The implementation of IACtHR judgments concerning land rights in Suriname - Saramaka people v. Suriname and subsequent cases

Rombouts, Bas; Meijknecht, Anna; Asarfi, J.

Publication date:
2016

THE IMPLEMENTATION OF IACtHR JUDGMENTS CONCERNING LAND RIGHTS IN SURINAME: *SARAMAKA PEOPLE V. SURINAME* AND SUBSEQUENT CASES

Proposed by *Anna Meijknecht, Bas Rombouts and Jacintha Asarfi*

Contents

1. Introduction

While the significance of the jurisprudence of the Inter-American Court concerning indigenous peoples' land rights is passed on among indigenous peoples and legal scholars in the world, it is often not realized that this jurisprudence is still not the end of the indigenous peoples' struggle for the restitution or recognition of their ancestral lands. After the decision both indigenous peoples and states are confronted with a new process: a land delimitation and demarcation process during which they are bound to cooperate. Cooperation on these matters between states and indigenous communities establishes a new relationship characterized by specific requirements such as 'full participation of the community' and 'as much as possible according to their traditions and customary law'.

Considering the innovative character of the Courts' rulings concerning indigenous land rights, it is plausible that their practical implementation on national level takes some time. However, the current implementation processes start becoming longer and longer and it is to be feared that some judgments eventually will remain unimplemented.[1] This phenomenon of long-lasting non-compliance has a devastating effect, in the first place on the physical, cultural and psychological survival of the communities concerned, but also on the biodiversity and natural resources in the territories concerned. Moreover, it undermines the credibility of international law, of the OAS Human Rights System, and the trustworthiness of States.

This contribution focuses on the indigenous peoples' land rights judgments concerning Suriname - in particular on the Saramaka People v. Suriname decision - and on the obstacles hampering the full implementation of those judgments. Suriname is one of the few countries on the South-American continent not to have ratified ILO C169 and problems concerning indigenous and tribal peoples' rights are widespread here. There are several cases concerning the land rights of indigenous and tribal people of Suriname, which have been dealt with by the Inter-American Court of Human Rights (hereinafter IACtHR). All these cases reveal a structural problem involving a lack of recognition in domestic law of the juridical personality and right to collective property of indigenous – and tribal - peoples in Suriname.

The ground-breaking character of the 2007 *Saramaka People v. Suriname* decision is beyond doubt and has been underlined in subsequent international and national rulings and scholarly articles.[2] In this case the IACtHR elaborated on earlier decisions and proposed a framework of (a) participation and consultation, (b) social and environmental impact assessments and (c) benefit-sharing mechanisms, in order to deal with cases involving (development) projects on or

[1] For instance, it took more than 7 years before the judgment in the *Awas Tingni* case was fully complied with by the state. See for a description of the background of the case and titling ceremony: <http://unsr.jamesanaya.org/opinions/nicaraguas-titling-of-communal-lands-marks-major-step-for-indigenous-rights> (accessed 31 March 2016). So far, most subsequent rulings of the IACHR regarding indigenous peoples' land rights, such as in the cases concerning the *Yakye Axa Indigenous Community* (2005), the *Moiwana Community* (2005), the *Saramaka People* (2007), the *Xákmok Kásek Indigenous Community* (2010) and the *Kichwa Indigenous People of Sarayaku* (2012) have remained largely unimplemented.

[2] S.J. Rombouts, *Having a Say, Indigenous Peoples, International Law and Free, Prior and Informed Consent*, Wolf Legal Publishers, 2014 (Henceforth: Rombouts, 2014); Richard Price, *Rainforest Warriors, Human Rights on Trial*, University of Pennsylvania Press, 2010; Fergus MacKay, Saramaka, de Strijd om het Bos, KIT Publishers, 2010; M. Orellana, 'Saramaka People v. Suriname', American Journal of International Law, 102, 2008.

near indigenous peoples' territories in which economic, environmental and cultural interests need to be balanced carefully. There have been a number of further applications to the Commission and relevant situations concerning indigenous and maroon communities in the Surinamese interior since Saramaka. While this study focuses on the Saramaka case and the following implementation process, the 2015 *Kaliña and Lokono Peoples* case and the pending case of *Maho* will also be taken into account in order to explore how Suriname could implement indigenous peoples' land and resource rights when economic activity is proposed to take place on indigenous territories.

However, the implementation of the Saramaka case has been, to say the least, ineffective thus far. Nevertheless, the model that was suggested by the Court in Saramaka has served as an example for the 2008 *Endorois v. Kenya* decision of the African Commission on Human and Peoples' Rights and the reasoning of the Court is fully in line with its earlier case-law concerning indigenous peoples' land rights (*Awas Tingni, Sawhoyamaxa, Yakye Axa, Moiwana*) and later decisions (*Sarayaku, Kalina and Lokono*).[3]

This contribution will elaborate on the current status of the implementation process of the Saramaka case and will assess the progress of the Government of Suriname in implementing the land rights of indigenous peoples in general.

1.2 Methodology

The next two paragraphs will provide a brief description of the historical and social contexts of indigenous and tribal peoples in Suriname as well as an explanation of the most relevant elements of the *Saramaka* case (Judgment of November 28, 2007). Paragraph 4 will focus on the post-judgment implementation phase of the *Saramaka* case. The current situation with regard to the case of the *Kaliña and Lokono Peoples v. Suriname* (Judgment of November 25, 2015) and the pending decision in the case of the *Maho Indigenous Community v. Suriname,* will be assessed in paragraph 5, followed by further analysis and a number of concluding observations in paragraph 6.

The indigenous' land rights cases against Suriname and, in particular, the (still unfinished) implementation processes in those cases have been researched on the basis of available compliance reports, CERD documents, reports of the UN Special Rapporteur on the rights of indigenous peoples, case law and literature. Moreover, in order to determine the most recent developments with regard to the *Saramaka* case, and the *Kaliña and Lokono Peoples* case *and Maho Indigenous Community* case, interviews were conducted in Suriname from 13-15 January 2016.[4] These interviews were held at the Ministry of Foreign Affairs, the Ministry of Regional Development and

[3] IACtHR, *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Ser. C, No. 79. IACtHR, *Case of the Moiwana Community v. Suriname.* Judgment of June 15, 2005, Series C No. 124, Preliminary Objections, Merits, Reparations and Costs. IACtHR, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment of June 17, 2005, Series C No. 125, Merits, Reparations and Costs. IACtHR, *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of March 29, 2006, Ser. C, No. 146. IACtHR, *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of June 27, 2012. Series C No. 245, Merits and reparations. IACtHR, *Case of the Kaliña and Lokono Peoples v. Suriname*, Judgment of November 25, 2015, Ser. C, No. 309, Merits, Reparations and Costs.

[4] Due to privacy reasons, the names of the interviewees of the Ministries of Foreign Affairs and Regional Development are not mentioned in this report. The questions asked during all the interviews related to the status quo of the three aforementioned cases as well as the actions taken by the government to implement the collective property rights of the indigenous and tribal peoples.

the Bureau dealing with land rights. The reason for conducting the interviews at these institutions is based on their respective roles, namely:

- The Ministry of Foreign Affairs of Suriname is the diplomatic channel and is mainly in charge of the correspondence between the Inter-American Human Rights institutions and the national institutions such as the Bureau for land rights.[5]
- The Ministry of Regional Development is mostly in charge of the affairs of indigenous and tribal people and maintains contact with these people. This ministry was also in charge of implementation of, for instance the *Saramaka* case. This was the case until the Bureau for land rights was established in 2013.[6]
- The Bureau for land rights (*Bureau Grondenrechten*) was established by Presidential Decree in 2013. In accordance with this Decree, a Presidential Commissioner has been appointed from April 1, 2013, which is Mr. Martin Misiedjan. The task of this Commissioner is formulated in general terms and consists of providing information as well as supporting and advising the Government on matters relating to, in particular, the administrative or constitutional field. It is to be noted that this Decree does not explicitly mention the land rights of indigenous or tribal people and reference is made to developments which can influence society in the short and long term. It is worth mentioning that Mr. Misiedjan is also the Agent of the State in most of the cases concerning land rights.

