/or defend their rights as will be further discussed in the next chapter.

6. JUDGMENTS

There have been only very few court cases in Suriname related to upholding the rights of indigenous (and tribal) peoples. Main reasons for this are:

- The fact that, as commented in previous chapters, these rights, and also indigenous and tribal peoples as such, are not recognized in Surinamese legislation, so it is legally difficult to even make a case. This has been acknowledged in earlier-mentioned conclusions of the CERD³⁰ and IACHR
- In the few cases that have gone before court, the ruling has consistently been negative for the involved persons or communities, exactly because of the previous reason, and there is justified skepticism among the affected persons or communities as well as among lawyers to even bring or defend a case before court. This will be described in the section below;
- Apart from the skepticism that a court case will be successful, the affected persons or communities often do not sufficiently know the legal procedures or they do not have the money to start a case, in particular paying a lawyer. Civil court cases in Suriname are

³⁰ See also the Universal Human Rights Index database of UN recommendations and conclusions related to human rights for Suriname at:

<http://uhri.ohchr.org/search/results?keyword=indigenous&searchoperator=And&BodyFilter=0000000-0000-0000-0000-0000-000000000000&AnnotationTypeFilter=00000000-0000-0000-0000-000000000000&CountryFilter=2a767a88-8f0f-4592-b6fd-7a9593cb5ed9&resultsOrder=Relevance>

usually brought before court by a registered lawyer. The law foresees for a government-paid lawyer in the case, both civil and criminal cases, of a defendant who would otherwise not be able to pay for his/her defense. However, this facility is used mostly when the person is the defendant in a case that has been started by another party, and not as much on the own initiative of the affected person starting a fresh case;

- There are very few lawyers in Suriname that have thorough knowledge of indigenous peoples' (collective) rights. The academic curriculum at the Law Faculty of the (only) University of Suriname does hardly deal with (collective) rights of indigenous peoples;
- Many disputes are pragmatically settled outside of court, e.g. after intervention by the District Commissioner, by the police or by VIDS. This is done precisely because it is common knowledge that court cases do not work in Suriname if it concerns the rights of indigenous peoples.

It should be noted that many conflicts simply remain unresolved or to the detriment of the affected community, as there are no legal nor political remedies against the injustice.

Following is a very brief, non-detailed description of a case that concern indigenous communities' rights. For privacy reasons initials will be used, where necessary. Three other court cases are known but it has been difficult to collect sufficient information in the time available to describe these cases. The decision in these other cases was also negative for the involved communities.

6.1 Case: Community Members Versus the State Suriname and Mining Company S

Twelve members of the indigenous community PK filed a complaint in 2003 against the State Suriname and a mining company S., regarding gravel mining in the ancestral territory of the community causing harm to the community members' livelihood. The judge was asked to order the State to immediately withdraw the mining permit given to the company, and to order the company to immediately cease its mining activities. The permit was given in 1998 for 5 years and expired while the court case was being considered (the company requested extension which was not yet granted). The community members filed the case as individuals since the community as a whole is not a legal entity before law. Arguments employed to request such injunction were:

- Damage (of camps, houses and gardens) and hinder to the community members
- The community members can be considered 'third parties' as specified in article 46c of the Mining Decree, due to the mining activities of the company;
- Wrongful or negligent act by issuing a concession to the company by the State without due regard to the rights of the community;
- Violation of article 8 of the Constitution (equal protection and non-discrimination clauses) for issuing the concession in spite of the rights of plaintiffs and therefore not adequately respecting and protecting their rights;
- Violation of article 17 of the Constitution, concerning the right of due regard of private life, family and residence;
- Violation of the OAS Convention for Human Rights;
- Violation of the general principles of good governance, in particular the principle of prohibition of misuse of power and arbitrariness;

- Violation of the Peace Accord Lelydorp 1992.

Counterarguments by the State and by the company (made as separate parties but overlapping in content) were:

- Rights of a community do not exist in Surinamese legislation;
- It cannot be proven that the mining permit has been given in land used by the community since no demarcation has been done nor has approval for communal/tribal land been given by the State;
- If the plaintiffs claim property rights on mentioned area, they should prove their rights;
- Even if the plaintiffs are of the opinion that they have 'land rights', that would not imply that property rights will arise;
- The District Commissioner had a meeting with villagers who stated their no-objection to the concession;
- Mining is in public interest which overrides the rights associated with private ownership;
- The protection of plaintiffs (article 8 of the Constitution) is not in proceeding in this case and does not apply;
- The concession was issued in accordance with the Mining Decree so there is no discrimination involved;
- Violation of article 17 of the Constitution (protection of private life and privacy) is not applicable because the scope of this article does not cover communities or hunting areas and other areas mentioned by plaintiffs;
- The articles that would be violated of the American Convention and Peace Accord are not specified;
- Plaintiffs are not representatives of the communities.

Company S. filed a counterclaim stating that its activities are hindered by the plaintiffs, requesting the judge to prohibit the defenders in the counterclaim to enter the concession area without prior consent.

