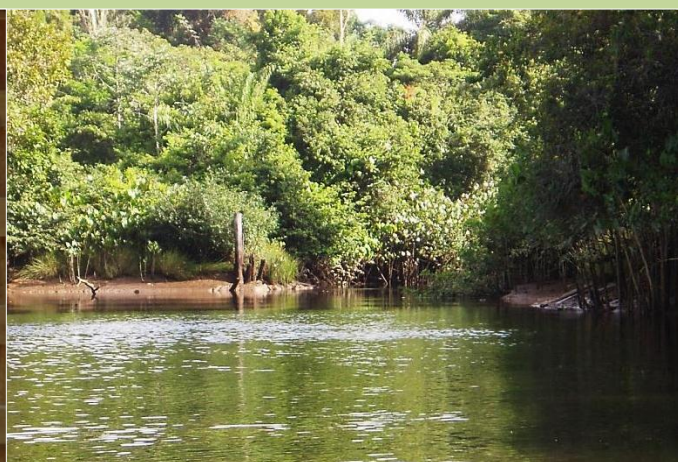


AN ANALYSIS OF INTERNATIONAL LAW, NATIONAL LEGISLATION, JUDGEMENTS, AND INSTITUTIONS AS THEY INTERRELATE WITH TERRITORIES AND AREAS CONSERVED BY INDIGENOUS PEOPLES AND LOCAL COMMUNITIES

REPORT NO. 6

AMERICAS REGIONAL



Stockholm Resilience Centre
Research for Governance of Social-Ecological Systems



KALPAVRIKSH



Environmental
Action Group

NATURAL JUSTICE

**The ICCA
Consortium**

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

*Permanent Forum on Indigenous Issues
Report on the Sixth Session
25 May 2007*

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Cover Photos (clockwise, from top left): Charles (Chuck) Commanda, a traditionally trained Algonquin canoe builder, constructs his canoes using traditional materials and techniques along with a few modern aids (Canada). © Peigi Wilson

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

Eco-Red Lickan Antai in Atacama, Chile. © www.travolution.org

Guna boats (Panama). © Jorge Andreve

The IX Indigenous peoples’ march against the construction of the road through the TIPNIS, in their rise to the Andes (Bolivia). © www.ftierra.org

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GLOSSARY

CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CSNR	Central Suriname Nature Reserve
FPIC	Free Prior and Informed Consent
ICCAs	Indigenous territories and community conserved areas
IIRSA	Regional Infrastructure Initiative of South America
ILO	International Labor Organization
LBB	Forest Service
NBSAP	National Biodiversity Strategy and Action Plan
NGO	Non-governmental Organization
NR	Nature Reserves
PN-ANMI	National Park and Natural Integrated Management Area
PoWPA	Programme of Work on Protected Areas
RCAP	Royal Commission on Aboriginal Peoples
REDD+	Reducing Emissions from Deforestation and forest Degradation and enhancing forest carbon stocks
RGB	Ministry of Physical Planning, Land and Forest Management
SINAP	National System of Protected Areas in Panama
TCOs	Lands of Original Communities
TIPNIS	Indigenous Territory and National Park Isiboro Secure
TIOCs	Original Indigenous Peasant Territories
UNDRIPs	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Program
VIDS	Vereniging van Inheemse Dorpshoofden Suriname

EXECUTIVE SUMMARY

Indigenous peoples territories and community conserved areas (ICCAs) play an essential role as a basis for the spiritual and cultural identity and the sustainable livelihood (the *buen vivir*) of Indigenous Peoples and local communities. They also form an effective and rights-based approach to biodiversity conservation, and contribute significantly to other environmental values like climate change mitigation and adaptation, soil and water protection, and the conservation and restoration of fisheries and forest resources. Especially Indigenous lands are traditionally conserved for their ecological, social, spiritual, and life sustaining values. The recognition of Indigenous Peoples rights to conserve their lands is an important human rights' strategy by itself, but it has also proven to be a highly effective conservation strategy¹. Throughout the American continent the richest ecosystems are found in recognized or non-recognized Indigenous territories. While non-Indigenous ICCAs are far more scarce, there are some valuable experiences found in countries like Chile, Bolivia and Suriname (Aylwin 2012, Miranda et al. 2012, VIDS 2012). Especially in the latter country, the conservation practices and legal status and rights of the maroon population (descendants of escaped African slaves) are very similar to that of Indigenous Peoples (VIDS, 2012).

This report provides an analysis of studies conducted in five very diverse countries on the American continent: Canada, Panama, Suriname, Bolivia and Chile, to assess the effects of laws and policies on Indigenous territories and conserved areas. It forms a part of a larger study that undertook the same exercise in countries in Asia, Africa and the Pacific, as well as a review of international instruments and regional case law. The full collection of reports is available on the website of the Indigenous and Community Conserved Areas Consortium.²

Notably, the national level reviews included in this regional report demonstrate that formal legislation seldom recognizes or supports ICCAs. Only in Bolivia, has there been an explicit recognition of over 20 million hectares of Indigenous Peoples territories, and even in this case there are indications this policy might be discontinued despite their remaining outstanding claims over an estimated 27 million hectares (Miranda et. al., 2012). Panama has recognized Indigenous

From a traditional Indigenous perspective, all of Canada is a protected area, worthy of our respect, and any use we make of it must honour our obligations to care for the land. (Wilson, 2012)

¹ See for example Porter-Bolland, L., Ellis, E., Guariguata, M., Ruiz-Mallen, I., Negrete-Yankelevich, S. and Reyes-Garcia, V., 2011. Community Managed Forests and Forest Protected Areas, An Assessment of their Conservation Effectiveness across the Tropics. In Forest Ecology and Management, Elsevier, 2011. In press.

http://www.cifor.org/publications/pdf_files/articles/AGuariguata1101.pdf

² <http://www.iccaforum.org>

Comarcas as more or less autonomous Indigenous territories, but there is continuing confusion about the actual status of Comarca laws and regulations vis-à-vis the laws and regulations of the Panamanian State, including in the field of biodiversity conservation (Masardule, 2012). Some Indigenous Peoples in Canada have received a certain level of autonomy over their territories through comprehensive agreements, but it concerns only a fraction of the territories claimed by Indigenous Peoples and recognition has been a slow and painful legal process (Wilson, 2012). An exception is formed by the Territory of Nunavut, which is de facto ruled by the Inuit People as they have a majority in the Provincial government. This is a very relevant experience for ICCAs as the Nunavut Government has explicitly adopted several traditional Inuit concepts, rules, regulations and practices as a basis for its natural resources policy and legislation. Non-Indigenous community conserved areas are not recognized in any legislation, and with the exception of the maroon in Suriname, non-Indigenous communities seldom have the traditional governance structures and autonomy required to see their area qualified as an ICCA. One explanation might be the colonial background of non-indigenous people, with its strong emphasis on obtaining exclusive (though historically often illegitimate) individual private property rights over land, which might complicate the communal value systems and governance structures required for ICCAs. That said, there is a clear need for more analysis on the question of why non-indigenous ICCAs are so scarce on the American continent.

It should be emphasized in this respect that in the view of the authors of the five national reports Indigenous territories should be recognized as *de facto* ICCAs, even though the explicit aim of these territories is not limited to biodiversity conservation. However, the inherent spiritual relationship between Indigenous Peoples and their lands, which they consider as “Mother Earth”, or their “great home” of which they are an inherent part, triggers a strong conservation mentality resulting in effective conservation practices. While admittedly in Bolivia most of the recognized Indigenous territories (TCOs) in the highlands have suffered from degradation, it should be pointed out that many of the traditional practices applied by the Indigenous communities in the highlands, like terraces and traditional irrigation systems, effectively address such degradation (Miranda et.al., 2012).

The reports highlight that to a great extent, Indigenous communities consider their entire traditional indigenous territories as a ‘protected’ or ‘conservation’ area that is protected and conserved for future use and future generations, while respecting life and everything that has a spirit. The whole traditional territory is therefore managed by the communities in a holistic manner, and spirituality and sustainability considerations play major roles in management rules and traditions (VIDS, 2012). As the Canadian report points out: *“For Indigenous Peoples the process of monitoring and assessing the health of the land was conducted on a daily basis in the process of going through one’s routine...walking the land, hunting or gathering, drinking the water, tasting the fish or meat, judging the thickness of a hide, listening to and observing the natural world around. Traditionally Indigenous Peoples live on the land in a fashion that is much more*

intimate than do most other Canadians. The knowledge of the land from time immemorial is captured in traditional cultures and languages. The practice of them generates deeper awareness and understanding. It is an intergenerational and on-going process of gathering and sharing information that forms the basis of traditional Indigenous monitoring and assessment processes. It is a way of living harmoniously and respectfully on the land” (Wilson, 2012).

The reports also raise critical question marks on the ICCA concept itself; namely whether the holistic and sustainable use and management of indigenous territories, should now be incorporated into contemporary conservation frameworks for the sake of species and ecosystem conservation and protection, or for the sake of conserving monetary and commercial values, or governmental and enterprise powers. Reasons to counter this trend include the fact that formal conservation frameworks are currently delinked from traditional indigenous concepts of life, spirituality and sustainability. They sometimes serve very different purposes than those of the traditional indigenous concepts of territorial management. Where indigenous territories or certain areas therein are designated as ‘ICCA’ only to be able to fit them into existing conservation or development frameworks, there is a risk of taking an overly pragmatic approach to essential matters and in doing so diluting the real issues of legally recognizing and respecting indigenous peoples’ rights.