2. Judicial Mechanisms invoked: The OAS human rights system and its involvement in the protection of indigenous peoples

The Organization of American States (OAS) includes two main institutions designed specifically for human rights protection and promotion: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The main function of the Commission is to promote respect for and defence of human rights.[7] In the exercise of its mandate the Commission is empowered, *inter alia*, to receive and act upon petitions that allege facts constituting violations of the substantive norms included in the American Declaration of the Rights and Duties of Man (ADRDM)[8] or, in cases involving States Parties to the American Convention, norms in that Convention.[9]

According to Article 44 of the ACHR, 'any person or group of persons or nongovernmental entities legally recognized in one or more of the Member States of the OAS may submit such petition to the Commission, on their own behalf or on behalf of third persons.'[10] Thus, since the claimant does not need to be a victim of violations of the ACHR or the ADRDM, complaints to

[5] Information obtained from the interview conducted at the Ministry of Foreign Affairs of Suriname.
[6] Information obtained from the interview conducted at the Ministry of Regional development of Suriname.
[7] Art. 41 ACHR.
[8] American Declaration of The Rights And Duties of Man, Adopted By The Ninth International Conference Of American States, Bogotá, Colombia, 1948.
[9] Artt. 44-51 ACHR, Art. 23 Rules of Procedure IACHR .Also see: Report No. 43/10, *Mossville Environmental Action Now v. United States*, March 17, 2010, para. 43.
[10] Art. 44 ACHR.

the IACHR may be filed[11] by individuals, groups and organisations who are legally recognized in at least one OAS member state[12], other than the victims, and with or without the victims' knowledge or consent.[13] However, as follows from the jurisprudence of the Commission this broad *ius standi* is not limitless: 'with respect to the victim, it must be understood that the concept refers to individuals, the Commission having no standing to consider petitions regarding legal entities'.[14]

The Inter-American Court of Human Rights began operating in 1979. The contentious jurisdiction of the Court is more limited than that of the Commission; it may only hear cases where the state involved has ratified the American Convention and has accepted the Court's (optional) jurisdiction.[15] Further, only the States Parties and the Commission have the right to submit a case to the Court within three months of the release of the Commission's report.[16] Thus, an individual, group or a petitioner may not independently bring forth a case to be considered by the Court.

In fact, the broad *ius standi* before the Inter-American Commission is enough to enter the OAS Human Rights System and this judicial opening is increasingly being used by various categories of petitioners in order to denounce policies and practices jeopardizing the survival of indigenous peoples in the Americas.

2.1 Applicable law and legal interpretation

Within the OAS human rights system, legal provisions on which allegations of violations of specific indigenous peoples' rights could be based are not directly clear: neither the American Declaration of the Rights and Duties of Man (hereinafter: 'the American Declaration')[17] nor the American Convention on Human Rights (hereinafter: 'the American Convention', or 'ACHR')[18] contain provisions explicitly referring to indigenous peoples or their specific rights. As far as other OAS documents are concerned, indigenous peoples are only mentioned in Art. 9 of the Inter-American Democratic Charter, adopted on 11 September 2001, and the non-binding Proposed American Declaration on the Rights of Indigenous Peoples (1997).[19] The latter document was approved by the Inter-American Commission on Human Rights on February 26, 1997, but the document has not yet reached its definitive version.[20]

[11] According to Art. 46 sub d ACHR, the petition must contain the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.
[12] Art. 26 par. 1 Regulations of the IACHR.
[13] Artt. 44-47 ACHR and 26, 32-41 Regulations IACHR.
[14] Report No. 88/03, Case 11.533, *Metropolitan Nature Reserve v. Panama***,** *October 22, 2003***,** para. 33.
[15] Art. 62 ACHR.
[16] Artt. 51 par. 1 and 61 ACHR.
[17] The American Declaration from 1948 is the first international document listing human rights and duties and is applicable to the all the members of the OAS.
[18] The American Convention entered into force in 1978 and contains both civil and political human rights and well as economic, social and cultural rights.
[19] Proposed American Declaration on the Rights of Indigenous Peoples (Approved by the Inter-American Commission on Human Rights on February 26, 1997, at its 1333rd session, 95th Regular Session), OEA/Ser/L/V/.II.95 Doc.6 (1997).
[20] See the following website:
<http://www.oas.org/dil/indigenous_peoples_preparing_draft_american_declaration.htm> (accessed 31 March 2016).

The jurisdiction of the Court comprises all cases concerning the interpretation and application of the provisions of the ACHR.[21] Petitions to the American Commission aiming to address situations concerning the physical or cultural survival of indigenous peoples must be based on articles of the Declaration, such as: Article XI, the right of every person 'to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care (...)', and Article XXIII, the right 'to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home', or on the provisions of the American Convention, such as: Article 4 (Right to Life), Article 8 (Right to a Fair Trial), Article 10 (Right to Compensation), Article 15 (Right of Assembly), Article 21 (Right to Property), Article 24 (Right to Equal Protection), and Article 25 (Right to Judicial Protection).

The Court ascribes autonomous meaning to the ACHR's provisions, independently of how a particular term is defined in the national context.[22] It also applies the 'living instrument doctrine' by which it affirms that the Convention's provisions are not static and their scope may change over time. Furthermore, the human rights entities of the OAS follow a universalistic approach, by which they rely on other international sources. Concretely, it means that the American Commission and Court are systematically using Article 29 ACHR[23] as a tool to expand their respective mandates[24] and invoke treaties and other sources outside the Inter-American system[25], such as ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries[26] and the UN Declaration on the Rights of Indigenous Peoples.[27] In the *Saramaka* case, for example, the Court refers to elements of the UNDRIP as having gained the status of international custom, thereby contributing to shaping and interpreting international legal norms.[28]

This active approach by the Court has been described by James Anaya as the post-modern realist method, a working method that includes interdisciplinary inquiries to determine how the

[21] Art. 62 par. 3 ACHR.

[22] M. Killander, 'Interpreting Regional Human Rights Treaties, SUR' - *International Journal on Human Rights*, v. 7, n. 13, Dec. 2010, p. 163.

[23] As regards the interpretation of the Convention, Article 29 ACHR appears to be a central tool for determining the ways in which the Convention should *not* be interpreted. Art. 29 ACHR reads as follows No provision of this Convention shall be interpreted as: (...) b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

[24] Lucas Lixinski, 'Treaty Interpretation by the Inter-American court of Human rights: Expansionism at the Service of the Unity of International Law', *EJIL*, Vol. 21 no. 3, p. 587 and 603.

[25] V. De Oliveira Mazzuoli and G. De Faira Moreira Teixeira, 'Greening the Inter-American Human Rights Sytem', L'Obervateur des Nations Unies, 2012-2, Vol. 33, p. 312

[26] Report No. 75/02, Case 11.140, *Mary and Carrie Dann v. United States*, 2002, paras. 127-131; IACtHR, *Case of Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of 29 March 2006, Series C No. 146, at paras. 117, 119, 150, 151; IACtHR,., *Case of Yakye Axa Indigenous Community v. Paraguay* , Judgment of 17 June 2005, Series C No. 125, at paras. 95, 96, 127, 130, 136, 150, 151, 163; IACtHR, *Case of Saramaka People v. Suriname*, Judgment of 28 Nov. 2007, Series C No. 172, paras. 92, 93, 130.

[27] Lucas Lixinski, 'Treaty Interpretation by the Inter-American Court of Human rights: Expansionism at the Service of the Unity of International Law', *EJIL*, Vol. 21 no. 3, pp. 596-598.

[28] *Cf.* International Law Association, Sofia Conference 2012, Rights of Indigenous Peoples, Final Report, part 6 and 7.

law actually works or has worked in the past in relation to its effect on specific groups.[29] According to James Anaya, the realist model establishes three interpretative principles that are widely accepted in international adjudication.[30] Firstly, human rights provisions are to be interpreted in light of the overall context and object of the instrument of which they are a part. Secondly, the broader body of relevant human rights norms should to be taken into account and thirdly, the relevant provisions are to be interpreted in the manner that is most advantageous to the enjoyment of human rights (the *pro homine* principle). [31] This evolutionary method of (purposive) interpretation, goes further than applying positive international law and progressively addresses the current problems of indigenous peoples.[32]

3. Saramaka People v. Suriname

The following paragraphs will examine the IACtHR's 2007 Saramaka judgment in detail. After providing the historical and social context of indigenous and tribal peoples in Suriname, the most relevant elements of the Court's decision will be analyzed. In paragraph 4, the implementation process following the decision will be examined.

3.1 Suriname: historical context

Following the colonial period, full independence from the Dutch was achieved in 1975 but after the initial positive reception, Suriname quickly fell into a political and economic crisis in the years 1975 – 1980.[33] This was the upshot for the 1980 coup which installed a *de facto* military regime in the period 1980 – 1987.[34] The constitution that was quite similar to the Dutch constitution was suspended for a number of years after the infamous "Decreet A" and Suriname's democratic aspirations seemed lost. Under pressure from the people and due to civil strife and economic downfall, the military regime agreed to a return to democratically chosen legislators and a new constitution in 1987.[35] The following turbulent period (1986 – 1993) was characterized by on the one hand a new constitutional formula and on the other by the conflict known as the "war of the interior".[36] The new constitution departed from the old constitutional structure and created – under pressure from the military – a presidential democracy, in which the president wields executive power and legislative power is vested in the National Assembly (Nationale Assemblée), which still is the name of the parliament present day. The judicial structure remained largely intact and while the constitution does provide for the installment of a