The decision of the judge was to deny the plaintiffs' claim as well as the company's counterclaim, with as main considerations:

- that the plaintiffs do not have the status [as individual community members] to claim those measures as requested, because this is not supported by the law;
- that the concession has meanwhile expired and an extension has not (yet) been granted;
- that therefore, plaintiffs should strive to achieve their wish by convincing the State not to give permission to extend the mining permit;
- that plaintiffs will have to pay for the process expenses, as the unsuccessful party in the case.

6.2 Comments

The decision in this case is illustrative for the (lack of) legal protection of indigenous peoples' rights to their territories and resources, as well as of their rights to self-determination, to recognition of their authorities, to property, lifestyle and culture, among others, and thus for the legal situation of indigenous communities to exercise (legal) control

and protection of their territories and resources. As mentioned throughout this report, indigenous peoples' rights are not established in the Surinamese legislation and their legal personality and representation are not regulated in law, and the most obvious conclusion for a judge, in Suriname's civil law system, is therefore that such claims 'do not find support in the law'. It is also illustrative that pragmatic remedies (in this case influencing the process of renewal of the concession) are mentioned as the avenue to seek protection or prevention of harm and damage. The counterarguments employed by the State and the mining company furthermore clearly show their opinion and attitude towards indigenous peoples' rights, the perception that the State or private companies do not have an obligation to respect and uphold these internationally recognized rights, the perceived 'lower value' of these rights and the (mis)use of 'national interest', among others.

It may be mentioned, as a sideline, that when the involved community members were looking for a lawyer to defend their case, they were referred by some of the lawyers that they contacted, to a human rights' NGO, apparently because the lawyers did not have the belief that they can successfully defend such a case (interview with community member, 2012). The extension to the mining company was indeed not renewed, among others thanks to continued protests from the community members.

This lack of legal protection of indigenous peoples in Suriname has led to several petitions to the Inter-American Commission on Human Rights, and two subsequent judgments of the Inter-American Court for Human Rights, as described in the next paragraph.

6.3 Regional Human Rights' Court Cases

Suriname is member of the Organization of American States (OAS), has ratified (among others) the American Convention of Human Rights and has in 1987 accepted the jurisdiction of the Inter-American Court for Human Rights, without restrictions or observations³¹.

In relation to the (collective) rights of indigenous and tribal peoples, Suriname has already been convicted by the Inter-American Court in the cases *Moiwana* and *Saramaka*³², while two petitions have been submitted to the Inter-American Commission on Human Rights which have been admitted for consideration by the Commission but not yet been submitted to the Court, namely the case of the *Kali'na* and *Lokono* peoples of the Lower Marowijne River³³ and of the *Kali'na* people of *Maho*. In the case of *Maho*, precautionary measures were requested by the Commission, which have not been complied with by the State Suriname³⁴. All above-mentioned cases regard land and resource use rights, among others, as referred to in chapter 5. These cases are directly relevant for the possibility of indigenous and tribal peoples to own, use and control their lands, territories and resources in accordance with their own values, norms, traditions and vision, and thus for the integrity, maintenance and management of their conserved areas. Particularly the *Saamaka* case is a landmark decision, for the tribal maroon *Saamaka* people in particular but for all indigenous and tribal peoples in Suriname and internationally as well, because in this judgment the

³¹ <http://www.oas.org/juridico/English/signs/b-32.html#Suriname>

³² Official documents available at http://www.corteidh.or.cr/pais.cfm?id_Pais=11

³³ <http://cidh.org/annualrep/2007eng/Suriname198.07eng.htm>

³⁴ <http://www.oas.org/en/iachr/indigenous/protection/precautionary.asp>

rights of indigenous and tribal peoples, as collectivities, are unambiguously recognized and given legal standing in court. Some of the crucial highlights of the judgment can be summarized as follows:

- The Court follows the interpretation of the Committee on Economic, Social, and Cultural Rights that the **right to self-determination** as stated in common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) **is** applicable to indigenous peoples³⁵. Accordingly, by virtue of the right of indigenous peoples to self-determination recognized under said Article 1, they may “freely pursue their economic, social and cultural development”, and may “freely dispose of their natural wealth and resources” so as not to be “deprived of [their] own means of subsistence”. The aforementioned Committee is the body of independent experts that supervises State parties’ implementation of the ICESCR.
- Building on previous judgments (among others the Mayagna (Sumo) Awas Tingni, Sawhoyamaxa and Yakyé Axa cases), the Court reiterated that both the private property of individuals and **communal property** of the members of [...] indigenous communities are protected by Article 21 of the American Convention, based upon the special relationship that members of indigenous and tribal peoples have with their territory, and on the need to protect their right to that territory in order to safeguard the physical and cultural survival of such peoples. In this sense, the Court has declared that the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, [their relationship with] the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy [...] to preserve their cultural legacy and transmit it to future generations. In essence, pursuant to Article 21 of the Convention, States must respect the special relationship that members of indigenous and tribal peoples have with their territory in a way that guarantees their social, cultural, and economic survival. Such protection of property under Article 21 of the Convention, read in conjunction with Articles 1(1) and 2 of said instrument, places upon States a positive obligation to adopt special measures that guarantee members of indigenous and tribal peoples the full and equal exercise of their right to the territories they have traditionally used and occupied.
- The Court also reiterated that its jurisprudence regarding indigenous peoples’ right to property is also **applicable to tribal peoples** because both share distinct social, cultural, and economic characteristics, including a special relationship with their ancestral territories that require special measures under international human rights law in order to guarantee their physical and cultural survival.
- With regard to property rights over **natural resources**, the Court reiterated earlier jurisprudence on this matter, namely that the connectedness between the territory and the natural resources necessary for their physical and cultural survival is precisely what needs to be protected under Article 21 of the Convention in order to guarantee the members of indigenous and tribal communities’ right to the use and enjoyment of their