This issue is underscored with reference to Bolivia vis-à-vis the other countries in this report. In Bolivia, at least until the last Governmental period, there were relatively few conflicts between Indigenous Peoples and protected areas (Miranda et. al., 2012). Most of the conflicts that did occur concern illegal settlements by outsiders in the area or the threats of mega-projects like roads and mines. One important reason might be the clear and unconditional formal recognition of the territorial rights and autonomy of indigenous Peoples that can be found in the new Constitution of Bolivia. As stipulated in the national report, this implies that protected areas on recognized Indigenous territories have a double status, in which Indigenous Peoples are fully participating in the development and administration of the area, through their own governance structures, which are recognized as having similar jurisdiction to State structures (Miranda et.al. 2012). This status of equality can be seen as a pre-condition for genuine ICCAs. In contrast, all other countries analyzed are marked by serious and deep conflicts between Indigenous Peoples and protected areas, and Indigenous Peoples and conservation laws in general. While Indigenous Peoples’ customary laws include a large number of restrictions in natural resources use to ensure the sustainability of use, they do not accept such restrictions to be imposed on them by non-Indigenous People that have failed to recognize their rights in the first place. In countries like Suriname, overlapping and often conflicting conservation rules of customary and State law are a constant source of conflict and confusion (VIDS, 2012).

As such, the most important recommendations of this report are to recognize and ensure the effective enforcement of Indigenous Peoples’ rights, including their

territorial rights, their rights to self-government through their own traditional governance structures, and their rights to Free Prior and Informed Consent regarding any projects or activities that might affect their territories. It is recommended that Governments move away from colonialist cultural hegemony and embrace reconciliation of Indigenous cultures, laws, worldviews and epistemologies.

Furthermore, it is recommended to establish policies and regulations to recognize, protect and support ICCAs, including through awareness-raising amongst decision-makers, mobilizing sufficient financial resources, and strengthening the capacity and traditional governance institutions of Indigenous peoples and local communities. It was recommended to design a procedure that allows Governments to recognize and respect the traditional practices and initiatives of Indigenous Peoples and local communities to conserve biodiversity within their lands and territories, without the need to create new formally protected areas, and to include ICCAs as an alternative to protected areas.

Environmental and natural resources laws should be reformed to ensure greater participation of affected communities, including in particular women, and coherence with human rights. This includes reviewing protected areas systems and governance structures so that the territorial rights and lands of Indigenous Peoples and local communities are fully respected and review and resolve all outstanding conflicts in this respect, with the full involvement of traditional authorities. Provide greater financial and other capacity building support to Indigenous Peoples to facilitate their effective involvement in governance of protected areas. It should also be ensured that ICCAs and sacred natural sites are effectively protected against destructive activities like mining, monoculture tree plantations, roads and other infrastructural projects and that free trade agreements and investment treaties do not undermine Indigenous rights. The trend to privatize indigenous territories and community lands and/or grant concessions for the exploitation of natural resources by outsiders should be halted.

Moreover, it is recommended to reform policies and laws to effectively protect and promote traditional knowledge and management practices and to guarantee their effective protection against external and internal threats and promote revitalization, guaranteeing the integrity of indigenous knowledge innovation and practices as part of the cultural, social and economic integrity of Indigenous Peoples.

PART I

COUNTRY OVERVIEWS

1. COUNTRIES, COMMUNITIES AND ICCAS

To reflect the biological and cultural diversity of the continent, 5 very distinct countries in the Americas were selected for this review: Canada, Panama, Chile, Bolivia, and Suriname.

1.1 Canada

With 9,984,670 square kilometers, Canada is the second largest country in the world. It has one of the planet's lowest population densities, with a population of 34,711,257 inhabitants, and much of this population lives within 200 kilometers of the border with the USA. It is estimated there are approximately 1.17 million Indigenous people in Canada (Statistics Canada, 2010b), but this has never been accurately determined, as many Indigenous people do not participate in the national census (Toronto Star 2008). There is great diversity amongst the approximately 60 historic nations of Indigenous Peoples of Canada. This includes the Inuit, which have large land claims in the North of the country, the Métis, First Nations, which include the Mi'kmaq, Innu, Atikamekw, Cree, Anishnaabe, Lakota, Blackfoot, Dene, Gwich'in, Nuu-chah-nulth, and Haida, and non-status First Nations. A total of 18 First Nations have signed comprehensive land and self-government agreements with the Canadian Government. An additional 2 First Nations have self-government agreements. Otherwise First Nation governments operate under the colonial provisions of the *Indian Act*. Non-status Indians are those individuals who self-define as First Nation people and who can often demonstrate direct Indigenous lineage but may be denied recognition for reasons of administrative law. This is particularly the case for Indigenous women, who were excluded for several generations from passing on their inherent rights to their children if they married a non-Indigenous man. The Métis People are of mixed Indigenous and European heritage, predominately French fur traders but also British employees of the Hudson's Bay Company. They developed a unique culture and language and they are considered to be Aboriginal people in Canadian domestic law and as Indigenous Peoples by Canada in international discussions. As a result of historic injustices, the Métis People today have very little land base (Wilson, 2012).

Historically Indigenous Peoples included subsistence-based hunters, gatherers, fishers and farmers. Most, though not all, were nomadic. Nowadays, young Indigenous people are increasingly taking up employment in fields such as teaching, engineering, law, science, and business, but a myriad of detrimental social conditions has meant that unemployment is more than twice the comparable rate for the rest of the Canadian population. Moreover, assimilation policies threaten cultural and linguistic diversity amongst Indigenous Peoples. While Indigenous Peoples in Canada are well-defined with a traditionally close and profound relation with an equally well-defined traditional territory, and traditional Indigenous cultural values promoted conservation, by virtue of the fact that the Canadian state generally does not recognize Indigenous rights to self-government over land and resources, Indigenous Peoples are constrained from

exercising their traditional cultures and are not the primary decision makers regarding the management of protected sites or species. From the perspective of the Canadian government, this means there are no ICCAs in Canada. For many traditional Indigenous Peoples, Canada's perspective is little hindrance to the ongoing care for the land exercised by Indigenous Peoples since time immemorial. While driven underground, Indigenous Peoples continue to govern their traditional territories via community-level institutions and in keeping with traditional Indigenous laws. Outside of the constitutionally defined Indigenous Peoples, there are no 'local communities' recognized in Canadian law whose traditional cultural values promote conservation of indigenous biological diversity, even though there are some non-Indigenous people and organizations that undertake work to conserve lands (Wilson, 2012).



A healthy specimen of black bear, Canada. © Sandra Lucas

1.2 Panama

The Republic of Panama is located between Central and South America. It covers 78,517 square kilometers and has a population density of 44 inhabitants per square kilometer. Its total population is 3,405,813 inhabitants. It has a privileged position as far as standard indices of economic growth and development is concerned, having the highest human development index of Central America and the 6th highest in Latin America (UNEP, 2011). It is one of the most biodiverse countries in the region. The Constitution

of Panama recognizes and respects the ethnic identity of national Indigenous communities, and includes provisions that promote programs and institutions to develop the material, social and spiritual values of their cultures, including their languages. The Indigenous peoples of Panama include the Ngabe, the Guna, the Embera, the Wounaan, the Bugle, the Naso and the Bri-Bri, who represent approximately 285,231 persons, a little less than 10% of the Panamanian population. A little over half of Indigenous People live in Indigenous territories called “Comarcas”, which cover 20% of the territory of Panama, some 15,103 km². It should be considered an important success that the majority of the Indigenous Peoples in Panama has succeeded to obtain a legal recognition of its territories and its historic rights in this respect. However, part of their territories are still located outside Comarca’s in non-legalized lands, and other territories are now occupied by protected areas or recent urbanizations.

All Indigenous peoples in Panama have their own administrative structure, which are based on their General Congresses, where the final decision about any initiative is taken through full participation of the delegates of all communities, headed by the traditional authorities of each community. Some of the Peoples, like the Ngobe-Bugle, the Embera-Wounaan and the Gunas of Madugandi also have regional congresses, but the highest authority is with the General Congress.

There are no non-Indigenous community conserved areas in Panama that can be compared with the strong traditional conservation experience in the indigenous territories (Masardule, 2012).

1.3 Chile

Chile has a population of approximately 17 million people and covers 756,950 square kilometers stretched out over a length of 4,270 kilometers in the extreme South of the Americas. Due to its length and geographical diversity it represents a significant diversity of ecosystems and landscapes. An estimated 1 million people, some 6.6.% of the population, identifies as Indigenous. There are 9 main Indigenous Peoples, of which the Mapuche are by far the most numerous. Other Peoples include the Aymara, the Atacameña (or Lickanantay), the Diaguita, the Quechua, the Colla, the Rapa Nui, the Kaweskar and the Yagan. The economy is currently undergoing rapid economic growth as a result of an aggressive national policy of opening up to international markets and investments, which has included the ratification of more than 50 free trade agreements. However, despite the increased wealth Chile is marked by significant inequalities in terms of gender, and access to land, health and education. The economic strategy based on exploitation of the natural resources in the country has also had a significant environmental impact (Arce, 2012).

The rural Indigenous population lives in close relationship with the land and its natural resources, but most of their territorial rights remain unrecognized. The Mapuche

people, for example, live on 5% of their original territory. Large tracks of Indigenous territory were privatized and sold to large landholders in the 19th and 20th century. This, and the exploitation and destruction of natural resources by economic activities like mining and the expansion of monoculture tree plantations, has seriously compromised the livelihoods of these Indigenous Peoples. Non-Indigenous communities are faced with similar challenges as far as their communal conservation efforts are concerned. Many rural people have ended up with properties of land that tend to be too small for communal conservation initiatives.



Eco-Red Lickan Antai, Atacama, Chile (c) www.travolution.org

Different categories of ICCAs could be identified in the country: a) ICCAs that do not have any relationship with protected areas, in particular recognized Indigenous territories and lands where local communities have been granted a significant level of governance; b) ICCAs that are the result of co-management arrangements of protected areas, although it should be cautioned that many of these are not strictly ICCAs in the sense of the Indigenous peoples and local communities have limited governance over the area; and c) unrecognized ICCAs, often within the limits of protected areas, where the communities and Indigenous peoples have *de facto* conserved their lands but where they are still virtually excluded from the formal decision-making structures, and often live in a conflict situation with the formal park authorities (Aylwin, 2012).