[29] S. James Anaya, 'Divergent Discourses About International Law, Indigenous Peoples, and Land Rights over Lands and Natural Resources: Towards a Realist Trend', *Colorado Journal of International Environmental Law and Policy* 16, 2005, page 250.
[30] S. J. Anaya, 'Panel: Indigenous Rights, Local Resources and International Law, Divergent Discourses about International Law, Indigenous Peoples, and Rights over Lands and Natural Resources: Towards a Realist Trend' (2005) 16 Colo J Int'l Envtl L & Pol'y.
[31] *Ibid*.
[32] *Cf.* IACtHR, *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgement of August 31, 2001, Ser. C, No. 79 (2001), paragraph 148.
[33] H. Buddingh, *De Geschiedenis van Suriname*, Nieuw Amsterdan/NRC boeken, 2012, pp. 297- 308.
[34] *Ibid*., Chapter 13.
[35]< http://pdba.georgetown.edu/Constitutions/Suriname/dutch.html>
[36] H. Buddingh, *De Geschiedenis van Suriname*, Nieuw Amsterdan/NRC boeken, 2012, pp. 354-362.

constitutional court, no such court has been created yet. The vulnerability of the new democracy was illustrated clearly by the 1990 "telephone coup" in which the government of President Shankar was effectively disbanded by a phone call from the military leadership.[37]

The "war of the interior" was an uprising by – initially - several Maroon communities against the military rulers. The Maroons, led by Ronnie Brunswijk fought a guerilla war against the government troops of Dési Bouterse. The conflict had a disruptive effect on Suriname's economy and social life while it allowed illegal drug and weapons trade to flourish. The conflict formally ended on 27 March 1991, when the peace talks at the town of Drietabbetje were finalized. The government of President Venetiaan ratified the peace treaty in August 1992. This slow return to a democratic regime, which continued over the years leading up to the new millennium, was also characterized by large scale corruption and drug trafficking, and the military continued to exercise substantial control over Surinamese politics. During the first years of the new millennium, Suriname has witnessed economic recovery and growth, but in recent years the country's economy is again staggering.[38]

3.2 Indigenous and tribal peoples in Suriname

Suriname's dynamic history is characterized by different – voluntary and involuntary immigration flows. During the colonial period Africans were brought to Suriname by the Dutch to work on the plantations as slaves. Furthermore, large groups from China, India and Indonesia (Java) were brought to Suriname as indentured labourers by the Dutch Colonial Authorities. More recently, considerable groups of Jewish, Lebanese, Guyanese and Brazilian people have settled there.

The original inhabitants of Suriname were a number of different Caribbean and Amazonian tribes. The most numerous of these tribes – that currently make up about 4% of the population – are the Kaliña (or Caribs), the Lokono (or Arawaks), the Trio and the Wayana people. Besides indigenous peoples, a large number of tribal peoples referred to as Maroons also inhabit the Surinamese interior. These peoples are descendants of Africans who fled from the Dutch slave-plantations to the rainforest in the 18th century and retained a large part of their distinct identity based on their West African origin. These Maroons now make up approximately 15% of the population, which means that about 20% of the Surinamese population qualifies as indigenous or tribal.[39]

The Maroons are organized in six different groups: the N'Djuka (or Aukaners); the Aluku (or Boni) and the Paramaka peoples live in the East, while the Saramaka, Matawi and Kwinti peoples reside more centrally in Suriname. The N'Djuka and Saramaka tribes are the largest groups and likely number between 20.000 and 35.000 members each. Maroon are organized in different clans (lö's), which are represented by Captains and Head-Captains (Kapteins). At the head of each Maroon people stands a Gaa'man (or Granman) who wields the highest authority.[40]

The indigenous peoples' social structure is more diverse, but generally speaking they are also represented by Captains and Basja's (Captain's assistants). Since both the Maroon and the

[37] *Ibid.*, pp. 362-366.
[38] *Ibid.*, pp. 359- 362, 376-378.
[39] See e.g.: IWGIA, the Indigenous World 2015, ISBN 978-87-92786-52-4, p. 145 ff. Also see: Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Suriname: Maroons, 2008. These statistics are estimates.
[40] For a more elaborate description of the Maroons and indigenous peoples in Suriname, see: Rombouts, p. 252 ff.

indigenous peoples have no legal personality, they are also represented before the public authorities by different organizations like the Association of Indigenous Village Leaders in Suriname (VIDS) and the Association of Samaaka Traditional Authorities (VSG).[41]

The "war of the interior" which plagued the inhabitants of the Surinamese rainforest between 1986 and 1992 left deep scars in a number of indigenous and Maroon communities who were displaced or worse during these years of internal civil strife.[42] Currently, both indigenous and Maroon groups in Suriname again face problems that relate - among other things - to the absence of (constitutional or other) recognition of their juridical personality, the absence of collective rights to lands and resources, marginalization and lack of effective participation, effects of development projects and (illegal) resource extraction. A number of these issues were discussed by the Court in its ground-breaking 2007 judgment.

3.3 The substantive issues in the Saramaka case

In the mid-1990s, the Surinamese government had granted a number of concessions for timber extraction to – among others – Chinese logging companies in areas where the Saramaka people reside. The affected communities had not consented to these activities and were neither informed nor consulted about the concessions. In fact, the Saramaka people only found out about the concessions when they discovered loggers – escorted by Surinamese soldiers - already employed on their territories. One Saramaka eye-witness declared:

> *The soldiers told me: "Leave the Chinese, go hunting here (in an area where the Chinese have finished cutting already). But don't let the Chinese see you." Well, I went there: there was destruction everywhere; the forest was destroyed. In Paramaribo people do not know what the Chinese are doing. Should not someone control the logging-activities of foreign investors? The Chinese cut hundreds of trees, dragged them to a place and piled them up there. They abandoned them in the forest because they did not need them anymore. For us, people from the interior, it is terrible to see cedar trees cut down that are so important for us. And all this destruction made the animals flee away also.*[43]

When national remedies had failed, the *Saramaka* people filed a petition to the Inter-American Commission (IACHR) in 2000. The Commission referred the case to the Inter-American Court of Human Rights (IACtHR) in 2006.[44] On the 28th of November 2007 the Court issued its judgment in the case *Saramaka People v. Suriname*.[45]

The applicants alleged that Suriname had failed to recognize their collective land rights, which resulted in violations of Article 21 (the right to property) and Article 25 (the right to judicial protection) of the American Convention on Human Rights, in particular in relation to development projects and investment activities in the area inhabited by the Saramaka people.

---

[41] VIDS: Vereniging Inheemse Dorpshoofden Suriname; VSG: Vereniging Saramakaanse Gezagsdragers. Furthermore a number of NGO's represent the indigenous and tribal peoples in Suriname.

[42] IACtHR, *Case of the Moiwana Community v. Suriname*, Judgment of June 15, 2005, Preliminary Objections, Merits, Reparations and Costs.

[43] Forest Peoples Programme**,** *Inter-American Commission on Human Rights requests that Suriname suspend logging and mining concessions in Saramaka Maroon territory*, Press Release, 20th August 2002, www.forestpeoples.org.

[44] IACtHR, *Case of Saramaka People v. Suriname*, Judgment of 28 Nov. 2007, Series C No. 172.

[45] *Ibid.*

The Saramaka people also filed complaints about the construction of the Afobaka dam in the sixties, which had resulted in the displacements of a large number of Saramaka communities. However, this section of the complaint was declared inadmissible on grounds of legal certainty, since these facts and allegations were not included in the original application to the Commission or Court.[46]

The Court first had to deal with a lengthy set of preliminary procedural objections by the State of Suriname that related to: the lack of legal standing before the Commission and the Court;[47] irregularities in the proceedings before the Commission;[48] non-compliance with certain time-limits;[49] non-exhaustion of domestic legal remedies;[50] duplication of international proceedings;[51] and lack of jurisdiction "ratione temporis".[52]

The preliminary objections were rejected and the Court stated eight substantive issues to be addressed. First, whether the Saramaka people are a tribal community; second, whether article 21 of the ACHR also protects tribal peoples; third, whether the State recognizes the communal or collective property rights of the Saramaka people; fourth, to what extent the Saramaka people are entitled to enjoy their natural resources; fifth, whether the State may grant concessions for extracting these resources; sixth, whether the current concessions are in line with the safeguards under international law; seventh, whether the lack of recognition of the Saramaka people as possessing juridical personality makes them ineligible to receive communal land title under domestic law; and lastly, whether there exist effective legal remedies in domestic law for the Saramaka people.[53]

3.4 The Saramaka judgment

In its judgment, the IACtHR reaffirmed the right to communal property under Article 21 of the American Convention on Human Rights for tribal peoples by stating that "the Court`s jurisprudence regarding indigenous people's right to property[54] 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".[55] The Court had little trouble in asserting that the Saramaka qualify as tribal people, since it had already explained in the Moiwana case that the N'Djuka Maroons formed a tribal community.