³⁵ Cf. UNCESCR, Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations on Russian Federation (Thirty-first session), U.N. Doc. E/C.12/1/Add.94, December 12, 2003, para. 11

property. From this analysis, it follows that the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life. In emphasizing that the state has an obligation to have **safeguards** in place against restrictions on the right to property, the Court also quoted article 32 of the UN Declaration on the Rights of Indigenous Peoples: *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 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.* The Court explicitly stipulated that the state has a duty, not only to consult with the Saramakas, but also to obtain their **free, prior, and informed consent (FPIC)**, according to their customs and traditions in case of large-scale development or investment projects that would have a major impact within Saramaka territory. The Court also addressed related issues of the conduct of ESIA's and just benefit-sharing.

- Another important aspect of the judgment is the obligation of the state Suriname to legally recognize the **juridical personality** of the Saramaka people. The state acknowledged that it does not recognize that the Saramaka people can enjoy and exercise property rights as a community. The Court observed that similarly, other communities in Suriname have been denied the right to seek judicial protection against alleged violations of their collective property rights precisely because a judge considered that they did not have the legal capacity necessary to request such protection. This places the Saramaka people in a vulnerable situation where individual property rights may trump their rights over communal property, and where the Saramaka people may not seek, as a juridical personality, judicial protection against violations of their property rights recognized under Article 21 of the Convention. The Court therefore decided that the state must establish, in consultation with the Saramaka people and fully respecting their traditions and customs, the judicial and administrative conditions necessary to ensure the recognition of their juridical personality, with the aim of guaranteeing them the use and enjoyment of their territory in accordance with their communal property system, as well as the rights to access to justice and equality before the law.
- The Court also repeated that for members of indigenous peoples "it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs." Specifically, the Court held that, in order to guarantee members of indigenous peoples their right to communal property, States must establish "an **effective means with due process guarantees** [...] for them to claim traditional lands."
- Finally, the Court convincingly addressed the 'reasons' (incl. lack of clarity regarding the land tenure system of the Saramaka people, and sensitivities regarding 'special treatment') why the state Suriname has still not legally recognized indigenous and tribal

peoples rights to the use and enjoyment of property in accordance with their system of communal property.

- One particular reason the state mentioned in this regard is worth highlighting, namely that in the state's view, judge-made law could recognize collective property rights, but that the members of the Saramaka people have refused to apply to domestic courts for said recognition. The Court made clear that first and foremost, a distinction should be made between the State's duty under Article 2 of the Convention to give domestic legal effect to the rights recognized therein, and the duty under Article 25 to provide adequate and effective recourses to remedy alleged violations of those rights. The Court furthermore observed that although so-called judge-made law may certainly be a means for the recognition of the rights of individuals, particularly under common-law legal systems, the availability of such a procedure does not, in and of itself, comply with the **State's obligation to give legal effect to the rights recognized in the American Convention**. That is, the mere possibility of recognition of rights through a certain judicial process is no substitute for the actual recognition of such rights.

In its operative decisions, the Court ordered Suriname:

- To delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities;
- Abstain from acts until delimitation, demarcation, and titling has been completed, unless the State obtains the free, informed and prior consent of the Saramaka people;
- To review existing concessions;
- To grant legal recognition of the collective juridical capacity of the Saramaka people, in accordance with their communal system, customary laws, and traditions;
- To remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people;
- To adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities;
- To adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out;
- To ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory, and

implement adequate safeguards and mechanisms in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people;

- To adopt legislative, administrative and other measures necessary to provide the members of the Saramaka people with adequate and effective recourses against acts that violate their right to the use and enjoyment of property in accordance with their communal property system;
- To translate into Dutch and publish Chapter VII of the judgment, and to finance two radio broadcasts in the Saramaka language of the content of some of the most important paragraphs and Operative Paragraphs in a radio station accessible to the Saramaka people;
- To allocate the amounts for material (US\$ 75,000) and non-material damages (US\$ 600,000) in a community development fund created and established for the benefit of the members of the Saramaka people in their traditional territory.

From the foregoing it is clear how important this judgment is for indigenous and tribal peoples of Suriname and of other countries that have accepted the jurisdiction of the Inter-American Court, but also for other indigenous peoples in the world as this is now part of established jurisprudence on the rights of indigenous peoples.