1.4 Bolivia

Bolivia is located in the center of the South American continent, at a geographical, geological and climatic intersection of the continent, covering Amazon, Andean, Chaco

and cerrado ecosystems. It has a surface of 1,098,581 square kilometers and its highest peaks reach 6452 meters high. It has a total population of slightly over 10 million people, of which 72% is concentrated in the large cities. Large regions of the country have a very low population density. It has one of the lowest GDPs per capita of the continent, approximately 2,800 USD per capita per year, compared to 8,200 USD for Latin America. Around 64% of the population lives below the poverty line. Current economic development strategies focus on the exploitation of fossil fuels, as well as large infrastructural projects, the expansion of monocultures and forestry, which all form a threat to biodiversity and Indigenous cultures. At this moment, the Government is planning at least 17 mega-projects like dams, roads and mines, including as part of the regional Infrastructure Initiative of South America (IIRSA).

There are 36 Indigenous nations in the country, which constitute 62% of the population. While the Bolivian State calls itself plurinational, it also includes a clause in its constitution that states that “The entire human collectivity that shares the culture, language, historic tradition, institutions, territoriality and cosmovision, which existed before the Spanish colonial invasion is nation and original Indigenous peasant People.” It has been pointed out by Indigenous rights activists that this definition of Indigenous peoples indicates a homogenization of Indigenous cultures and denies the existence of non-agricultural Indigenous Peoples, which is seen as a threat to the identity of some of the smaller and/or non-agricultural Indigenous Peoples of the lowlands. Many of the indigenous Peoples in the lowlands still foster a communal lifestyle, while many of the Indigenous Peoples in the Andean highlands live a more individual peasant lifestyle. The most populous Indigenous Peoples, the Aymara and the Quechua, live in the highlands and represent more than half of the Indigenous population. There has been a strong deculturization amongst these peoples, but they still foster some important traditional land management practices like the construction of terraces, traditional water and soil management practices, and the conservation of traditional seeds and crop varieties.

While the term ICCA is not used, Bolivia has started to recognize “Lands of Original Communities” (TCOs) in 1994. Since the adoption of the new Constitution in 2009, this concept has been replaced by the broader concept “Original Indigenous Peasant Territories” (TIOCs). These entities are a formal recognition by the State of the autonomy of the relevant Indigenous communities and allow them to manage their territories through their own governance structures. The concepts respect the Indigenous perspective on the concept of ‘territory’, which unites the aspect of political control, power and administration with the exercise of property rights over the land and the natural resources that can be found on the land. Thanks to the traditional management practices of the relevant Indigenous communities, all the TCOs/TIOCs of the lowlands include ecosystems of high biodiversity values and high cultural values, and as such they meet all the criteria of an ICCA. Several of the TCOs/TIOCs in the highlands have suffered from a severe degradation of ecosystems due to intensive use of the land, but there are at least three TCOs in the highlands that are of great biodiversity value as well. It should be emphasized that TCOs and TIOCs are not conservation areas in the

strict sense. However, most TCOs represent a high biodiversity and ecological stability and a significant integrity of ecosystems due to the traditional interaction between Indigenous cultures and the land. For that reason, fourteen areas have the double status of TCO and protected area.

All Indigenous Peoples in Bolivia have their own traditional authorities and in a number of cases, including in particular the above-mentioned TCOs/TIOCs, these authorities have been recognized by the State and given formal administrative power. Traditional systems of authority and customary laws are also recognized in the Bolivia constitution. Indigenous Peoples also have their own communal norms and rules for the management of natural resources, outlining shared responsibilities and the mutual sharing of benefits. Many of these rules are part of an oral tradition based on customs and use (Miranda, 2012).

1.5 Suriname

The Republic of Suriname is situated on the north coast of South America and is bordered by the Atlantic Ocean, French Guiana, Guyana and Brazil. Its total area is approximately 164,000 square kilometers. The total population of Suriname is approximately 492,000 (census 2004/2007). The population is ethnically and religiously very diverse, consisting of Hindustani (27.4%), Creoles (17.7%), Maroons ('Bushnegroes', 14.7%), Javanese (14.6%), mixed (12.5%), indigenous peoples ('Amerindians', 3.7%) and Chinese (1.8%) (ICCA Consortium/VIDS, 2012). The four most numerous indigenous peoples are the Kali'na (Caribs), Lokono (Arawak), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian indigenous peoples in the South West and South of Suriname, including the Akurio, Wai Wai, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. Suriname also has a substantial (almost 15%) population of 'maroons' or 'Bushnegroes', who are descendants of African slaves who fought themselves free in colonial times and were able to establish communities in the Interior, where they have been living for the last 300 years. They live tribally, according to ancestral cultures and traditions, under comparable circumstances as the indigenous peoples. There are six maroon tribal peoples in Suriname: the Saamaka, Okanisi, Paamaka, Matawai, Kwinti and Aluku. The Inter-American Court of Human Rights has stated that its jurisprudence on indigenous peoples' rights is also applicable to these tribal peoples, as they share distinct social, cultural and economic characteristics that "require special measures under international human rights law in order to guarantee their physical and cultural survival".³

The livelihood strategies of these peoples are diverse, but fishing, hunting, logging, agriculture and the collecting and harvesting of non-timber forest products are the most important means of subsistence. As elsewhere in the world, the areas identified as most rich in biodiversity and containing unique ecosystems in Suriname, are almost always

³ http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

located within the traditional territories of indigenous peoples. In spite of increasing threats and absence of effective support, this holistic management of indigenous territories is continued by the involved communities through traditional knowledge and ancestral management systems and practices. While the designation 'ICCA' is not well-known (even unknown) or used in Suriname, there are many examples of cases/situations throughout the country that in practice match the criteria of an ICCA. However, the crucial role and contribution of indigenous peoples in ecosystem and biodiversity management has not been legally or practically recognized in the nature conservation regulatory framework in Suriname (VIDS 2006; ICCA Consortium/VIDS, 2012).



Part of the biodiversity rich Kaboeri Creek in West Suriname. (c) VIDS

Indigenous lands and territories are managed through customary rules and traditions within the overall framework of the national indigenous authority structure VIDS, and each village's decision-making structures, institutions, and processes. The Association of Indigenous Village Leaders in Suriname, VIDS (*Vereniging van Inheemse Dorpshoofden in Suriname*) is the traditional authority structure at the national level. The VIDS board is composed of representatives from the various regions in which VIDS is organized, namely East, West and Wayambo, South Trio, South Wayana and Central/Para. At 'macro-regional' level there are formal or informal traditional governance structures of the communities, in which collective decisions concerning the region are taken. At

village level there are the traditional authority structures consisting of the village leader (chief or 'captain') and *basjas* ('assistants'), jointly called the 'village council' (*dorpsbestuur*). Issues concerning the larger community are always discussed and decided upon in open village meetings (*dorpsvergadering* or *krutu*) for which everyone is invited. In addition to these institutional structures there are the actual rules for managing the indigenous lands, territories and resources. Usually, these are customary rules that are not written down but are passed along orally, from elders to youngsters or from peers to peers (e.g. hunters among each other). Stories and descriptions of incidents and experiences are the most common ways to transmit the rules. Overarching everything is also the deep-rooted binding with, and respect for the land and nature, which is expressed in many stories including on the genesis of humankind, and in traditional beliefs, customs and ceremonies to be undertaken to pay due respect to the earth.

In spite of the centuries-old, vibrant and functional traditional governance systems in all indigenous and maroon communities, the administrative legislation of Suriname does not know traditional authorities. The only formal provision related to traditional authorities is the issuance of a ministerial decision (*beschikking*) of the Minister of Regional Development on behalf of the Government, in which the authorities, chiefs (*kapitein*) and assistants (*basja*), are individually 'recognized' and provided with a modest monthly stipend. Nowhere are the tasks, powers and responsibilities of traditional authorities described in formal legislation. Thus, there are two systems in place regarding local governance, the functional traditional system and the not-so-functional administrative decentralized system based on political party representation (VIDS, 2012).

PART II

LEGAL AND INSTITUTIONAL ANALYSIS

2. LAWS & JUDGEMENTS

2.1 Land, Freshwater and Marine Laws

Several countries in the region, especially Bolivia and Chile, have ratified Convention no 169 of the International Labor Organization, which has important implications for Indigenous rights. In many countries with legal systems of Spanish colonial origin, Conventions are directly binding as soon as they are ratified, which means that the different clauses are formally legally binding. The jurisprudence mentioned below includes several cases where direct reference has been made to this international treaty. Article 14 of this Convention recognizes rights to property and possession over lands that are traditionally occupied by Indigenous Peoples and the International Conference of ILO in 2009 has clarified that this provision also apply to lands that have not been formally recognized as Indigenous property (Aylwin, 2012). The Convention also recognizes the rights of Indigenous people to use and participate in the management and conservation of natural resources on their territories. These rights are reiterated in the more recent UN Declaration on the Rights of Indigenous Peoples. This declaration does not have legally binding status by itself, but many human rights lawyers see it as an instrument that reflects a growing number of principles of customary international human rights law. However, in practice both instruments are seldom applied.

The Canadian *Constitution Act, 1982*, Section 35, “recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal Peoples”. Treaty rights include those that currently exist by way of land claim agreements or which may be acquired in the future. Aboriginal title is considered a ‘*sui generis*’ interest in land, which may only be transferred to the Crown via treaty (*Calder et al. vs. Attorney General of British Colombia*, 1973). The legal regime for Inuit, Métis and First Nation Peoples accord different levels of respect for their Indigenous rights. While only one Métis group holds rights under a comprehensive agreement for land and self-government, all Inuit have negotiated comprehensive agreements for land and self-government. In the Territory of Nunavut, the Inuit are presently the largest portion of the population, so they have control of this government. They agreed to the creation of a Nunavut Territory with its own legislative assembly that operates on the same principles of other territorial legislative assemblies in Canada. For the majority of First Nation Peoples the Crown is only prepared to recognize limited authority to govern or manage small parcels of land allocated to First Nation Peoples from their original vast traditional territories. Most lands in Canada are held under fee simple, except for First Nation reserve lands and Crown lands. The provinces have exclusive jurisdiction with respect to property rights outside of reserve lands or Indigenous lands held under comprehensive agreements. This includes *de facto* rights to determine tenure rights on lands that remain under Aboriginal title (Wilson, 2012).