Subsequently, the Court linked the juridical personality of the *Saramaka* people with their right to property and concluded that recognition of their juridical personality is necessary to

[46] *Ibid.*, paras. 15, 16 and 17. This could be explained by the fact that the Moiwana Case, in which the continuing violation doctrine was explained, was not decided by the time the Saramakas filed their petition. See in general: Rombouts, 2014, Chapter V.
[47] *Ibid.*, paragraph 19 and 25.
[48] *Ibid.*, paragraph 30.
[49] *Ibid.*, paragraph 34.
[50] *Ibid.*, paragraph 41.
[51] *Ibid.*, paragraph 45.
[52] *Ibid.*, paragraph 59.
[53] *Ibid.*, paragraph 77. See: Rombouts, 2014, p. 253 ff.
[54] IACtHR, *Case of the Mayagna Community Awas Tingni vs. Nicaragua*, Ser. C No. 79, Judgment of August 31, 2001, para. 148.
[55] IACtHR, *Case of Saramaka People v. Suriname*, Judgment of 28 Nov. 2007, Series C, No. 172, par. 86

ensure that the community, as a whole, will be able to fully enjoy and exercise their right to property.[56]

After acknowledging[57] that the right to property is not absolute,[58] the Court added that a 'crucial factor to be considered is whether the restriction amounts to a denial of their traditions and customs in a way that endangers the very survival of the group and of its members.'[59] Furthermore, the Court stated that members of indigenous and tribal peoples have the right to own the natural resources they have traditionally used within their territory since: "Without them, the very survival of such peoples is at stake. Hence the need to protect the lands and resources they have traditionally used to prevent their extinction as a people."[60] Subsequently, the Court formulated three safeguards in order to guarantee that restrictions to the communities' property rights will not amount to a denial of their survival as a tribal people[61]:

First, the State must ensure the *effective participation* of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan (hereinafter "development or investment plan") within Saramaka territory. Second, the State must guarantee that the Saramaka people will receive a *reasonable benefit* from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State's supervision, perform a *prior environmental and social impact assessment*. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as tribal people.'[62]

With regard to the requirement of ensuring the effective participation of members of the community in development plans within their territory, the Court explicated that the State has a *duty to actively consult* with the Saramaka people taking into account their traditional methods of decision-making. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties.[63] The Court points out that these consultations must be 'in good faith, through culturally appropriate procedures and with the objective of reaching an agreement'. Furthermore, the Saramaka people must be consulted 'at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community'[64] Moreover, the State must 'ensure that members of the Saramaka people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily'.[65]

The Court added that same safeguards and the same duty to consult apply regarding other concessions within Saramaka territory involving natural resources which have not been traditionally used by members of the Saramaka community, like gold, because their extraction will necessarily affect other resources that are vital to the way of life of the community, such as

[56] *Ibid.*, para.171
[57] *Ibid.*, para. 127.
[58] As follows from Art. 21 sub b ACHR, a State may restrict the use and enjoyment of the right to property where the restrictions are: a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society.
[59] IACtHR, *Case of Saramaka People v. Suriname*, Ser. C No. 172, Judgment of November 28, 2007, para. 128.
[60] *Ibid.*, paragraph 121, drawing on the Yakye Axa Case.
[61] *Ibid.*, para.129
[62] *Idem*, emphasis added.
[63] *Ibid.*, para. 133.
[64] *Ibid.*
[65] *Ibid.*

waterways.[66] Finally, in a crucial consideration – taking into account art. 32 of the UNDRIP – the Court added that:

> *Regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions. The Court considers that the difference between "consultation" and "consent" in this context requires further analysis.* [67]

The Court concluded that Suriname had violated the property rights of the members of the Saramaka people recognized in Art. 21 of the Convention. The Court considered that 'the logging concessions issued by the State in the Upper Suriname River lands have damaged the environment and the deterioration has had a negative impact on lands and natural resources traditionally used by members of the Saramaka.' Furthermore, 'the State had failed to carry out or supervise environmental and social impact assessments and failed to put in place adequate safeguards and mechanisms in order to ensure that these logging concessions would not cause major damage to Saramaka territory and communities'. Finally, the State did not allow for the effective participation of the Saramaka people in the decision-making process regarding these logging concessions.[68]

In order to guarantee the non-repetition of the violation of the rights of the members of the Saramaka people and to ensure the recognition of their juridical personality, property, and judicial protection, the Court ordered the State, to take the following measures with regard to the members of the *Saramaka* people:

a) Delimit, demarcate and grant collective title over the territory 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;
b) Grant legal recognition of their collective juridical capacity pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions;
c) Remove or amend the legal provisions that impede protection of the right to property and adopt in its domestic legislation legislative, administrative and other measures to recognize, protect, guarantee and give effect to hold collective title of the territory;
d) 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
e) Ensure that environmental and social impact assessments are conducted by independent and technically competent entities in order to minimize the damaging effects such

[66] *Ibid.*, para.155.
[67] *Ibid*., para.134.
[68] *Ibid*., para. 154.

projects may have upon the social, economic and cultural survival of the Saramaka people;

f) Adopt legislative, administrative and other measures necessary to provide the *Saramaka* people with adequate and effective resources against acts that violate their rights to the use of their property;[69]

Additionally, the Court ordered the State to take measures of satisfaction, such as translating the judgment in Dutch and publishing this in the State's Official Gazette and one daily newspaper as well as financing the broadcasts of several paragraphs in the *Saramaka* language. The material and immaterial damages were also awarded. The material damages were to be compensated by US$ 75.000,00 and the immaterial damages by allocating US$ 600.000,00 for a community development fund. [70]

3.5 Tools to monitor and enforce compliance with the judgments of the IACtHR

The Inter-American Court has a number of ways to monitor compliance with its decisions. Article 68 of the American Convention obliges states to comply with the IACtHR judgments in any case to which they are parties. In the case of *Baena Ricardo et al*. (270 Workers v. Panama) the Court explained in detail the basis for its authority to oversee implementation with its decisions and established that the IACtHR has inherent power to monitor states' compliance with its own judgments.[71]As stated in Article 63 of the Rules of Procedure of the Inter-American Court monitoring compliance with the Court's judgments implies, first, that it must periodically request information from the States on the measures taken to comply with the said judgments, and then obtain the observations of the Commission and of the victims or their representatives. The Court can require information from other sources, such as expert declarations or reports it considers appropriate,[72] and can convene the parties to a hearing in order to monitor compliance with its decisions. In the context of such hearings, the Court does not merely take note of the information presented by the parties and the Commission, but also endeavors to establish collaboration between the parties suggesting options to resolve difficulties, encourages compliance with the judgment, calls attention to a lack of willingness to comply, and promotes the establishment of timetables for compliance by all those involved. [73]

However, in case of failure to comply with the IACtHR judgments in contentious cases of breach of the ACHR or the Court's order of provisional measures, there are no effective tools to enforce sanctions: the American Convention[74] does not confer any duty to a political body within the OAS to ensure execution of the Court's judgments.[75] As follows from Art. 30 of the Statute of the Inter-American Court of Human Rights, every year the Court submits a report on its work

[69] *Ibid.*, par. 194.
[70] *Ibid.*, par. 195-196.
[71] IACtHR,*Case of Buana Ricardo et al vs Panama*, Judgment of November 28, 2003, Series C No. 104, paras. 26, 58 – 67
[72] Art. 30 par. 2 ACHR.
[73] J.M. Pasqualucci , *The Practice and Procedures of the Inter-American Court of Human Rights*, 2nd edition 2013, pp. 58-67.
[74] Unlike Article 46 of the European Convention of Human Rights.
[75] M. Kirilova-Eriksson, *At the Service of Human Rights, The contribution of the Human rights Bodies of the OAS to the Protection of Indigenous Peoples' communal Property*, Working Paper 2014:5, Uppsala Faculty of Law, 2014, p. 82.

to the OAS General Assembly indicating those cases in which a State has failed to comply with the Court's ruling. However, through its resolutions[76] the General Assembly can only encourage the State in question to comply with the Courts' decision.[77] So far 'these resolutions have not had a clear effect on implementation practices'.[78]

4. The implementation process of the Saramaka judgment

In monitoring the follow-up to its decisions, the IACtHR can issue monitoring reports to measure and expose the way in which the state complies with its judgments. Furthermore, the state may request an interpretation of the judgment from the Court if certain parts are unclear. Both follow-up mechanisms were used after the Saramaka judgment. Furthermore, the UN Special Rapporteur on the Rights of Indigenous Peoples – at that time James Anaya - visited Suriname and offered his technical expertise to help the state with the implementation of the verdict. Moreover, representatives of the Saramaka people also requested the Committee on the Elimination of all forms of Racial Discrimination (CERD) to consider their complaints about the lack of implementation of the Saramaka judgment under its Urgent Action and Early Warning Procedures. CERD also commented upon the judgment's follow-up on several occasions in the framework of the State reporting obligations to the ICERD.[79]

4.1 Request for interpretation of judgment 2008

In 2008, Suriname requested the IACtHR for an interpretation of parts of the judgment, which the Court provided on August 12 of that year. Pursuant to Article 67 of the ACHR, the Court is mandated to interpret judgments if one of the parties files a request. The exclusive purpose of such an interpretation is to clarify the meaning of a decision when parties feel that certain