7. IMPLEMENTATION

As mentioned in previous chapters, there are only very few provisions in the current Surinamese legislation that make a reference to indigenous peoples' rights, more specifically safeguard clauses in the Forest Management Law and the Law on Principles of Domain Land, as well as in two governmental resolutions (which are not formal laws) for the establishment of nature reserves (protected areas). These safeguard clauses, in different wording, require the recipient of land titles or exploitation concessionaries to respect the rights of tribally living inhabitants of the Interior 'as much as possible' or as long as it does not conflict with national interest or an approved development project. These rights are not further specified, the indigenous and tribal communities do not have legal personality and their traditional authorities are not recognized as such (as representatives) by law. There are no provisions for (co)management by indigenous peoples' communities of protected areas within their traditional territories, nor are there formal provisions for self-management of indigenous territories and resources, although this is the case in practice. The only practical arrangement based on a memo, that has something to do with involvement in the management of protected areas is the possibility to establish a 'consultation commission' (*Overlegcommissie*) as mentioned in chapter 3, which is only an advisory body and has not been very functional so far.

Taken together with the limited access to justice as described in chapter 6, the implementation and especially the enforcement of even these few references is therefore practically impossible. Law cases before national judges have shown to be unsuccessful as illustrated in the previous chapter, among others because of procedural aspects such as the impossibility of representation of communities as such (as collectivities with rights) or because judges have 'not been able to find support in the law' for claims of violations of indigenous peoples' rights.

There are various other limitations to the implementation in Suriname of contemporary standards on indigenous peoples' rights in general, which are equally applicable in relation to conservation and sustainable use of biodiversity:

- The basic awareness of the existence of such standards seems to be very limited, limited to those persons that follow international processes *ex officio*. For example, the majority of persons interviewed during the review of recognition of ICCAs in Suriname (VIDS/ICCA Consortium; March 2012) had not heard of ICCAs before.
- There is a significant capacity gap at all levels in Suriname, within government but also among indigenous peoples' organizations and NGOs. High-level expertise is scarce or employed in the private sector, and political decision-taking is slow, certainly for issues that do not enjoy political priority. This results in slow governmental policy and legislative processes.
- Broad awareness-building on contemporary standards and developments is similarly affected by limited human capacity but also limited operational capacity due to insufficient funding, particularly among the indigenous organizations.

8. RESISTANCE AND ENGAGEMENT

This chapter will deal with some burning matters, from a subjective, pro-indigenous peoples' rights perspective.

There is a long history of resistance against the unilateral, unlawful and unjust appropriation of indigenous peoples' lands and territories, in fact dating back to the time of the arrival of the colonizers. Subsequent developments related to land rights were briefly touched on in chapter 2. In 1974, a historic march of more than 150 km. was walked by indigenous villagers from East Suriname to the capital Paramaribo to demand the recognition of indigenous peoples' rights in the face of the imminent independence of Suriname from the Netherlands. Land rights were also a major issue in the Interior War (1986 – 1992). More specifically with regard to conflicts related to natural resources and protected areas, there have also been multiple incidents and opposition to the unilateral giving out of concessions and establishment of protected areas over the past decades, and are still ongoing. One of the most blatant examples related to nature 'conservation' was the establishment of the Galibi Nature Reserve in 1969 where the indigenous villagers were literally driven away from their ancestral lands (personal communication villagers).

Most protected areas were established without the prior knowledge of the indigenous communities in the area who were informed even many years after such establishment (VIDS/FPP 2009³⁶). Due to isolation and the other factors described earlier, there was not much to be done against such injustice at national level. In more recent years, the Association of Indigenous Village Leaders in Suriname (VIDS) has actively protested against the continued disinformation, non-participation and marginalization in policy-making and

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<http://www.forestpeoples.org/sites/fpp/files/publication/2010/04/wccsurinamepareviewoct09eng.pdf>

decision-taking and the multiple incidences of new concessions being given in indigenous lands. This was done through numerous letters to the relevant ministers, formal petitions to the President in accordance with article 22 of the Constitution, lobbying and advocacy, and many press releases, interviews and other publicity articles. Since the early 2000's the attention of the UN-CERD has been requested for the persistent and pervasive racial discrimination against indigenous and tribal Peoples in the Suriname, and since 2006 the path to the regional Inter-American Commission on Human Rights and the Inter-American Court of Human Rights has been taken, where two cases have been filed. Various reports on the sustainable lifestyle and management of indigenous peoples' territories and resources have been published by VIDS, as well as experiences related to participatory and FPIC processes in relation to, among others, mining and forestry.



Indigenous leaders during the land rights conference organized by the government in October 2011. © VIDS

Subsequent governments have indicated their intentions to work towards laws and policies recognizing indigenous and tribal peoples' rights. In practice however, this has not yet materialized in tangible changes. The current government has taken some concrete steps, among others calling for a land rights conference and establishing a working group composed of representatives of the traditional authorities to develop a roadmap towards legal recognition of indigenous and tribal peoples' rights. Foreseen within this roadmap are the collaborative drafting of legal bills for submission to the National Assembly of Suriname, demarcation of indigenous and tribal peoples' territories, and awareness processes for the larger Surinamese society. However, the land rights conference was terminated after

hearing the position of the indigenous and tribal peoples for full recognition of land and resource rights³⁷, while the aforementioned working group's work has been stalled for various months amidst political changes in Suriname.