The Environmental Planning Law of the National Territory in Panama does not include a

specific reference to ICCAs. However, it does emphasize that social, cultural and ecological aspects should be taken into account in environmental planning, which implies that traditional practices of sustainable use and conservation, which are closely related to cultural and social aspects, are implicitly recognized. The law also states that Indigenous Comarca's have the duty to contribute to the protection and conservation of the natural resources within their territories, in accordance with the parameters established by the national Environmental Authority together with the Indigenous authorities of the Comarca's, in accordance with existing laws (Masardule, 2012).

Chilean law strongly protects individual property rights, and prioritizes them over communal land tenure. According to law 19.253, the State formally has a duty to protect Indigenous lands, and such lands are excluded from taxes and cannot be sold or alienated, unless it is between members of the same tribe. The law also established a Fund for Lands and Waters which is supposed to grant subsidies for the acquisition of additional lands when indigenous communities do not have sufficient land at their disposal and finance the resolution of conflicts over Indigenous lands. However, this law does not explicitly recognize Indigenous territorial rights, it merely promotes the establishment of Indigenous lands where they can 'develop' themselves, for example through forestry activities, and it does not provide legal protection for Indigenous Peoples that want to limit or prohibit the extraction of natural resources in their territories. Only in the case of water the law provides for restitution of rights – there is a possibility for the acquisition of water rights through the above-mentioned Fund, which has in reality been used by some of the Andean Indigenous peoples to reconstitute their ancestral water rights. The Fishing and Aquaculture Law of 1991 includes a provision to establish reserves for artisanal fishing by communities, which has formed the basis for a legal initiative that resulted from a strong campaign by the Lafkenche Mapuche to recognize "Marine and Coastal Spaces of Aboriginal Peoples" (Ley No. 20.249). This Law was adopted in 2008 and formally recognizes marine areas that are subject to artisanal fishing practices. It has created a lot of expectations, but until now only one area has been declared as such (Aylwin, 2012).

As in many other Latin American countries, inequitable land distribution in Bolivia is rooted in the colonial era, when the Spanish colonizers occupied the lands of the original peoples, subjected Indigenous Peoples to slavery or servitude and fractured communal norms of life and property. As of 1953 a policy of agrarian reform was initiated, the main aim of which was to promote capitalism in the agricultural sector, which meant that it strongly supported individual rather than communal property over land. Since the 1990's, policies have started to change. In 1991 Bolivia ratified ILO Convention 169, the Constitutional Reform of 1994 recognized the existence of Indigenous Peoples and their right to Original Communal Lands (TCOs) and in 1996 the National Institute for Agrarian Reform started to formally recognize TCOs. The most important recognition of Indigenous rights is found in the new Constitution that was adopted in 2009. Article 2 of this Constitution states: "Considering the pre-colonial existence of nations and original Indigenous peasant peoples and their ancestral

dominance over their territories, the free determination within the framework of the unity of the State is guaranteed, which consists of their right to autonomy, self-government, their culture, the recognition of their institutions and the consolidation of their territorial entities, in accordance with this Constitution and the Law". In Article 30, the right to collective title over lands and territories of Indigenous Peoples is recognized, which is further elaborated in Article 403. Indigenous Peoples exercise a right of property and exclusive access, use and exploitation rights over renewable natural resources on their territories. Regarding non-renewable resources and sub-soil resources like fossil fuels only a right to prior and informed consult and a share of the benefits of the exploitation is granted.

Indigenous territories form a special category of property where Indigenous peoples can administrate their lands and renewable natural resources with significant autonomy, but their rights to dispose of these lands is limited. The Constitution also recognizes the possibility for Indigenous peoples to apply their own norms, administrated by their representative structures and the definition of their development according to their cultural criteria and principles of living harmoniously together with nature. Article 179 of the Constitution recognizes that the jurisdiction of Indigenous Peoples is seen as equal to the jurisdiction of the State, and article 190 subsequently recognizes the jurisdictional functions, principles and procedures of Indigenous peoples. Indigenous authorities also have a clear role in the management of water resources on their territories, which are considered a renewable natural resource over which they exercise full rights (Miranda et.al., 2012).

The Surinamese legal system and legislation in general very much reflect, sometimes literally, the colonial Dutch legislation. With regard to land rights of indigenous peoples, colonial legislation, as early as 1629 in the West Indian Order Regulations and in land titles dating back to 1667, has consistently made reference to the 'rights and freedom' of 'the natives', more particularly in colonial 'land letters' issued by the colonial government. A major reform of the Surinamese land legislation took place in 1982 with the issuance of the Decree⁴ on the Principles of Land Policy (L-Decreet Beginselen Grondbeleid 1982⁵). This decree intended to consolidate various previous forms of land titles into one single title namely land lease (*grondhuur*), based on the so-called 'domain principle', which is described in that decree as '*all land, of which others cannot prove their right of property, is domain of the State*'. What exactly 'domain' is has not been defined in Surinamese legislation, but in practice it is interpreted by the government to be the State's property over all land over which no one else can prove property rights (Kambel and Mackay 2003). The decree also stipulates:

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

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

- *Article 4.1: 'When deciding over domain land, the rights of tribally living Bushnegroes and Amerindians on their villages, settlements and livelihood plots will be respected in as far as this does not conflict with the public interest';*
- *Article 4.2: 'Under public interest is also included the execution of any project within the framework of an approved development plan'.*

The Explanatory Memorandum accompanying the decree states on this article that issuance of domain land will 'take their [inhabitants of the interior] factual rights on these lands into account as much as possible', and also says that this principle will be temporarily applicable during a transition period in which the interior population will 'gradually be integrated into the general socioeconomic life'. (VIDS, 2012)

2.2 Protected Areas, ICCA and Sacred Natural Sites

Canada has federal, provincial and territorial laws that govern protected areas, including the *Canada National Parks Act*, the *Canada National Marine Conservation Areas Act*, the *Migratory Birds Convention Act*, the *Canada Wildlife Act* and the *Species at Risk Act*. The latter makes possible the designation of critical habitat for certain species at risk of extinction. In addition, each of the provinces and territories has legislation that governs the creation and management of protected areas. The Parks Canada Agency, a division of Environment Canada, is responsible for national parks, including marine parks. The Department of Fisheries and Oceans may also establish marine protected areas under the *Oceans Act*. The provinces and territories have their own agencies.

The Canadian protected areas framework does not recognize ICCAs or allow for devolution of governance of protected areas to Indigenous Peoples. Indigenous Peoples have not been able to participate in the governance of protected areas. Indigenous Peoples generally gain little direct or immediate benefit from an area being declared protected, other than some possible employment as guides or enforcement officers. The creation of new parks has been a point of conflict between Indigenous Peoples and Canada and there are a number of outstanding disputes about the creation of parks on traditional Indigenous territories that remain subject to either Aboriginal title or which were not properly transferred under treaty. There are isolated instances, however, where the federal and/or provincial and territorial governments have endeavored to work with Indigenous Peoples to include some Indigenous territories in the protected areas framework and to include Indigenous Peoples in management, especially when a comprehensive claims agreement was in place. There are provisions for the co-management or delegated management of protected areas under federal legislation. For example, the Kativik Regional Government manages parks in Nunavik (a territory under an Inuit comprehensive agreement). Canada has 15 Biosphere Reserves (Canadian Biosphere Reserves Association 2007), 13 World Heritage Sites (Environment Canada, 2012) and 37 Ramsar sites, 17 of which are national wildlife areas or migratory bird sanctuaries (Environment Canada, 2011c), but the management process involved with these sites fails to seek the free, prior and informed consent of Indigenous Peoples,

their full and effective participation, provide benefit-sharing or capacity building, or fully respect the cultural and spiritual values of Indigenous people. Also, decision-making processes in regards to the management of these lands, do not usually engage Indigenous people.

A common perspective among Indigenous Peoples in Canada is that most elements of the environment have spirit and are therefore sacred. This more differentiated view of “sacred sites” reflects the lack of split between spirituality and governance. Against a backdrop of religious intolerance, Indigenous Peoples in Canada have had little capacity to prevent the desecration and destruction of their sacred sites. Countless sites have been destroyed over the years by, for example, mining, forestry activities, farming, or souvenir collectors. Outside of comprehensive or self-government agreements, there are some provisions to allow co-management of sacred sites. For example, in 2010, the Brokenhead Ojibway Nation reached a tentative deal with the Province of Manitoba to develop a co-management agreement for petroform sites that are within the boundaries of Whiteshell Provincial Park.



Charles (Chuck) Commanda, a traditionally trained Algonquin canoe builder, constructs his canoes using traditional materials and techniques along with a few modern aids. © Peigi Wilson

It should be noted that the Province of Manitoba has recently passed legislation, *The East Side Traditional Lands Planning and Special Protected Areas Act*, which is intended to enable Indigenous communities to engage in land use and resource management in designated areas of Crown land that they have traditionally used and to designate areas of Crown land with special protection from development. A collection of five First Nations – the Bloodvien, Little Grand Rapids, Paingassi, Pikangikum, and Poplar River First Nations – agreed among themselves to make an application for a World Heritage Site on the eastern side of Lake Winnipeg, which was submitted by Canada in 2012 (Wilson, 2012).