[76] *From Judgment to Justice Implementing International and Regional Human Rights Decisions*, Open Society Justice Initiative, Open Society Foundations, 2010, pp. 77- 78.
[77] Art. 65 ACHR
[78] *From Judgment to Justice Implementing International and Regional Human Rights Decisions*, Open Society Justice Initiative, Open Society Foundations, 2010, p. 78.
[79] IACtHR, *Case of The Saramaka People v. Suriname*, Judgment of August 12, 2008, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Concluding Observations of the Committee on the Elimination of Racial Discrimination, Suriname, CERD/C/SUR/CO/12, 13 March 2009, Consideration of Reports Submitted by States Parties under Article 9 of the Convention. Order of the President of the Inter-American Court of Human Rights of April 20, 2010, Case of the Saramaka People v. Suriname, Monitoring Compliance with Judgment. Order of the IACtHR, of November 23, 2011, Case of the Saramaka People *v.* Suriname, Monitoring Compliance with Judgment. A/HRC/18/35/Add.7, 18 August 2011, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum, Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname. Request for Consideration of the Situation of the Saramaka People of Suriname under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures submitted by the Association of Saramaka Authorities and the Forest Peoples Programme, 22 January 2012. Order of the IACtHR, of September 4, 2013, Request for provisional measures and monitoring compliance with judgment with regard to the republic of Suriname, case of the Saramaka people.

operative paragraphs lack clarity of precision. Such a request for interpretation therefore cannot be used as a disguised form of appeal. The Court explained a number of issues regarding compensation, environmental and social impact assessments (ESIA's) and future concessions in Saramaka territory. Furthermore, it analyzed the issue of effective participation and the scope of the right to consultation and explained that:

> *In this regard, the Judgment orders the State to consult with the Saramaka people regarding at least the following six issues: (1) the process of delimiting, demarcating and granting collective title over the territory of the Saramaka people; (2) the process of granting the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong; (3) the process of adopting 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 the territory they have traditionally used and occupied; (4) the process of adopting 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; (5) regarding the results of prior environmental and social impact assessments, and (6) regarding any proposed restrictions of the Saramaka people's property rights, particularly regarding proposed development or investment plans in or affecting Saramaka territory.*[80]

Furthermore, the Court reiterated in its interpretation judgment that "survival" entails more than just physical survival[81] and emphasized with respect to the land rights of the Saramaka people that:

> *Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people. With regards to the concessions already granted within traditional Saramaka territory, the State must review them, in light of the present Judgment and the Court's jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people.*[82]

The Court explained that in implementing this criterion, the State should also apply it to any other indigenous or tribal peoples in Suriname that are affected by development of investment projects.

4.2 Compliance reports by the IACtHR 2010, 2011, 2013

[80] IACtHR, *Case of The Saramaka People v. Suriname*, Judgment of August 12, 2008, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, pp. 5-6.
[81] *Ibid*., paragraph 37.
[82] *Ibid*., paragraph 55.

Monitoring compliance with its judgment is a power inherent to the judicial functions of the IACtHR, and three compliance reports have been issued by the Court since its judgment: in 2010, 2011 and 2013 respectively.

In the first report, dated April 10, 2010, the Court stated that although some action had been undertaken, the majority of the orders of the Court had not been carried out. It continued to monitor compliance and convened a closed hearing at the seat of the Court in San José in May 2010. A second report followed in November 2011.[83] Although regular meetings between the representatives of the Saramaka people and government were held, the State has not complied with its duty to delimit, demarcate and title Saramaka land. A project called "Support for the Sustainable Development of the Interior" was stopped because it lacked adequate stakeholder support, but the State and Saramaka people had signed an agreement which included State assistance for the delimitation process.[84] But this was not enough to comply with the Court's orders, and the IACtHR stated that next to complying with the requirements mentioned, the State also had to report on the specific action it was to take related to consultation of the Saramaka people. Furthermore, since the State failed to meet the deadlines, it was ordered to submit a detailed schedule for compliance to the Court.[85]

With regard to new and existing concessions, the Court warned Suriname, that continuing with those activities, while Saramaka territory has not been delimited yet: "without the consent of the Saramaka and without prior environmental and social impact assessments, would constitute a direct contravention of the Court's decision and, accordingly, of the State's international treaty obligations.[86] For each of these concessions, the State has to show the Court that it had ensured the Saramaka people's effective participation, that there was a benefit-sharing agreement concluded and whether ESIA's had been carried out in a proper way. Moreover, the Court ascertained that no progress was made in recognizing the Saramaka people's juridical personality.

Subsequently, in 2013, representatives of the Saramaka people submitted a request to the Court for provisional measures with regard to the Saramaka leaders and their representatives. They referred to meetings held between the Saramaka leaders and State authorities during which Saramaka leaders were requested to revoke their legal representation before the Inter-American Court. They were threatened with termination of the salary payments by the State and with "personal repercussions". The Saramaka leaders indicated in the affidavits provided to the Court that they feared for their personal safety as a result of these threats.[87] The Court nevertheless considered that, in this matter, the three requirements of extreme gravity, urgency and irreparability of damage to life or personal integrity that would justify the adoption of provisional measures have not been substantiated by the presumed acts of intimidation against the Saramaka leaders and their representatives.[88]

Although the Court did not order provisional measures, it reiterated that the State has 'the constant and permanent duty to comply with its general obligations under Article 1(1) of the Convention to respect the rights and freedoms recognized therein and to ensure to all persons

[83] Rombouts, 2014, pp. 274-275.
[84] Order of the IACtHR of November 23, 2011, Case of the Saramaka People *v.* Suriname, Monitoring Compliance with Judgment, pp. 6-7.
[85] *Ibid*., p. 8.
[86] *Ibid*., p. 10.
[87] Order of the IACtHR of September 4, 2013, Request for Provisional Measures and Monitoring Compliance with Judgment with regard to the Republic of Suriname Case of the Saramaka People, No. 10.
[88] *Ibid.*, para. 15

subject to their jurisdiction the free and full exercise of those rights and freedoms, in any circumstance.'[89] And that 'regardless of the existence of specific provisional measures, the State has the special obligation to ensure the rights of individuals in a situation of risk'.[90] Moreover, the Court reminded the State of its a particular obligation of protection with regard to those whose work involves the defense of human rights,[91] hereby subtly reiterating its decision in the *Case of Kawas-Fernandez v. Honduras*.[92] The Court decided to continue monitoring the implementation of the Saramaka judgment and ordered the State to provide a report on the awarded mining concession.[93]

On 28 May 2013[94], a private hearing on monitoring compliance in the *Saramaka* judgment was held in Port of Spain, which was attended by representatives of the Commission, the State, and the victims. As a result of this hearing the Court proposed to Suriname to establish a Commission consisting of government officials and members of the tribal people, in order to set a timeline for the implementation of the judgment. The Commission has still not been established.

4.3 CERD monitoring reports and communications 2009, 2013

Besides recourse to the IACtHR, the Saramaka community also decided to seek the assistance of UN Committee on the Elimination of Racial Discrimination. The Committee, after exploring the periodic reports of Suriname, had noted in 2009 that it was deeply concerned about the implementation of the Saramaka judgment and legislation on land and resource rights in a wider perspective.[95] The Committee stated that significant problems were caused by natural resource extraction - mainly logging and mining - on indigenous and tribal traditional lands. It expressed its concern about the lack of effective natural resource management legislation and policy.[96] It urged Suriname to take steps towards: "A comprehensive national land rights regime and appropriate relevant legislation with the full participation of the freely chosen representatives of indigenous and tribal peoples."[97] All this should happen respectful of: "full compliance with the orders of the Inter-American Court of Human Rights in the *Saramaka people* case."[98]

---

[89] *Ibid.*, para. 9
[90] *Ibid.*, para. 10.
[91] *Ibid*., para. 17
[92] IACtHR, *Case of Kawas-Fernandez v. Honduras*, Judgment of 3 Apr. 2009, Series C No. 196, para. 140 and 145. In this case the Court emphasized the importance of protecting human rights advocates for the role they play in defending and promoting the rights in a democratic society and concluded that environmental defenders should be considered human rights defenders. The Court pointed also out that the States have 'the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.
[93] Order of the IACtHR of September 4, 2013, Request for Provisional Measures and Monitoring Compliance with Judgment with regard to the Republic of Suriname Case of the Saramaka People, decision, par. 2 – 3.
[94] Order of the Inter-American Court of Human Rights of September 4, 2013.
[95] CERD/C/SUR/CO/12, 12 March 2009, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Suriname.
[96] *Ibid*., para. 12.
[97] *Ibid*., para. 13.
[98] *Ibid*., para. 13. Rombouts, 2014, pp. 275-276.