Individual thematic ministries also have stated policy intentions in relation to, among others, biodiversity objectives and traditional knowledge. VIDS has been engaged constructively in the efforts of, particularly, the ministry of ATM, among others in the National Commission on Biodiversity (which has been recently abandoned due to policy changes) and hearings on the Nagoya Protocol, as well as by the Ministry of Foreign Affairs for hearings related to reporting to the Universal Periodic Review of Suriname in 2011. Again, however, concrete changes in laws, policies and, especially, practices are yet to be seen.

At village level, the indigenous communities have to put much effort in defending their territories and resources against intruders who are not seldom backed by government-supplied legal documents, individual persons and local companies but also large, well-known multinationals, mostly mining and logging companies. Some villages are adamant in simply refusing entry³⁸; others enter into (unequal) negotiations to try to force a win-win situation but are obviously very disadvantaged because of their weak and legally unsupported position.

In addition to the various disregards to indigenous peoples' rights in deciding over land and natural resources, the government is putting pressure on villages to accept 'community forests' (see chapter 2) and leads villages to believe that accepting those 'titles' is the best way for them to 'secure' their forests, in this way effectively weakening the land rights struggle that is aimed at proper land titles³⁹. Recently, there appears to be an increased tendency of political party interference with the traditional authorities, apparently to achieve more dominance over the communities⁴⁰.

More recent discussions on the establishment of protected areas have been more constructive. Indigenous representatives were invited to provide input in the design of management plans for the Central Suriname Nature Reserve and the Sipaliwini Nature Reserve. However, although the comments were taken on board in the first round, the final documents did not reflect the input provided and do certainly not reflect indigenous peoples' rights as recognized in international standards and instruments. There are still efforts to establish new protected areas in indigenous territories, and the affected

³⁷ <http://www.forestpeoples.org/region/suriname/news/2011/12/president-suriname-shuts-down-land-rights-conference-following-clear-de>

³⁸ Link newspaper article Pikin Poika puts up road block (in Dutch): <http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/6410> or <http://www.dwtonline.com/website/nieuws.asp?menuid=37&id=60134>

³⁹ Link newspaper article OSIP press release rejecting community forests (in Dutch): <http://www.dwtonline.com/website/nieuws.asp?menuid=37&id=55544>

⁴⁰ Link newspaper article VIDS press release rejecting political interference in traditional authorities (in Dutch): http://www.nospang.org/index.php?option=com_content&view=article&id=9988:vids-verklaart-verkiezingen-west-suriname-ongeldig&catid=73:binnenland&Itemid=65

communities are standing strong in their resistance, for example the proposed Kaboeri Nature Reserve (see case study in chapter 10).

International organizations (can) play an important role in constructive engagement of indigenous peoples. Among others, various organizations, particularly international environment organizations, have contributed to capacity strengthening of indigenous organizations and community-based organizations, mostly in relation to biodiversity conservation and management, especially protected area management. They have also facilitated or advocated for more inclusive and participatory approaches where the government did not give (sufficient) attention or priority to those aspects.

This role, however, has not been utilized to the full potential, particularly because of political sensitivities and a fear of being reprimanded by the Surinamese government of 'interfering with internal matters'. Another argument that is being used is that their mandate is restricted to environmental themes and particularly the establishment or management of protected areas. This is obviously not a valid argument, since all major international environment NGOs active in Suriname have clear policies and strategies that favor respect for, and/or the proactive advocacy and support to indigenous peoples' rights as a crucial element for human development and environmental sustainability. In a few cases (and fortunately only with 1-2 NGOs) it sometimes even happens that the local subsidiaries of environment NGOs are acting against indigenous peoples' rights, supporting obsolete government perspectives on land and resource rights, acting in a similar top-down manner, insufficiently respecting indigenous peoples' rights over traditional knowledge or proactively advocating for the establishment of protected areas in indigenous territories without adhering to standards of respecting indigenous peoples' rights in particular the right to free, prior and informed consent. Enabled by donations from the public in developed countries or by environment-oriented funding, such NGOs are particularly reaching out to remote communities in South Suriname that have otherwise little information and are eager to be supported, unaware of the advantage that is being taken of them.

New potential threats to indigenous peoples' rights, and rapidly increasing in importance, are the increasing efforts of government and NGOs to enter into REDD+, carbon offset, clean development mechanism (CDM) or payment for ecosystem services schemes. While these schemes are pictured as offering great opportunities for indigenous peoples to get economic income from the carbon market, they may actually work counterproductive in Suriname where indigenous peoples' rights are by no means legally recognized. In addition to the various conceptual weaknesses, such as the commercialization and monetizing of nature and disregard of the holistic worldview of indigenous peoples and of spiritual and cultural values, such schemes can be an additional reason for land hunger and the appropriation of indigenous lands and resources⁴¹.

A major task but also challenge for the indigenous communities and organizations is therefore the continued process of human rights/indigenous peoples' rights education and awareness, for the general public but certainly also for the indigenous communities.

⁴¹ See also news article in Mongabay 2011 http://news.mongabay.com/2011/0731-hance_suriname_rights.html

Funding sources are scarce though, especially if it concerns human rights, where donors shy away from.