Even in Panama, where Indigenous territories have been recognized in the form of Comarca's, there is not one law that explicitly recognizes or supports the creation of ICCAs. All protected areas have been created and are being managed by the law that creates the National System of Protected Areas in Panama (SINAP). There is no reference to the conservation initiatives of Indigenous peoples and local communities themselves. Thus, the fundamental and historical role Indigenous peoples have played in the conservation of biodiversity in the country is basically ignored. SINAP includes 87 areas, which cover a total of 2,600,018 hectares, or 37 % of the territory. The majority of these protected areas have been created in Indigenous territories and in most cases without the free prior and informed consent of the affected people. This has created conflicts with Indigenous Peoples like the Naso People, the Embera and Wounaan People and the Ngobe-Bugle People. Especially in the case of the Guna Yala Wargandi and Madugandi Peoples, the protected areas have had a negative impact on their livelihoods as they have limited their regular production practices like hunting, fishing and agriculture. In many protected areas the traditional use of natural resources is prohibited, which also has significant negative impacts on the traditional knowledge of the affected peoples. Most of the Indigenous Peoples whose territories have been declared protected area are demanding the restitution of their area.

There is some reference to co-management in the resolution that establishes the protected area system (Resolution no JD-09-94), especially in article 1.8, and this reference could be used to promote the recognition of ICCAs. However, the article refers to co-management of areas that have been unilaterally declared as a 'protected area' by the Government and that are part of the Government-run protected areas system. Similarly, Article 3 of the resolution makes a clear reference to natural areas located within Comarca's or Indigenous reserves that have been declared as a protected natural area by the General Congress of the relevant People. Here again, it concerns protected areas that are part of the Government-run system of protected areas, but the article could be used to promote recognition of ICCAs, also because it recognizes the role of General Congresses as the highest decision-making body of Indigenous Peoples themselves.

Several of the Laws of the Comarca's themselves, like the Law of the Comarca Embera-Wounaan, the law of the Comarca Ngobe-Bugle and the law of the Comarca Kuna de

Wargandi include procedures to designate certain areas as conservation areas. Moreover, the Embera-Wounaan Comarca Law grants the authority to administer the part of the National Park Darien that is located on its territory to its own traditional authorities, in conjunction with the National Environmental Authority. So while the laws of the Panamanian State do not refer to ICCAs, the laws of the Indigenous Comarca's do mention the traditional management practices in Indigenous territories. As the Panamanian State has recognized the traditional authorities of these Comarca's, it should also recognize the ICCAs established by these authorities (Masardule, 2012).

Nargana Protected Area

The Protected Natural Area Nargana is located in the Guna Yala Comarca and has an extension of 100.000 hectares. It was declared protected area by the General Congress of the Guna through Resolution 3 of 7 November 1987. In 1994, the Panamanian Government declared the area as a protected site as well. The Guna General Congress took the decision to establish a protected area so as to halt the invasion of colonists who were trying to extend their activities in the field of agriculture, hunting and gold mining in the area, which endangered the territorial integrity of the Guna Comarca and its natural resources. It is the only protected area in Panama that is directly and exclusively administrated by an Indigenous peoples, the Guna General Congress is responsible for all decision-making related to the area. (Masardule, 2012).

Protected area legislation in Chile is very dispersed, it includes more than 20 legal rules and regulations as well as 13 relevant international Conventions, resulting in no less than 32 different categories of protected areas administered by multiple Ministries and divisions. This segregation, and the weakness of the institutions responsible for protected areas administration has undermined the effectiveness of the protected area system, and there is a growing occurrence of extractive activities in protected areas. None of the institutions with a mandate in the field of protected area management is specialized in Indigenous Peoples. There are 157 protected areas covering over 30 million hectares of terrestrial and marine areas. There are possibilities to establish private protected areas, but these opportunities have been used almost exclusively by large landholders rather than Indigenous or non-Indigenous communities, and the impact on (potential) ICCAs has merely been negative. Protected area policy has historically applied a "Yellowstone" model of exclusion of Indigenous Peoples and local communities, in which the occupation and use of the area by human beings is prohibited, despite the fact that many protected areas were established on Indigenous territories and/or sacred natural sites. ICCAs or sacred natural sites are not recognized. The Indigenous Law (19.253 of 1993) recognizes the right of to exercise communal activities in sacred or ceremonial sites that are on fiscal land. It also establishes the possibility to solicit the free transfer of the title of these lands. This law has been used to protect sacred sites, although this has no implied a transfer of governance over these areas to Indigenous Peoples. Even in the 8 Biosphere Reserves, which formally have the sustainable development of the local communities that live in these sites are one of their objectives, there has not been any serious transfer of governance to these communities, and no communities were consulted in the process of establishing these

reserves. The law includes an objective to allow for participation of Indigenous Peoples and local communities in protected area related matters but in reality this has been a far cry from allowing governance over these areas. Some 48 consultative boards have been established in which local communities and Indigenous Peoples have been invited, but they have a mere consultative character. The only exception is the above-mentioned Law on Marine and Coastal Areas of Aboriginal Peoples, but until now only one area has been recognized under this law, in the locality of Fresia in the Lakes Region. Another potentially promising model are the 4 'associativity agreements' for the management of protected areas that have been signed by communities in the ancestral area of Lickanatai to co-manage the 7 units of the National Reserve Los Flamengos, which was created in 1990. However, while a useful example of co-management, it should not be seen as a form of Indigenous governance.



Florentín Hernández Ancapán, Condor community, Mapu Lahual territory. © Lorena Arce

A major complication in the recognition of ICCAs has been that Chilean law does not recognize the traditional authorities of Indigenous peoples. Rather, the law has forced Indigenous Peoples to set up Western-style organizations, such as associations, with a chairperson, secretary and treasurer etc. if they want their authorities to be recognized as representative. This is a clear violation of ILO Convention 169, which obliges States to

recognize the customary governance structures of Indigenous peoples. Regrettably, recent legislative initiatives, like the new draft Biodiversity and Protected Areas Service Law, were developed without any consultation with Indigenous peoples and local communities and they provide little hope for the future as far as the recognition of ICCAs is concerned (Aylwin, 2012).

Red de Parques Mapu Lahual¹

This initiative involved 9 Mapuche Huilliche communities on the coast of the Osorno Province in Chile. The Parks Network was created with the objective to stimulate a sustainable development program based on the conformation of “Indigenous parks”. In view of the lack of recognition of Indigenous governance structures in Chile, the communities involved established legal association that is responsible for developing and implementing the management plans of the area, including a number of alternative economic activities like ecotourism and the production of handicrafts. (Aylwin, 2012)

The National System of Protected Areas in Bolivia is based on Law 1333 on the Environment and the General Regulation on Protected Areas. These laws have proven insufficient to address the threats of mining and fossil fuel extraction and the relevant institutional structures are considered to be too weak to ensure effective protection. Due to operational limitations, the protected area system only covers the 22 protected areas that are considered of main relevant and national representativeness, covering a total surface of around 18 million hectares, or 18 % of the national territory. In all protected areas there are people who live there and use the resources, 70% of the inhabitants of protected areas is Indigenous, and 11 protected areas are predominantly inhabited by Indigenous Peoples. Most protected areas have a management committee, which was supposed to include representatives of local communities, but in practice many of these committees have not been effective, they have a mere oversight function related to the public officers in charge, and some have been marked by conflict. Only in two cases there has been a successful co-administration arrangement.

As explained before, Bolivian law is unique in so far that it explicitly recognizes a *sui generis* form of ICCAs, the TCOs (or TIOCs), and the government has recognized TCOs covering more than 20 million hectares. However, despite a large number of outstanding claims, the Bolivian Government has recently started to put a halt to the recognition of new TCOs, and it has stated that it considers the process as “completed”.

Some Indigenous Peoples have succeeded to obtain recognition of their TCO in areas that were already declared protected areas, for example in the case of TIPNIS, Pilon Lajas and Madidi. In certain cases, like the case of PN-ANMI Kaalya, the Indigenous Peoples decided to strive for the demarcation of their ancestral territory as a protected area. In both cases the lands at stake have a double status, protected area and Indigenous territory. There are 14 cases where TCOs overlap protected areas and two Biosphere reserves include TCOs. Until the end of the former Government, there was an informal alliance in these cases, product of the high level of compatibility between the objectives of the protected areas and the aims of the Indigenous Peoples. In practice

these areas were marked by reciprocity, a broad participation and strengthening of the governance of the Indigenous peoples and local communities in the development of protected areas with double status, without serious conflicts. However, under the current Government this situation is no longer the same.

The National Park and Integrated Management Natural Area KAAIYA

The NP-ANMI Kaalya in the Gran Chaco was created in 1995 as a result of the initiative of the Isoseno People through their organization the Capitanía del Alto y Bajo Isoso (CABI), with the support of Ayoreo and Chiquitanos. It was the first experience with co-management of a protected area by an indigenous organizations and the government in Bolivia. The Indigenous organisations played an important protagonist role in the establishment and formal recognition of the ICCA. Most of the surface area is located in the Municipality of Charagua, now an Indigenous Autonomy. Regretfully, after more than a decade of quite successful co-management, conflicts have arisen over the role of CABI, also triggered by internal conflicts within the organization. According to CABI, the lack of willingness of the Government to continue the recognition of TCOs, is a major cause of the conflict. The area is also seriously threatened by the expansion of soy monocultures and cattle ranching. (Miranda et. al. 2012)

All Indigenous Peoples in Bolivia have a close spiritual relationship with certain sacred natural sites. It should be emphasized that Indigenous Peoples have a spiritual bond with their territory in general, they see the cosmos as a multi-spatial and multi-temporal space, where the actual world is the result of a permanent process of creation and transformation. ICCAs are of crucial importance to the conservation of cultural and historical heritage, both at the archeological level and as living or intangible cultural heritage, representing mythological and religious traditions of the Andean and Amazon world. This includes the management of resources, handicrafts and the conservation and use of agrobiodiversity (Miranda et.al., 2012).