The Committee sent letters to the State in 2012 and 2013 in which it expressed its concern about the implementation process, in particular concerning the legal recognition of the collective juridical capacity of the Saramaka people and the communal and self-determination rights of the Saramaka people. CERD requested the State to provide further information on measures taken to give effect to the Committee's earlier recommendations.[99] Furthermore, in relation to the recent mining concessions in Saramaka territory, the community sent a request to the Committee for consideration under its Urgent Action and Early Warning Procedures in 2013: 'to avoid imminent and irreparable harm to the Saramaka caused by Suriname's active and persistent violations of the orders of the Court [...] by a massive expansion of large-scale industrial gold mining activities [by IAMGOLD a Canadian mining company] and hydropower generation in Saramaka territory.' In the request it was emphasized that 'the Saramaka have not participated in any of these decisions and have explicitly objected to the hydropower project'.[100]

In April 2013 the Tapajai hydropower project has been put on hold due to the objections of the Saramaka people. The State has indicated that this project has been annulled keeping in mind the interests of the indigenous and tribal people and the lack of ownership for this hydropower project.[101]

4.4 Report and visit of the UN Special Rapporteur, 2011

In March 2011, James Anaya, the former UN Special Rapporteur on the Rights of Indigenous Peoples, visited Suriname, after the Government of Suriname requested his technical and advisory assistance in developing a legal framework for securing indigenous and tribal rights.[102] The following report by the Special Rapporteur provides observations and recommendations to assist Suriname in the development of laws and administrative measures to secure indigenous and tribal peoples' rights, in particular their rights over lands and natural resources.[103] The Rapporteur mentions that:

> *In light of the Moiwana and Saramaka judgments, the Special Rapporteur is of the opinion that priority should be placed on developing specific legal provisions for (1) a procedure to identify and title indigenous and tribal lands; and (2) a procedure to follow for consulting with and seeking consent of indigenous and tribal peoples for resource extraction and other activities affecting their lands and resources.*[104]

In relation to the land titling process, Anaya explains that although there is some flexibility allowed, there are a number of minimum components that such a process should entail:

---

[99] CERD/82nd/GH/MJA, 1 March 2013 and GH/SP, 9 March 2012.
[100] Request for Consideration of the Situation of the Saramaka People of Suriname under the UN Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures, 12 February 2013. For further information on this IAMGOLD 'case' see: Report on observations to communications sent and replies received by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, A/HRC/27/52/Add.4, 3 September 2014, para. 162-165.
[101] See:< http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/16671> (Accessed 31 March 2016).
[102] Rombouts, 2014, pp. 277-281.
[103] A/HRC/18/35/Add.7, 18 August 2011, Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum, Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname.
[104] *Ibid*., para. 35.

> *It could be expected, nonetheless, that the procedure for land demarcation and titling would contain, at a minimum, the following components: (a) identification of the area and rights that correspond to the indigenous or tribal community, or group of communities, under consideration; (b) resolution of conflicts over competing uses and claims; (c) delimitation and demarcation; and (d) issuance of title deed or other appropriate document that clearly describes the nature of the right or rights in lands and resources.*[105]

The overall goal of these processes is to "provide security for land and resource rights in accordance with indigenous and tribal peoples' own customary laws and resource tenure."[106] While Anaya's findings provide helpful guidance for the implementation process, his subsequent offer to provide the State with further assistance went unanswered.[107]

4.5 National initiatives by the Government of Suriname.

On the national level, the Government of Suriname has taken several initiatives with regard to the *Saramaka* judgment of 2007. In 2010, the Government of Suriname indicated that the issue of indigenous and tribal peoples is a priority and as such this was also mentioned in the Coalition Agreement of 2010-2015[108], in which it is clearly stated that a solution should be found for this issue.

Another initiative worth mentioning is the land rights conference which was held on 21 and 22 October 2011. This conference was intended to facilitate the national debate concerning the collective land rights of indigenous and tribal peoples in accordance with the judgment. The issue of land rights of these peoples is considered to be a national issue; therefore the main purpose of this conference was to create sufficient support by means of starting a national dialogue between all the stakeholders. This conference is said to have been organized with the indigenous and tribal people and they presented their views at this conference. However, the conference did not meet the intended expectation.

In his opening speech President Bouterse stated that his government is willing to recognize the land rights of the indigenous and tribal peoples in Suriname, but that Suriname is one and indivisible and that the recognition of land rights should not result in a division of land. According to the President, Suriname has to find its own "sranan fasi" (Surinamese solution) to solve the land rights issue.[109]After this speech the indigenous and tribal people presented a joint statement[110] in which they claimed – in line with the Saramaka decision – their collective land rights and juridical personality. In response to this joint statement, President Bouterse terminated the conference[111] and, as mentioned in the official statement by the Government "…the President, as a good democrat, has decided to respect your will and to defer your joint statement

[105] *Ibid*., para.36.
[106] *Idem.*
[107] Rombouts, 2014, p. 281.
[108] *Regeer Akkoord 2010-2015*, available at: http://atm.gov.sr/media/29956/1._regeerakkoord_2010-15.pdf
[109] <http://www.gov.sr/actueel/archief/2011/president-bouterse-stelt-kader-van-grondenrechten-conferentie-scherp.aspx> (Accessed 2 April 2016).
[110] <http://www.gov.sr/kabinet-van-de-president/documenten/conferentie-grondenrechten.aspx> (accessed 2 April 2016).
[111] *Ibid.*

to the national Parliament". [112] The Conference thus ended on the second day after the joint statement and the statement of the President, without any further dialogue between the stakeholders.

In 2015, the Coalition Agreement of 2015-2020[113] stated that the development of the interior and the tribal peoples will have priority in order to transform the hinterland into a production area. Most importantly, this document states that the issue of land rights - namely 1) the granting of a proper title, 2) the tension regarding the issuance of mining rights as well as forestry rights and 3) the conservation and protection of the traditional communities - should be solved within this period. In this regard, the constitutional recognition of tribal people, the criteria established by law in order to qualify as such, and the reorganization of the gold sector will be important.

5. Analysis: causes and consequences of delayed and partial implementation of the Saramaka Judgment.

5.1. Causes of delayed and partial implementation of the Saramaka Judgment

By January 2016, 9 years after the Court's Judgment in the *Saramaka case*, the Government had taken the following measures of satisfaction and had awarded the following material and immaterial damages:[114]

- In 2009, the community development fund was established called "Stichting Fondsontwikkeling Samaaka Gemeenschap";
- The material damages of US$ 75.000,00 and the immaterial damages of US$ 600,000.00 were paid entirely and transferred to the community development fund;
- Payment of US$ 15.000,00 compensation to the Forest People Programme;
- Payment of US$ 75.000,00 compensation to the Association of Saramaka Authorities, the VSG ("Vereniging van Saramakaanse gezagsdragers");
- The operative paragraphs of the judgment were published in the State's Official Gazette in June 2010. The judgment has also been published in two local daily newspapers in May 2010;
- In 2010, several paragraphs were broadcasted in the *Saramaka* language as well as two other local languages through various radio stations.
- With regard to the legislative measures concerning the juridical personality and communal property rights, the work is still in progress according to the Bureau for land rights.

[112] http://www.gov.sr/kabinet-van-de-president/documenten/conferentie-grondenrechten.aspx
[113] *Regeer Akkoord 2015-2020*, available at: http://www.gov.sr/media/3045311/regeerakkoord-2015-2020.pdf , p.8
[114] Information obtained from the interview with Mr. Misiedjan and members of the Bureau for land rights on 15 January 2016

This overview raises the question why the crucial and substantive elements of the measures ordered by the Court[115] have remained largely unimplemented, notwithstanding, inter alia, an additional interpretation of the judgment by the Court; monitoring reports measuring and exposing the way in which Suriname complies with the judgment; the UN Special Rapporteur on the Rights of Indigenous Peoples visiting Suriname and offering his technical expertise to help Suriname with the implementation of the verdict; involvement of the Committee on the Elimination of all forms of Racial Discrimination (CERD) under its Urgent Action and Early Warning Procedures, and several national Government plans and measures?

According to the Presidential Commissioner Mr. Misiedjan (hereinafter: "the Commissioner"), interviewed in 2016, "the compliance with the judgments of the IACtHR brings many challenges for Suriname". He emphasized that "the government of Suriname is working on a proper and satisfactory solution without creating social turmoil. Furthermore, he indicated that the State is working out the possibilities of acknowledging the collective rights of the indigenous and tribal people within the legal system. This, he emphasized, will certainly have to be done in dialogue with the people concerned."

a) As regards the "obligations to delimit, demarcate and grant collective title over the territory 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"[116] the Commissioner mentioned that "up till now, one of the main obstacles hampering the implementation, which was also conveyed to the IACtHR, is that there is no overall consensus among the indigenous and tribal people on certain issues. For instance, there are diverging opinions among these people concerning the maps of the territories in order to demarcate their traditional lands."
b) As far as the obligation "to grant legal recognition of the collective juridical capacity pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions"[117] is concerned, the Commissioner explained that the legal status of the traditional authorities "is also on the list of the Government of Suriname."
c) As regards the obligations to "remove or amend the legal provisions that impede protection of the right to property and adopt in its domestic legislation legislative, administrative and other measures to recognize, protect, guarantee and give effect to hold collective title of the territory"[118], the Commissioner mentioned that the drafting of legislation on granting collective rights to indigenous and tribal people is in progress and that the State is in favour of an integral approach, which means a solution not only for the Saramaka people but for all the indigenous and tribal people. According to the Commissioner, "the Governments' main question concerns how the State can adapt its legislation in accordance with the *Saramaka* judgment, while keeping in mind the national interests of all its citizens as well as the principles and rules of the parliamentary democracy"[119]. What if implementing the *Saramaka* judgment to the letter will adversely

[115] See para. 3.4. of present ILA contribution.
[116] IACtHR, *Case of Saramaka People v. Suriname*, Ser. C No. 172, Judgment of November 28, 2007, para.194.
[117] *Ibid.*
[118] *Ibid.*
[119] From the Satement of Mr. Misiedjan at the hearing in Costa Rica, on 28 May 2013.

affect the foundations of the existing order in Suriname?[120] These concerns have been voiced to the IACtHR at the hearing of 28 May 2013 in Costa Rica. The Commissioner indicated that "the State is willing to implement the *Saramaka* judgment in such a manner that it is satisfactory to all its citizens including the indigenous and tribal people".