9. RECOMMENDATIONS

Rather than providing individual recommendations in each of the preceding chapters, this chapter will consolidate all recommendations related to improving laws and policies on nature conservation and management, in particular protected areas and ICCAs. Since we have taken the perspective that ICCAs are no different from indigenous territories (see chapter 1.5.1.), certainly in Suriname where there is no such distinction and little legislation in place, the following recommendations mainly relate to the overall issue of recognizing indigenous peoples' rights over their territories and resources in general. Within the scope of this report, these recommendations will not be elaborated on in much detail.

9.1 Legal Reforms

1. First and foremost, overall legislation recognizing and formalizing the rights of indigenous and tribal peoples, in accordance with international standards and obligations of Suriname, must be put in place in Surinamese legislation. This would eliminate or diminish the existing discrimination in law against indigenous and tribal peoples in Suriname, and will be the basis for making or revising specific land, natural resources and environment related legislation. As mentioned in the previous chapter, a working group has done some preparatory work to this effect but this has to be taken to the next level, namely high-level commitment to the process and actual implementation of an agreed roadmap.
2. Specific existing legislation on land, natural resources and environment needs to be revised accordingly, in particular eliminating discriminatory qualifiers such as 'these rights will be respected as far as possible' or 'subject to the implementation of development projects', and adding provisions recognizing and respecting the specific culture, lifestyle and use of land and resources by indigenous communities.
3. Also legislation on local governance and indigenous peoples' representation will need to be adapted to bring it in line with reality and contemporary standards. As mentioned, the law does not know traditional authorities who, however, lead and represent their communities in everyday life.
4. There should be legal requirements in place on the obligation to conduct cultural, social, economic and environmental impact assessments, with the full participation of indigenous peoples, prior to activities that may affect them. Similarly, the requirement to obtain their free, prior and informed consent (FPIC) in such situations needs to be embedded in law.
5. Respecting and implementing court decisions.

The usual procedure for new laws or revisions is for draft proposals to be submitted to the National Assembly either by members of parliament or by (a ministry of) the government, in this instance for example the Ministry of Physical Planning, Land and Forest Management, the Ministry of Justice and Police, or the Ministry of Regional Development. Such processes would of course need the full and effective participation of indigenous and tribal peoples at all stages.

At this stage, we are not recommending to revise the protected area system in itself or to establish or recognize ICCAs, as long as the basic requirements, namely formalizing indigenous peoples' rights over their territories and resources, are not in place first.

9.2 Policy Reforms

Policy reforms (should) go hand-in-hand with legal reforms, so the abovementioned legal reforms would obviously also need to be reflected in policy reforms and the other way around, and the same recommendations can be made here. Some additional, specific recommendations for immediate implementation are also mentioned:

1. For the government: Withhold the issuance of new, and review existing concessions and other conflicting land or resource titles (including protected areas) in indigenous territories; and,
2. Establish a constructive dialogue on rights-based arrangements related to protected areas, building on internationally agreed standards and best practices such as mentioned in the UNDRIP, CBD Programme of Work on Protected Areas, World Conservation Congress and the World Parks Congress; and
3. Establish mechanisms and guidance for obtaining the free, prior and informed consent of indigenous peoples for activities that may affect them. Much work in this respect has already been undertaken by VIDS.
4. For environment NGOs: Adhere to international standards and best practices on the rights of indigenous peoples and proactively partner with indigenous peoples to identify and pursue common objectives
5. For indigenous organizations: Intensify awareness (to the communities and general public) on indigenous peoples' rights, lifestyles and sustainable management of natural resources; and intensify lobby and advocacy
6. For international and donor organizations: Focus the attention, monitoring and support on issues that really matter in the daily lives of indigenous peoples. Truly apply the much preached human rights-based approach, defining objectives in light of achieving human rights' objectives and empowering rights-holders and duty-bearers. Monitor the compliance of Suriname with human rights, CBD and other internationally agreed obligations and standards.

10. CASE STUDIES

10.1 Case 1: Galibi

Christiaankondre and Langamankondre, known together as Galibi, are Kali'na indigenous villages located in the northeast of Suriname, very close to the sea in the estuary of the Marowijne River. Their earlier location was even closer to the sea, but the villages were forced to resettle in the sixties upon establishment of the Galibi Nature Reserve. This protected area was established because the sandy beaches of that part of Suriname's coast and Marowijne River are a nesting site for four species of threatened giant sea turtles, the Leatherback (Aitkanti; *Dermochelys coriacea*), the Green Turtle (Krape; *Chelonia mydas*), the Olive Ridley (Warana; *Lepidochelys olivacea*) and the Hawksbill Turtle (Karet; *Eretmochelys imbricate*).