The legal instruments that are the basis of the protected area framework of Suriname are the Nature Protection Law (1954), which also is the legal basis for the establishment and management of Nature Reserves (NR), as protected areas are generally called in Suriname, the Game Resolution (1954) and the Forest Management Law (1992). The Suriname Nature Protection Law 1954 (revised last in 1992)⁶ does not contain any protection clause on respecting the rights of Amerindians and Bushnegroes although the resolutions that are based on this law, establishing nature reserves in 1986 (Boven-Coesevijne, Copi, Peruvia and Wanekreek Nature Reserves) and 1998 (Central Suriname Nature Reserve, CSNR) did include one. Both resolutions however, make restrictions to these (unspecified) rights. The resolution of 1986 says in its Explanatory Memorandum that *“the forest inhabitants that live in or around the reserves will maintain their rights and interests in the newly established nature reserves (a) as long as the national objective of the proposed nature reserves is not prejudiced, (b) as long as the rationale*

⁶ <http://www.dna.sr/files/docs/natuurbeschermingswet-1954.pdf>

for those “traditional” rights and interests remains valid, and (c) during the process of growing toward one Surinamese citizenship”. The resolution of 1998 includes an even weaker clause. The Nature Protection Law of 1954 which is the basis for those resolutions, does not contain any clause as mentioned above, and for the 10 nature reserves established prior to the ones of 1986 and 1998 (often without prior knowledge of the affected communities) it is thus not required to respect the rights of Amerindians or Maroons. According to this law it is forbidden to hunt, fish and even carry materials to hunt or fish, and dogs are not allowed. It is also forbidden to cut wood, camp or make a fire, unless a person has received written permission from the Forest Service to do so.

Since many protected areas are within the traditional livelihood territories of indigenous and tribal peoples, this means that their normal subsistence activities are, formally speaking, against the law. However, government has not enforced this law against the interior communities and the former head of the Nature Management Division of the ministry of Physical Planning, Land and Forest Management (RGB) has expressed in a memo that the ‘traditional rights’ of the community will be respected, including their right to hunt, fish, agriculture, and logging for own use (Memorandum LBB, 1978). Nevertheless, this memo is not law and the absence of a formal arrangement has led to conflicts and tensions between indigenous villagers and governmental forest rangers. Conflicting rules, namely between customary and statutory legal rules, are another issue in governing and managing indigenous territories. As mentioned earlier, there are increasing pressures to adopt a monetary lifestyle, which leads to pressures on the maintenance and enforcement of traditional rules.

Galibi

Christiaankondre and Langamankondre, known together as Galibi, are Kali’na indigenous villages located in the northeast of Suriname. The communities live mainly from traditional agriculture, fishing and hunting, and increasingly tourism. Galibi is a nationally and internationally well-known tourism destination given its unique combination of indigenous culture, giant sea turtles, many other animal and plant species, and pristine ecosystems. The life of the Galibi villagers was cruelly disturbed by the establishment of the protected area in 1969, an area of approximately 4000 hectare covering part of their ancestral territory. The communities had to leave from certain traditional areas, without any assistance or compensation from the government. Hunting, fishing, collecting eggs, wood cutting and many other essential livelihood activities were forbidden by law from one day to the other. The villages did not go extinct. To the contrary, Galibi is still a vibrant place with many developments and economic activities within a living indigenous culture. However, the presence of the nature reserve has continued to cause conflicts. (VIDS, 2012)

The implementation of the Convention on Biodiversity (CBD) Programme of Work on Protected Areas (PoWPA) related to good governance, equity, full and effective participation, and benefit-sharing is weak. Within the protected area framework of Suriname there are no provisions for the governance and management by indigenous peoples over their territories and resources, and it does not recognize ICCAs. In the

absence of legal provisions for participation and co-management, the Nature Conservation Division has created a mechanism that allows for some participation, namely the possibility to establish a 'consultation commission' ('*overlegcommissie*') in relation to protected areas (Memorandum Establishment Galibi Consultation Commission, 2000), but the Nature Conservation Division has openly acknowledged that the consultation commission is not a co-management mechanism (VIDS, 2012).

2.3 Environment and Natural Resources

Generally speaking, Canadian laws, at the federal, provincial and territorial level hinder the capacity and opportunity for the majority of Indigenous Peoples to pursue their traditional ways of life, govern their people or implement traditional laws governing their interaction with the non-human world. The provinces and the federal government have jurisdiction for different elements of the environment and natural resources, and there are multiple agencies at both the federal, provincial and territorial levels whose mandate directly or indirectly touches on these issues. This has complicated relations with Indigenous Peoples. It is federal policy that Canadian law takes precedence over Indigenous laws in the case of environmental protection, assessment or pollution. Exceptions to this are Indigenous Peoples – the Inuit, a handful of First Nations such as the Cree, Nisga'a, and Gitskan, and one Métis community – who have managed to secure comprehensive agreements with the Canadian state.

The Nunavut government has developed its own environmental policy and requires the application of Inuit knowledge (*Qaujimaqatuqangi*) for the governance of the environment in Nunavut. "*Avatittinnik Kamatsiarniq*, the Inuit *Qaujimaqatuqangit* principle of Environmental Stewardship, emphasizes the key relationship between people and the natural world" (Nunavut Department of Environment, undated, from Wilson, 2012).

Tongait KakKasuangita SilakKijapvinga or Torngat Mountains National Park

This park came about as a result of comprehensive agreements with the Labrador Inuit and the Nunavik Inuit. The Labrador Inuit settled a comprehensive claim with Canada and the Government of Newfoundland and Labrador that took effect in 2005. It took 30 years to complete. Approximately 7,000 Inuit benefit from that agreement. The agreement establishes the Nunatsiavut Government, calls for the establishment of a Labrador Inuit Constitution, and sets out the authority of the Nunatsiavut Government (Labrador Inuit Land Claim Agreement Chapter 17). Being a comprehensive agreement it also includes self-government provisions within the pre-established limits of the Inherent Rights Policy. It contains chapters on land use planning, environmental assessment, wildlife and plants, fisheries and archaeology, Inuit cultural materials, Inuit burial sites and human remains. The *Nunavik Inuit Land Claims Agreement* was signed in 2006. It too is a comprehensive agreement with both land and self-government provisions. It contains many similar provisions as the *Labrador Inuit Land Claims Agreement*. Torngat Mountains National Park is located within the Labrador Inuit Settlement Area and the Nunavik overlap area, but does not form part of the Inuit owned lands. The Government of Canada undertook to establish the park or reserve as a part of the

comprehensive agreement. The mountain peaks are the highest in Canada west of the Rocky Mountains. Fjords and remnant glaciers line the coast. Polar bear, caribou, wolves, whales, and seals are found in the territory. It contains some of the world's oldest geological formations. Parks Canada relies on Inuit knowledge of the region to inform research and management of the Park (Parks Canada, 2010). Inuit use and occupation of the park is considered a key indicator of the park's vitality (Parks Canada, 2010). (Wilson, 2012).

The Panamanian Wildlife Law does not include any reference to ICCAs or other traditional conservation practices of Indigenous Peoples and the decision-making power regarding the establishment of protected areas is granted exclusively to the Ministry of Environment. However, Article 96 states that the National Environmental Authority will coordinate all matters related to the environmental and natural resources in Indigenous territories with the traditional authorities of the relevant Indigenous Peoples and local communities. The law also stipulates in Article 104 that when authorizing the use of natural resources in Comarca's or the lands of Indigenous communities, projects presented by the members of the community will be preferred, if they meet the conditions and procedures established by the competent authorities.

The Forestry Law does not include any reference to the rights of Indigenous Peoples regarding their forest areas. The only recognition of Indigenous governance can be found in article 44, which states that forestry concessions in Comarca's or Indigenous Reserves or Communities will be authorized jointly by the relevant Government institution and the relevant Congress, on basis of a scientific management plan.

The different Comarca's have their own land and natural resources laws. The Embera-Wounaan Law⁷ designates specific lands to the conservation of flora, fauna and water for the preservation of life. Under the authority of its General Congress it has established a Division of Lands and Limits which is responsible for the implementation of physical planning and the Division of Natural Resources and the Environment is responsible for the planning and implementation of natural resources management, including conservation areas. It does so in coordination with the National Environmental Authority of the Government of Panama. Similar institutions were established by, amongst others, the Ngöbe-Bugle Comarca⁸ and the Comarca Kuna de Wargandi.⁹ In some cases, like the Law of the Kuna de Wargandi, the National Environmental Authority is given the mandate to approve the biodiversity management plans elaborated by the traditional authorities of the Comarca. It is also stipulated that this

⁷ Ley de la Comarca Emberá-Wounaan “ Por La Cual Se Crea La Comarca Embera De Darien. Ley No. 22 de 8 de noviembre de 1983 y Carta Orgánica Embera-Wounaan Decreto Ejecutivo No. 84 de 9 de abril de 1999.

⁸ Ley No. 10 de 7 de marzo de 1997 y Carta Orgánica Ngöbe-Buglé. Decreto Ejecutiva No. 194 de 25 de agosto de 1999

⁹ Ley No. 34 de 25 de julio de 2000 y Carta Orgánica De Wargandi Decreto Ejecutivo No. 414 de 22 de octubre de 2008

National Environmental Authority is responsible for the management, protection, conservation and sustainable use of the natural resources in the Comarca (Masardule, 2012).

Similar to Chilean legislation in the field of land planning and water resources, Chilean laws in the field of environment and natural resources have promoted the appropriation of Indigenous lands by commercial interests like mining and plantations companies rather than the protection of ICCAs. Environmental Law (19.300 of 1994 modified by Law 20.417 of 2010) violates ILO Convention 169 in so far that it provides for a consultation procedure on different infrastructural and industrial projects that is weaker than the one prescribed by the Convention. Laws like the Water Code, the Mining Code and the Law on Geothermal energy Concessions allow the concession and exploitation of the natural resources on Indigenous lands by third parties. The results of these laws have been devastating for Indigenous Peoples. Similarly, the Legal Decree 701 from 1974 on forest resources has actively stimulated the expansion of large-scale monoculture tree plantations of exotic species by providing a subsidy of 75% for the costs of establishing such plantations. As a result, exotic plantations cover more than 2 million hectares of ancestral Indigenous lands, especially in the South of the country, leading to displacement and impoverishment of entire Mapuche communities.