Another point of concern for the Government is the fact that "the legislative measures as ordered by the IACtHR require that probably constitutional procedures should be followed in order to enact new legislation or amend existing ones. Implementation of certain parts of the judgment may possibly lead to an adjustment of the current Constitution of Suriname. The State has also communicated to the IACtHR that the current Constitution was adopted by 98% of the Surinamese population as a result of a referendum held on 30 September 1987."[121]

d) As far as the Government is required 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"[122] the Commissioner stated that "the indigenous and tribal people are regularly consulted on matters relating to their habitat. He refers to the meetings between the Ministry of Regional Development and the traditional authorities of the various indigenous and tribal tribes concerning issues related to development of their respective areas. He also mentioned that it is not clear whether, after the Saramaka judgment, the State has granted any concessions for timber in the areas which are perceived as tribal land.[123] According to the Commissioner, a model is being developed concerning the concept of Free, Prior and Informed Consent (FPIC), to which he refers as the "FPIC Protocol". The creation of a mechanism on benefit sharing is also set in motion by the State. With regard to this mechanism, the State is also considering a way in which the people in the interior can benefit directly, besides the general benefits resulting from the activities of the multinationals. It should be noted that the consultation mechanism of FPIC as well as the conducting of ESIAs need a legal basis in national law, which is not the case yet".

e) As regards the obligations "to ensure that environmental and social impact assessments are conducted by independent and technically competent entities in order to minimize the damaging effects such projects may have upon the social, economic and cultural survival of the Saramaka people" [124], the Commissioner stated that "these are conducted before the start of projects in the hinterland. The State hires consultants to perform these impact studies and the National Institute concerning the environment and development (NIMOS)[125] is in charge of evaluating the ESIAs. According to the Commissioner several ESIAs have been conducted recently by various multinationals, which were evaluated by

[120] *Ibid.*
[121] Statement by the Agent of the State of Suriname at the hearing of 28 May 2013 in Costa Rica.
[122] IACtHR, *Case of Saramaka People v. Suriname*, Ser. C No. 172, Judgment of November 28, 2007, para. 194.
[123] Compare with: Request for Consideration of the Situation of the Saramaka People of Suriname under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures submitted by the Association of Saramaka Authorities and the Forest Peoples Programme, 22 January 2012, paras. 29-33.
[124] IACtHR, *Case of Saramaka People v. Suriname*, Ser. C No. 172, Judgment of November 28, 2007, para. 194.
[125] Dutch: Nationaal Instituut voor Milieu en Ontwikkeling in Suriname (NIMOS)

the NIMOS. He also mentions that it is not clear whether the multinationals meet the requirements of such ESIAs before starting their activities.

f) Unfortunately, the Commissioner did not provide information on the question whether the Government has adopted legislative, administrative and other measures necessary to provide the Saramaka people with adequate and effective resources against acts that violate their rights to the use of their property.[126]

The description above reveals four main issues, which according to the Commissioner complicate the implementation of the Judgment: 1) the lack of overall consensus among the indigenous and tribal people on certain issues; 2) the fact that the State is in favour of adapting its legislation in line with the *Saramaka* judgment through an integral approach, thus solving the issue for all indigenous and tribal peoples of Suriname; 3) the fact that Suriname, while implementing the *Saramaka* decision, also wants to keep in mind the national interests of all its citizens as well as the principles and rules of the parliamentary democracy; 4) the fact that the current Constitution of Suriname possibly needs to be revised.

5.2. Consequences of delayed and partial implementation of the Saramaka Judgment

In 2012, in their request to the CERD, the representatives of the Association of Saramaka Authorities and the Forest People Programme stated that "Suriname's protracted refusal to take any meaningful action to implement the judgment perpetuates and exacerbates [their] suffering and the denigration of the basic cultural and spiritual values held by the Saramaka. The same may also be said for all indigenous and tribal peoples in Suriname, who are all in the same position and who have all strived for recognition of their rights for many decades only to be rebuffed, frustrated and denied at every opportunity by the State."[127] In 2016, the lack of full compliance with the Courts' rulings continues to affect the physical and cultural survival of the Saramaka communities as well as the environment and natural resources in the areas concerned.

Moreover, the lack of compliance by the State undermines the trustworthiness of the State. The Court, in its consecutive monitoring reports, had to conclude over and over again that the failure to implement its Judgments constitutes a violation of Suriname's international treaty obligations. Moreover, the Court had to remind Suriname that according to international law, states cannot invoke their domestic laws to escape pre-established international responsibility.[128]

Finally, as formulated by Kirilova-Eriksson: 'Needless to say, substantial delays and unsolved cases may create a high number of repetitive cases and thereby jeopardize the Court's effectiveness in the long run.'[129]

[126] IACtHR, *Case of Saramaka People v. Suriname*, Ser. C No. 172, Judgment of November 28, 2007, Para. 194.
[127] Request for Consideration of the Situation of the Saramaka People of Suriname under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures submitted by the Association of Saramaka Authorities and the Forest Peoples Programme, 22 January 2012, paras. 34-35.
[128] Article 27 Vienna Convention on the Law of Treaties, in force since 27 January 1980. Suriname acceded to this Convention on 31 January 1990.
[129] M. Kirilova-Eriksson, *At the Service of Human Rights, The contribution of the Human rights Bodies of the OAS to the Protection of Indigenous Peoples' communal Property*, Working Paper 2014:5, Uppsala Faculty of Law, 2014, p. 244.

5.2.1 Kaliña and Lokono Peoples v. Suriname

The Court's Judgment in the *Kaliña and Lokono Peoples case* (2015) constitutes such a repetitive case against Suriname. On behalf of the Kaliña and Lokono people of the Lower Marowijne River, eight traditional leaders, the Association of Indigenous Village Leaders in Suriname and the Lower Marowijne Indigenous Lands Rights Commission filed a petition to the Commission of the Inter-American Court of Human Rights (IACHR) on February 16, 2007.[130] The Commission referred this case to the Inter-American Court of Human Rights (IACtHR) on January 28, 2014.[131] In 2015, the Inter-American Court on Human Rights (IACtHR) issued its judgment on the merits, reparations and costs in the case of the *Kaliña and Lokono Peoples v. Suriname.*

The Kaliña and Lokono peoples are known as the "Lower Marowijne Peoples". Their complaints concern alleged violations of their territorial rights resulting from the establishment of three nature reserves and mining operations, as well as granting property titles over parts of their lands to third parties. The Kaliña and Lokono were unable to bring their grievances before national authorities since they do not possess legal personality and recognition of their collective land rights.[132] The IACtHR ruled that Suriname was responsible for violations of the right to recognition of juridical personality (Art. 3), the right to collective property and political rights (Art. 21 and 23) and the right to judicial protection (Art. 25).[133]

With regard to the right to collective ownership, the Court concluded that the State's failure to delimit, demarcate and grant title to the territory of the Kaliña and Lokono peoples – like in the Saramaka case - violated the right to collective property recognized in Article 21 of the American Convention and the obligation to adopt domestic legal provisions established in Article 2.[134] The Court furthermore indicated that the State should also respect the rights of Maroon communities in the area.

The case is also similar to the *Saramaka* judgment, because it concerns a lack of recognition of the juridical personality which in its turn prevents the recognition of the collective ownership of their ancestral territories.[135] Therefore, it is not surprising that the Court follows the same reasoning as it did in the *Saramaka* judgment, by declaring that the State has to grant the Kaliña and Lokono peoples legal recognition of collective juridical personality, delimit and demarcate the traditional territory of the members of the Kaliña and Lokono people, as well as grant them collective title to that territory and ensure their effective use and enjoyment thereof, taking into account the rights of other tribal people in the area and create a community development fund for the members of the Kaliña and Lokono people.[136]

---

[130] http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf , p.4
[131] Ibid, p. 6
[132] IACtHR, Case of the *Kaliña and Lokono Peoples v. Suriname*, Official Summary Issued by the IACtHR, Judgment of November 25, 2015.
[133] *Ibid.*, paras. 1-3.
[134] http://www.corteidh.or.cr/docs/comunicados/cp_01_16_eng.pdf
[135] In contrast with the *Saramaka* judgment, an on-site visit to Suriname was conducted by the Inter-American Commission in this case. The purpose of the on-site visits to Member States by the Commission is to conduct an in-depth analysis of the general situation and/or to investigate a specific situation.
[136] IACtHR, Case of the *Kaliña and Lokono Peoples v. Suriname*, Judgment of November 25, 2015, Merits, Reparations and Costs, paras. 5-11.