The communities live mainly from traditional agriculture, fishing and hunting, and increasingly tourism. Galibi is a nationally and internationally well-known tourism destination given its unique combination of indigenous culture, giant sea turtles, many other animal and plant species, and pristine ecosystems, all of which have been carefully nurtured by the communities throughout the many centuries. As the giant sea turtles are considered animals with certain spirituality, they are treated respectfully and are not consumed by the Kali'na. Only eggs that are laid in a location where they would not hatch, e.g. below the high tide waterline, are taken for home consumption. The region is also home to a large variety of other animal species, trees and plants that are treated with similar respect and care, regulated by a variety of customary rules and practices, reason why they have been maintained over the centuries. This is also the case in many other indigenous regions in Suriname, and while the protected area system does not recognize ICCAs, all indigenous territories (also not recognized as such under Surinamese legislation) have the characteristics of ICCAs: conservation of nature and/or specific species, in a well-defined indigenous region, and where decision-making over management and control is in practice exercised by the indigenous communities.

In recent history, the life of the Galibi villagers was cruelly disturbed by the establishment of the protected area in 1969, an area of approximately 4000 hectare covering part of their ancestral territory. This establishment was based on the 1954 Nature Protection Law⁴² which does not say a word about local communities in or around protected areas. The communities had to leave from certain areas, without any assistance or compensation from the government. Hunting, fishing, collecting eggs, wood cutting and many other essential livelihood activities were forbidden by law from one day to the other. Were it not that in practice such provisions are not enforced against the indigenous communities, they would have all been criminalized in name of nature conservation.

In 1986, this time in the southwestern part of their territory, another protected area (Wanekreek) was established, which they only coincidentally got to know in 1997. The Resolution⁴³ establishing this nature reserve (and three others) does make mention that "if the nature reserves are within the living areas of tribally living forest inhabitants, the rights derived from that will be respected". The Explanatory Memorandum of this 1986 resolution states that the rights of forest inhabitants living in or around the reserves "will be maintained, (a) as long as they do not infringe on the national objective of the proposed nature reserves, (b) as long as the motives for these "traditional" rights and interests are still valid; and (c) during the period of growing towards one Surinamese citizenship". While this could be considered a positive evolution from the previous silence on indigenous peoples' rights, there is a clear subordination of these rights – which are not defined anywhere else in Surinamese legislation – to 'national objectives'. Such vagueness, subordination or restriction of rights would be unimaginable for other people's rights. The assimilation thinking that indigenous peoples' identity will 'disappear' is clearly stated in this legal document, very disrespectful towards the right to cultural diversity. As one villager put it bitterly: "The animals got their rights recognized, and we Amerindians can die away".

⁴² Wet Natuurbescherming GB 1954 no. 105

⁴³ Natuurbeschermingsbesluit 1986, SB 1986 no. 52

The villages did not go extinct. To the contrary, Galibi is still a vibrant place with many developments and economic activities within a living indigenous culture. However, the presence of the nature reserve has continued to cause conflicts. Government authorities, sometimes triggered by, or with support from international environment NGOs, started to enforce the protected area regulations when the poaching of sea turtle eggs started to increase, due to commercialization under pressure of an expanding money-economy in the villages. Through national advertising against turtle egg-poaching, villagers were practically criminalized. Tourism began to grow in Suriname, leading the quasi-government foundation tasked with protected area management to organize tours to the turtle sites and therefore effectively becoming a mega-competitor to the small indigenous tour operators in the villages.

The underlying issues are not exposed in the mainstream discussions and 'environment' publicity. Government and environment NGOs do not mention the facts that indigenous peoples' rights to their lands and resources are not recognized nor enforceable, that traditional authorities have no legal powers to monitor and enforce their own or governmental regulations, that there is no indigenous peoples' participation in policy-making and decision-taking in general and in protected area management in particular, that there are very few structural efforts for improving education and alternative income-generation, and that these same actors are undertaking or supporting unfair competition. The only 'participation' mechanism for the nature reserve created as a matter of goodwill from the (former) head of the governmental Nature Division, was the establishment of a 'consultation commission' (*overlegcommissie*) which, however, is only advisory on issues related to the management of the protected area. In recent years, both government and conservation NGOs have been taking a more constructive and supportive approach. For example, recently a consultative meeting was called together by WWF Guiana Office for improving the monitoring of sea turtles, with the villagers as main actors.

The villages themselves did not sit still. Continuous awareness, community cohesion, functional internal organization and visionary leadership have all been instrumental in resisting the above illustrated external domination and violation of indigenous peoples' rights in name of nature conservation. In 1997, Galibi established its own local environment and development organization, Stidunal, which became the dialogue partner of government and environment NGOs.

Last year, Stidunal took up the idea of a villager to make a park and nature trail, the **Arawone Jungle Trail**, in a community-conserved, biodiversity-rich region in Galibi. This area is used in a sustainable manner by the communities for non-commercial sustenance agriculture and hunting, and collecting non-timber forest materials such as *kokriki*, *anakogo*, *panarako* and *pararapu* seeds for traditional jewelry. The area is also rich in various bird, ape and tree species such as *Arawone* or greenheart (*Tabebuia serratifolia*), tonka (*Dipteryx odorata*), *ulemari* or *ingipipa* (*Bagassa guianensis*), *kubesjine* and *pakoeli* (*rheedia benthamiana*). In this area it is not allowed to cut down trees, as a measure of traditional protection and sustaining this ecosystem which has been recognized by the communities for its unique value. By way of year-long tourist attraction (in addition to the seasonal sea turtle attraction) and also to educate tourists about the communities' nature conservation

efforts, an existing footpath was cleaned and broadened, small bridges across difficultly accessible or swampy areas were made, and on a strategic location a little park was made to rest and get information about the surroundings. The trail goes in a U-shape from Christiaankondre to Langamankondre, through the *arawone* forest. The establishment of the trail and park was agreed upon through the regular decision-making structures of the communities, including by village meetings and by the traditional leadership, after assurance that it will be managed by the local organization. The WWF-Guiana office in Suriname provided financial support, and the trail was inaugurated in October 2011.