On a more positive note, the recently approved law on the recuperation of native forests (Law 20.283) establishes a fund to support initiatives in the field of conservation and management of native forests, but until now no resources have been freed up for such projects, so the implications for ICCAs are as yet uncertain (Aylwin, 2012).

Law 1333 on the Environment of 1992 constitutes the legal framework for environmental management in Bolivia. It is complemented by a number of regulations adopted in 1995. In 2010, the Law on the Rights of Mother Earth was adopted, which “adopts in the character of collective subject of the public interests” the rights of Mother Earth to the diversity of life, to water, to clean air, to balance, to restoration and to live without contamination. Another relevant law is the Framework Law on Autonomy and Decentralization, which stipulates that autonomous governments should preserve, conserve, promote, and guarantee the environment and the ecosystems, contributing to the rational occupation of the territory and to the sustainable use of natural resources in their jurisdiction. A law on the protection of traditional knowledge and cultural expressions is currently being elaborated. (Miranda et.al., 2012)

The Constitution of Suriname¹⁰ states in article 41 that natural riches and resources are the property of the nation and that the nation has the inalienable right to take full possession of those for the economic, social and economic development of Suriname. The Constitution does not acknowledge the existence or rights of indigenous or tribal

¹⁰ http://www.oas.org/juridico/mla/en/sur/en_sur-int-text-const.pdf (English) or original in Dutch at <http://www.dna.sr/files/docs/grondwet-suriname.pdf>

peoples in Suriname. The guarantee or exclusion clause requiring concession and land title holders to respect the rights of Bushnegroes and Amerindians was repeated in laws on natural resource exploitation such as the Gold Regulation 1882 revised in 1932, the Balata Regulation 1914, the Agriculture Regulation 1937¹¹ and the Logging Regulation 1947, and more recently the Forest Management Law 1992¹². Also in the case of issuing permission for other commercial activities, it is practice that the indigenous and tribal leadership of communities potentially affected by such activities are heard by the District Commissioner, who is the highest government authority in the districts system of Suriname. Their opinion is only advisory however, and there are continued instances of a lack of meaningful consultation. The Mining Decree 1986¹³ dealing with subsoil resources does not, surprisingly given the fact that all other relevant legislation does, include the exclusion or safeguard clause. The holder of the mining title is required to 'take into reasonable account the interests of rights-holders and interested third parties', and implements its activities with at least harm as possible to the interests of those. It is unclear whether or not indigenous and tribal peoples are considered to be rights-holder or 'interested third parties'. The Hunting Law 1954 (revised last in 1997)¹⁴, the Fish Protection Law 1965 (revised last in 1981)¹⁵ and the Sea Fishing Law 1980¹⁶ (revised last in 2001) similarly make no reference to indigenous and tribal peoples, thus making their customary livelihood practices illegal.

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

¹¹ <http://dna.sr/wetten/13---Milieuwetgeving-en-Ruimtelijke-Ordening/agrarisch-wet-gb-1937-no.-53.pdf>

¹² <http://www.dna.sr/files/docs/wet-bosbeheer.pdf>

¹³ <http://www.dna.sr/files/docs/decreet-mijnbouw.pdf>

¹⁴ <http://www.dna.sr/files/docs/jachtwet-1954.pdf>

¹⁵ <http://www.dna.sr/files/docs/visstandsbeschermingswet.pdf>

¹⁶ <http://www.dna.sr/files/docs/zeeverijwet-1980.pdf>

permission can be withdrawn any moment as prerogative of the minister of RGB (VIDS brochure on community forests, 2008).

The National Biodiversity Strategy and Action Plan of Suriname (NBSAP 2006)¹⁷ stipulates as strategic direction under Goal 3 (Access to biological resources): “*Enact and enforce law and policy to protect the use and transfer of traditional knowledge and use pertaining to biological resources and biotechnology*”, and it includes an objective to develop new legislation in this respect. (VIDS, 2012).

2.4 Human Rights

The Canadian *Indian Act*, first adopted in 1876 and little changed since, continues to govern most status First Nation – Canadian relations. The provisions of this legislation dictate everything from personal identity, control over status First Nations lands and money, and powers of First Nation governments. In the past this legislation outlawed the practice of sacred ceremonies, required First Nation Peoples to obtain permission from an Indian Agent to leave their reserve, made it illegal for First Nations people to bring claims against the government or even hire a lawyer to defend their interests. The Canadian government has also been responsible for the forced relocation of Indigenous Peoples at different times and places, including policies resulting in the forced assimilation of school children.

Under the provisions of section 25 of the *Constitution Act, 1982*, Indigenous Peoples enjoy the same rights contained in the *Canadian Charter of Rights and Freedoms* (the Charter) as are extended

“Canada currently sees the obligation to obtain the free, prior and informed consent of Indigenous Peoples to pursue activities on their lands as constituting a veto power over the decision-making authority of the Crown. They need to move from this position to one that recognizes Indigenous Peoples as partners not adversaries.” (Wilson, 2012)

to other Canadians. In addition to the Charter, the federal government adopted the *Canadian Human Rights Act* and established a Canadian Human Rights Commission. Knowing full well that the *Indian Act* was discriminatory legislation the federal government excluded the application of the *Canadian Human Rights Act* to decisions made under the *Indian Act*. In 2008 the *Canadian Human Rights Act* became applicable to decisions under the *Indian Act* and to decisions of First Nation governments on reserve since June 2011. The duty to consult has emerged as a legal tool that may be employed to seek protection of Indigenous rights to culture, ways of life, and protection of land. However, the authors of the national report know of no instance that the Crown has sought the consent of an Indigenous nation about hunting or fishing regulations outside of a comprehensive claim.

¹⁷ <http://www.cbd.int/doc/world/sr/sr-nbsap-01-en.pdf>

The federal government has recently reduced environmental protections, generally making it easier to pursue resource development. This trend is compounded by the fact that there is no express intention of the federal government at this time to recognize rights to self-government beyond those expressed in comprehensive agreements and the Inherent Rights Policy (Wilson, 2012).

The Constitution of the State of Panama ignores the rights of Indigenous Peoples regarding their natural resources, which is in violation of ILO Convention 169 and UNDRIPs. According to the Constitution the State has national sovereignty over all natural resources in the country, and subsequent laws stipulate that subsoil resources and forests are all property of the State, ignoring Indigenous rights regarding these resources. This has triggered many conflicts and in many cases there has been a loss of natural resources due to legal and illegal exploitation (Masardule, 2012).

As many other countries in the region, Chile has ratified most international human rights treaties, including ILO Convention 169, and it has signed the UN Declaration on the Rights of Indigenous Peoples. However, as described above it has ignored the most important principles of these instruments and failed to elaborate or adapt its legislation to ensure coherence. Exploitation of natural resources and the establishment of protected areas on Indigenous territories takes place without any Free Prior and Informed Consent or even consultation. The participation of representatives of Indigenous Peoples and local communities in decision-making processes is extremely limited and the existing participation structures are of a mere consultative nature. Moreover, the legitimate struggles of Indigenous leaders against the destruction of their lands by monoculture tree plantations and other destructive activities and other social protests by Indigenous Peoples have been criminalized. Especially the application of the anti-terrorist law has led to numerous human rights violations, including unlawful detention of Indigenous leaders, cruel and inhumane treatment of Indigenous prisoners, torture and even the death of Indigenous human rights defenders. (Aylwin, 2012)

Bolivia has ratified Convention 169 of the ILO, and adopted the UN Declaration on the Rights of Indigenous Peoples and its new Constitution explicitly recognizes a large number of Indigenous rights, including the rights of Indigenous Peoples to their territories and autonomy. There are also fixed criteria for Indigenous representation in most State institutions, like the national legislative assembly and the Constitutional Tribunal. The recognition of TCOs has also formed an important instrument for the recognition of Indigenous rights, between 1996 and 2010 190 Indigenous territories were recognized, covering a total of 20.7 million hectares of land. The Framework Law on Autonomies includes the possibility for Indigenous municipalities to constitute themselves as Indigenous Autonomies, and 11 municipalities have made use of this possibility. However, some human rights advocates see this law as a threat to Indigenous rights, as it only grants autonomy to Indigenous Peoples that meet minimum requirements in terms of population numbers, territorial continuity and management capacity. This has created obstacles for smaller Indigenous Peoples to have their

autonomy recognized. The definition of Indigenous Peoples in the new Constitution is also seen as problematic as it assumes a homogenization of all Indigenous cultures and ignores the existence of non-agricultural Indigenous Peoples. Servitude is illegal in Bolivia, but it still exists in some areas, with Indigenous communities being the main victim.

The Indigenous Territory and National Park Isiboro Secure

The Indigenous Territory and National Park Isiboro Secure (TIPNIS) is located in a transition zone between the Eastern Andes slopes and the Amazon lowlands. The park was established in 1965, but in 1990, as a result of the political pressure triggered by the first Indigenous march, the park was recognized by Decree as the territory of the Moxeno, Yuracare and Chiman Indigenous Peoples, be it that the formal title was only granted in 2009. The area is jointly administrated by the National protected areas service and the sub-central of TIPNIS, which represents the Indigenous Peoples in the area. The ICCA is seriously threatened by illegal settlements, which have already deforested some 50.000 hectares of the area for coca cultivation and a proposed road that is expected to trigger a rapid expansion of illegal settlements for this crop . On 15 August 2011 the first of a series of Indigenous marches for the defense of TIPNIS was initiated, which continues until today. The Government has employed various techniques, including violent repression and false promises, to halt the protests. (Miranda et. al. 2012)

In general, it should be emphasized that there are various Indigenous Peoples in Bolivia that are in a situation of extreme vulnerability, both in terms of physical survival as in terms of ethnocultural survival, due to their limited population and lack of resources. A total of 20 Peoples represent less than 0.2% of the Bolivian population, and these ethnic minorities have been confronted with economic, political and geographical marginalization, and loss of territory due to agro-industrial expansion, the construction of mega-projects and other aggressions. There are no policies or State organizations that address the needs of these peoples, many of which are at the brink of ethnocide.