Furthermore, the State has to establish, through the competent authorities, how the territorial rights of the Kaliña and Lokono people will be protected in cases in which the land claimed is owned by the State or by third parties, and take the appropriate measures to ensure the access, use and participation of the Kaliña and Lokono people in the Galibi and Wane Kreek Nature Reserves, as well as take the necessary measures to ensure that no activities are carried out that could have an impact on the traditional territory, in particular in the Wane Kreek Nature Reserve. The State should also implement sufficient and necessary measures to rehabilitate the affected area in the Wane Kreek Nature Reserve and implement the necessary inter-institutional coordination mechanisms in order to ensure the effectiveness of the measures established above, within three months.[137]

Importantly, the Court reaffirmed the Saramaka criteria and stated in operative paragraph 16 that:

> *The State shall take the necessary measures to ensure: (a) effective participation processes for indigenous and tribal peoples in Suriname; (b) the execution of social and environmental impact assessments; and (c) the distribution of benefits, as appropriate, as established in paragraphs 305.d of this Judgment.*[138]

This paragraph illustrates clearly that the implementation of this judgment is closely tied to the implementation of the *Saramaka* judgment and the recognition of indigenous and tribal peoples rights in the whole of Suriname, especially regarding the granting of collective titles to ancestral territories but also in relation to the recognition of juridical personality and rights to effective participation and consultation. The Presidential Commissioner indicated that the process to enact legislation on a collective land rights regime is still in progress.

The Court found in the case of the *Kaliña and Lokono Peoples* that pursuant to its case law, as well as other relevant international standards, domestic remedies have to be applied in order to ensure the human rights of indigenous peoples in Suriname.[139]

5.2.2. Maho Indigenous Community v. Suriname

A third – also repetitive – case, that is still pending before the Court, concerns the Kaliña indigenous community of Maho and the Association of Indigenous Village Leaders in Suriname, who filed a complaint to the Inter-American Commission on Human Rights on December 16, 2009.[140] The IACHR declared this petition admissible on March 19, 2013.

In this case, the petitioners argue that the State has allegedly granted concessions and permits to third parties to allow them to exploit the land, territory and natural resources that the Community has traditionally occupied and used.[141] According to information obtained from the

---

[137] http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf , p. 83-84.

[138] IACtHR, Case of the *Kaliña and Lokono Peoples v. Suriname*, Judgment of November 25, 2015, Merits, Reparations and Costs, para. 16. Furthermore, the Court stated in paragraph 17, that: "The State shall implement permanent programs or courses on the human rights of indigenous and tribal peoples, as established in paragraph 309 of this Judgment."

[139] IACtHR, Case of the *Kaliña and Lokono Peoples v. Suriname*, Official Summary Issued by the IACtHR, Judgment of November 25, 2015.

[140] Report No. 9/13, Petition 1621-09, Admissibility *Maho Indigenous Community v. Suriname*, March 19, 2013, p.1

[141] *Ibid.*

Bureau for land rights,[142] the status quo is that the State and the Kaliña indigenous community of Maho and its members (hereinafter "Maho Indigenous Community) are in the process of a friendly settlement in accordance with Article 40 of the rules of procedures.

In this regard, the State of Suriname has communicated to the Commission that it is in favor of finding a solution for the land rights issues and to hold a dialogue with the Maho Indigenous Community. On October 21, 2015, a meeting was held in Washington D.C., and the IACHR was informed about the status quo of the friendly settlement. According to the Bureau for land rights, there is currently a proposal of the Maho Indigenous Community, which is being discussed by the appropriate institutions of the State. The Bureau indicated that both the State and the Maho Indigenous Community will discuss this proposal on a date to be determined later.

6. Concluding remarks

This contribution focused on the indigenous peoples' land rights judgments concerning Suriname and in particular on the *Saramaka People v. Suriname* case and on the obstacles hampering the full implementation of this judgment. Considering the innovative character of the Courts' rulings concerning indigenous land rights, it is plausible that their practical implementation on national level takes some time. However, almost ten years have passed since the Saramaka Judgment and the Government of Suriname has still not managed to fully implement any of the substantive parts of the ruling.

Among other things, it has been unable to provide the legislative basis for recognising and securing indigenous and tribal rights in Suriname. This situation remains, notwithstanding international expertise offered by the UN Special Rapporteur; several detailed monitoring compliance reports by the IACHR; involvement of the CERD; questions from other States in the context of the Universal Periodic Review system; national Governmental plans, conferences and measures; and even the submission to the State for its consideration of several draft laws on indigenous and peoples' rights drafted by indigenous and tribal peoples and their organisations.

From the interview with the Surinamese Presidential Commissioner it becomes clear that, 10 years after the Judgment, Suriname is still willing to comply with its international treaty obligations, but that it considers 1) compliance with the judgments of the IACtHR an issue bringing "many challenges for Suriname"; 2) that the government of Suriname tries to reconcile two disparate elements, insisting "on a proper and satisfactory solution without creating social turmoil"; 3) that the Government, so far, has been unable to work out in visible legislative measures the acknowledgment of the collective rights of the indigenous and tribal people within the legal system.

The ongoing lack of full compliance with the Courts' ruling affects the physical and cultural survival of the Saramaka indigenous communities as well as the environment and natural resources in the areas concerned. Moreover, it undermines the trustworthiness of the State and creates repetitive cases – the case of the *Kaliña and Lokono* people and the *Maho Indigenous Community* case. All three cases reveal a structural problem involving a lack of recognition in domestic law of

[142] See note 111.

the juridical personality and right to collective property of indigenous and tribal peoples in Suriname.

A positive development though seems to be a growing alertness within the Government that the development of measures necessary to implement the Judgment "will certainly have to be done in dialogue with the people concerned". This development can be discerned, for instance, in the fact that the State and Maho Indigenous Community are in the process of a friendly settlement in accordance with Article 40 of the rules of procedures and that the State of Suriname has communicated to the Commission that it is in favor of finding a solution for the land rights issues and to hold a dialogue with the Maho Indigenous Community. It also shows from the fact that, as pointed out by the Commissioner, "the indigenous and tribal people are regularly consulted on matters relating to their habitat", for instance in meetings between the Ministry of Regional Development and the traditional authorities of the various indigenous and tribal tribes concerning issues related to development of their respective areas. Moreover, a model is being developed concerning the requirement of Free, Prior and Informed Consent ("FPIC Protocol") and the Government is working on a mechanism of benefit sharing. Unfortunately, the consultation mechanism of FPIC as well as the conducting of ESIAs need a legal basis in national law, which is not the case yet.

'Achievements on the international level may be curtailed by unwilling governments as well as domestic authorities and courts. Decisions of international monitoring mechanisms at times and on different occasions have been seen by some governments as an intrusion in their domestic affairs.'[143] This observation by Maja Kirilova – Eriksson bears specific relevance to the implementation processes of rulings concerning indigenous peoples. In those cases the lack of political will is a problem driven by economic and political gains associated with indigenous peoples, their lands, and natural resources, and cannot be curtailed by the OAS system. However, the very protracted and cumbersome implementation process following the *Saramaka* Judgment is not only an indicator of an 'unwilling government', but ultimately also of the weakness of the human rights system of the OAS.

According to Article 27 of the Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Moreover, as follows from articles 1 and 2 of the IACHR: "Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms." These rules of international law make crystal-clear that all arguments put forward by the Government of Suriname in order to explain its failure to implement the rulings of the Court, cannot negate the fact the Suriname is continuously violating its international treaty obligations. At this point however, the lack of strong compliance mechanisms within the OAS system becomes painfully visible. As pointed out in paragraph 3.5, in case of failure to comply with the IACtHR judgments in contentious cases of breach of the ACHR or the Court's order of provisional measures, there are no effective tools to enforce sanctions: the American Convention does not confer any duty to a political body within the OAS to ensure execution of the Court's judgments.[144]

[143] M. Kirilova-Eriksson, *At the Service of Human Rights, The contribution of the Human rights Bodies of the OAS to the Protection of Indigenous Peoples' communal Property*, Working Paper 2014:5, Uppsala Faculty of Law, 2014, p. 77.
[144] *Ibid.*, p. 82.

In 2010, Richard Price concluded as follows: "Suriname has done little to abide by the Court's judgment, other than to assert its good intentions. It has complied with the easiest of the rulings..." and he continued: "The Saramakas and other Suriname Maroons will need to be vigilant in seeing that Suriname implements the Judgment of 2007 (and the Interpretive Judgment of 2008). The coming several years will be pivotal, on the ground in Suriname, in determining whether the rulings of the Court in San José have the desired local effects. The Saramaka leaders, negotiating with the government of Suriname will need to draw on all their considerable political and warrior skills to assure that their abstract legal victory brings the desired concrete benefits to their long-suffering but proud people."[145] In 2016, unfortunately, these conclusions have not (yet) lost their validity.

[145] Richard Price, *Contested Territory: The Victory of the Saramaka People vs. Suriname,* Prepared for Simpósio Internacional: Territórios Sensíveis: diferença, agência e transgressão, Museu Nacional, Rio de Janeiro, 15 June 2009.