Part of the jungle trail through the biodiversity rich Arawone forest in Galibi. © VIDS

This example clearly shows the underlying problems as well as practices related to nature conservation in indigenous territories. Superimposed protected areas that effectively violate the human rights of indigenous peoples, have caused deep wounds and are naturally met with resistance that unfortunately often goes unnoticed by mainstream society from which indigenous peoples are marginalized. At the same time, nature and ecosystems in general, and biodiversity in particular, have been nurtured and conserved for many centuries, with the whole indigenous territory in effect being a 'protected area', conserved and protected by indigenous peoples' customary rules, traditions and practices. The real threats are the non-recognition of indigenous peoples' rights, in particular land, resource and self-governance rights, the unprepared invasion of a money-economy amidst lack of education and sustainable economic alternatives, resource hunger of external actors, and short-sightedness of conservation organizations, to name a few, and certainly not simply the indigenous villagers. The main recommendation is therefore not to 'pragmatically' seek recognition of ICCAs but to fully recognize indigenous peoples' rights as agreed in the UN

Declaration on the Rights of Indigenous Peoples (UNDRIP), as the basis and starting point to achieve equal and respectful partnerships in achieving common (environmental) objectives from a more holistic, rights-based perspective.

10.2 Case 2 – Kaboeri

The Kaboeri Creek is a 13 km. long tributary of the Corantijn River, the border river between Suriname and Guyana. The Kaboeri Creek and its surrounding area are an important part of the traditional territory of the indigenous people of the three Lokono villages in West Suriname: Apoera, Section and Washabo, as their ancestors have lived and used that area for centuries. Many people still go to the Kaboeri area to hunt, fish, and collect timber and non-timber forest products. The area has a high biodiversity value, which has been maintained and strengthened over the centuries, thanks to the observance of traditional laws and rules. Together with other former settlements along the Corantijn River many stories and legends of this area provide information about the history of their ancestral territory. It is considered the heart of social, cultural and spiritual life of the indigenous people of West Suriname, and is a significant place in the preservation of their cultural heritage and biodiversity.

Main threats to the area have been identified by the communities to be the absence of collective land rights and recognition of the traditional authorities and governance over the indigenous territories, and furthermore the increase of external fishers and hunters and unsupervised and ecologically insensitive tourists who drive the animals away. The region is monitored by villagers who go there for their regular livelihood activities, and they report the invasion of (city-based) hunters and fishers to the Chiefs, but those cannot legally take measures against such invaders.

Because of its unique ecosystems and species, Kaboeri has been identified as a potential nature reserve (protected area) since the 1970s. Over the past years the government, with the support of an international environment NGO, has undertaken consultations to establish the Kaburi Reserve. However, thanks to the continued resistance of the indigenous villages this has not been implemented. Among others, the villages wrote petitions and letters in 2001 and 2004 to the government, expressing that they do not consent to the establishment of a nature reserve *“as long as our historic and traditional rights on our territory have not been adequately incorporated in Surinamese legislation”*.

More recently, efforts to establish the nature reserve were again raised with the communities, this time in relation to a project proposal that the village Washabo had prepared for submission to the UNDP/GEF Small Grants Programme (SGP). Two environment NGOs were approached for co-financing, but those made their support conditional on putting it in the context of the project Protected Areas West Suriname, respectively on a ‘letter of no-objection from the government’. These conditions were unacceptable to the community and the request to the NGOs was withdrawn. As the chief of Washabo expressed: *“The area is part of our territory. We do not need to ask permission for our own territory. It cannot be the government or others to prescribe what must be in the project. There are big developments and threats coming at us and we will have to confront those. We want to maintain our culture and traditions and that is inextricably*

connected to our territory". The project *'Washabo Economic empowerment and preservation of cultural heritage and biodiversity'* would make an analysis of potential tourism opportunities, of the importance of bio-diversity and its link to economic opportunities, and of traditional knowledge and culture in relation to economic development, plus look into lessons-learned from past experiences related to these topics. In a next phase, the recommendations coming out of this would be implemented.

In the meantime, 'national' economic developments move forward. Large-scale bauxite mining in West Suriname is being prepared; plans for hydroelectricity dams are reevaluated; and modern tourism facilities are established along the Corantijn River backed by concessions from the government. Political parties and local government bodies try to interfere with traditional authority structures. The indigenous peoples, in their ancestral lands, remain unprotected.

It is again recommended that indigenous peoples' rights are formally recognized in Suriname, and that environment NGOs support this crucial goal instead of holding on to outdated exclusionary policies for nature conservation.



Part of the biodiversity rich Kaboeri Creek in West Suriname. © VIDS.

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