Moreover, there has been a growing tendency towards centralization of power in the current government, and it has not only effectively halted the recognition of new TIOCs, but there are also increasing voices that compare Indigenous territories with large landholders and call for land reform in this respect. The basic views of the peasant communities in the Andes is that “the land is for who works the land”, which means they question TCOs as ‘unproductive landholdings’. Meanwhile, for the Indigenous Peoples in the lowlands their territory is as “the big house”, they mainly see their territory as their home and basis for their identity (Miranda et. al., 2012).

Indigenous (and tribal maroon) peoples’ land and resource rights are not recognized in the Surinamese legislation. Some laws make only very brief reference to ‘the rights of Amerindians and Bushnegroes’, none to indigenous or tribal peoples as such (as peoples or collectivities), and there are no further provisions or specification which rights these exactly are. The legislation on land titles, while it has mentioned indigenous and tribal

peoples' rights over their lands and livelihood resources for more than three centuries, does not specify and protect these rights in the law, offers no means to enforce these rights, obliges indigenous and tribal peoples to prove their ownership due to the domain principle, and makes their rights subject to public interest that can include any project in an approved development plan. Such limitations and qualifications are not used for the rights of any other group of people or other categories of land titles in Suriname but only and systematically for 'Amerindians and Bushnegroes', and are thus considered discriminatory and a legal entrenchment of racial inequality.

There are no compulsory legal provisions for meaningful participation or consultation in decisions affecting indigenous peoples, nor is their right to free, prior and informed consent (FPIC) recognized. In practice it can therefore easily happen that indigenous peoples are only notified of decisions that have already been taken, even months or years after the decision as in the case of the establishment of many protected areas in indigenous territories. There are also many examples of superficial consultations, e.g. in the form of one participant on behalf of all indigenous peoples in Suriname in a one-time 'stakeholders workshop', without clarity on how the input or comments received during the workshop are incorporated or not in the final decisions or documents (personal communication VIDS, April 2012).

2.5 Judgements

In Canada, there are federal and provincial courts. Provincial courts are generally the court of first instance except for issues of federal administration that are heard by the Federal Court and the Federal Court of Appeal. Each province or territory has an Appeals Court. Appeals from provincial, territorial or federal courts maybe heard by the Supreme Court of Canada, the court of final appeal. Provincial and territorial decisions apply solely within the political boundaries of the province or territory. Decisions of the Federal and Supreme Courts are applicable nationally.

Some of the most relevant court cases affecting Indigenous rights regarding land and resource use include *The St. Catherines Milling and Lumber Company v. R* (1887 and *Calder v. Attorney General of Canada* which were all settled to the detriment of Indigenous rights, notwithstanding the fact that the Court agreed in the Calder case that Indigenous Peoples could hold rights to land that survived settlement by non-Indigenous people, thus spurring action by the Crown to address Indigenous Peoples' land claims beyond existing treaty boundaries (Hurley, 2001). *Delgamuukw v. British Columbia*, (1997) had a more favorable outcome for Indigenous Peoples as the court held, among other things, that Aboriginal title is a '*sui generis*', or unique, interest in land, and the link between Indigenous Peoples and their lands is an element of it. Aboriginal title "encompasses the right to use the land held pursuant to the title for a variety of purposes, which need not be aspects of those aboriginal practices, cultures and traditions which are integral to distinctive aboriginal cultures; and second, that those protected uses must not be irreconcilable with the nature of the groups' attachment to

that land” (*Delgamuukw* para 117). Section 35 of the Constitution protects this right. The Court established the test for proof of Aboriginal title, and stated, “aboriginal title arises out of prior occupation of the land by aboriginal peoples and out of the relationship between the common law and pre-existing systems of aboriginal law...it crystallized at the time sovereignty was asserted” (*Delgamuukw* para 145). The concept of Indian title was also recognized in *Guerin v. R.* and in *Campbell, et al v. The Attorney General of British Columbia, the Attorney General of Canada and the Nisga’a Nation*, the court stated that the “right to aboriginal title ‘in its full form’, including the right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is ... constitutionally guaranteed by Section 35 (*Campbell* para. 137).”

R v Sparrow, 1990 was the Supreme Court of Canada’s first opportunity to interpret the application of section 35 (1) of the *Constitution Act, 1982*. Of critical importance was the recognition by the Court that Aboriginal rights take priority, except in cases of conservation and that consultation is generally required to prove the Crown is justified in limiting Indigenous rights. Similarly in the case of *Haida Nation v. British Columbia (Minister of Forests)* the court concluded that the Crown “cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued in the process of treaty negotiation and proof. It must respect these potential, but yet unproven, interests” (*Haida* at para 27).

Gwaii Haanas National Park Reserve, Haida Heritage Site and Gwaii Haana National Marine Conservation Area Reserve.

The Haida People are a sovereign nation and hold Aboriginal title to their territory. They have no treaty with Canada regarding either land or self-government. The Haida Nation and Canada have very different ideas about sovereignty, title and ownership of Haida Gwaii. The Haida Nation “Sees the Archipelago as Haida Lands, subject to the collective and individual rights of the Haida citizens, the sovereignty of the Hereditary Chiefs, and jurisdiction of the Council of the Haida Nation. The Haida Nation owns these lands and waters by virtue of heredity, subject to the laws of the Constitution of the Haida Nation, and the legislative jurisdiction of the Haida House of Assembly (Gwaii Haana Agreement, 1993). In 1993, the Council of the Haida Nation and the Government of Canada signed the Gwaii Haanas Agreement stating their mutual commitment to the protection of Gwaii Haanas as a natural and cultural treasure. An Archipelago Management Board was established to undertake the planning, operation and management of the area. Canada and the Haida Nation each have two seats on the four person Board, which operates on the basis of consensus. Although Parks Canada construes these agreements as co-operative management, they are in actual fact a type of co-governance arrangement as neither party has relinquished claims to sovereignty. To this degree, Haida Gwaii is an ICCA within the context of the IUCN – at least from the perspective of the Haida Nation. (Wilson, 2012)

Three cases, *R v. N.T.C. Smokehouse Ltd.*, *R. v. Gladstone* and *R. v. Van der Peet*, collectively referred to as the *Van der Peet* trilogy, decided in 1996, all revolved around whether there exists an inherent Aboriginal right to sell fish. In these decisions, the

Supreme Court of Canada described a test for determining what constitutes an Aboriginal right that would be protected under section 35 of the Constitution. In short, the Court found that the right must be “an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right” (*Van der peet* 1996 para. 46). In one of the cases, *Tsilhqot’in*, it is also considered that: “The result [of *Gladstone* and *Van der Peet*] is that the interests of the broader Canadian community, as opposed to the constitutionally entrenched rights of Aboriginal peoples, are to be foremost in the consideration of the Court. In that type of analysis, reconciliation does not focus on the historical injustices suffered by Aboriginal peoples. *It is reconciliation on terms imposed by the needs of the colonizer* [emphasis in the original] (*Tsilhqot’in* 2007, para 1350).”

The Supreme Court of Canada has also cited Australian jurisprudence, *Mabo v. Queensland [No. 2]* where the Australian Supreme Court writes, “Native title has its origin in and is given its content by the traditional laws acknowledged by and the traditional customs observed by the indigenous inhabitants of a territory (*Van der Peet* para. 40)”.

The High Court of Justice of Panama, in a resolution of 6 December 2000, has stated explicitly that the protection of the environment, the respect for the cultural and ethic traditions of national Indigenous communities and the preservation of the archeological sites and objects that are testimonies of the Panamanian past are values of a superior hierarchy that have a fundamental consecration in the Constitutional norms of the country due to their explicit nature.

Most jurisprudence in Chile has been contrary to the rights and interests of Indigenous peoples and local communities. Only recently there has been a growing recognition in Chilean Courts that international human rights law should be considered part of the internal legal order. In two important recent cases the Court ordered the restitution of waters to Indigenous communities in the North of the country and “the Indigenous rights over the lands and its resources, which constitutes a recognition of the customary right of aboriginal tribes, validating the Indigenous property over these goods”.¹⁸

Another noteworthy case is the case of a *Machi*, or Mapuche Shaman, against a forestry company over the illegal logging of trees that were considered sacred to the indigenous community. The Court based its verdict amongst others on ILO Convention 169 and argued that the right to Indigenous territory – which includes the totality of the habitat that the Indigenous Peoples occupy or use – was being affected in this case and that the government should respect the special importance the relationship with their lands and

¹⁸ Fallos de Corte Suprema en caso *Toconce contra ESSAN SA*, Rol 986, 2004 y caso *Comunidad Aymara Chusmiza – Usmagama con Empresa Embotelladora de Agua Mineral Chusmiza S.A* Rol 2480, 2008), Corte de Apelaciones de Iquique, Rol 817, año 2006, considerando 3°. Ratificado por la Corte Suprema el 26 noviembre 2009, Rol 2480 año 2008.

territories has for the cultural and spiritual values of the affected peoples.¹⁹(Wilson, 2012)

The most relevant jurisprudence in Bolivia consists of decisions by the National Agrarian Tribunal, which has often ruled in favor of the rights of Indigenous Peoples. In 2003, the Constitutional Tribunal applied, amongst others, the clauses of ILO Convention 169 to rule that Indigenous rights to the recognition of their lands could not be extinguished due to administrative failure, as this would compromise the right of the communities involved to their land title. In 2006 it took a landmark decision in which it ruled that human rights treaties, including in particular ILO Convention 169, formed part of the “Constitutional Block” and were thus directly applicable.²⁰ More recently, the Court has further emphasized the different rights of Indigenous Peoples as consisting of the right to 1) the lands, territories that they have traditionally possessed, occupied, utilized or acquired, 2) possess, utilize and control those lands and territories, 3) to which the State guarantees the recognition and legal protection of those lands and territories, including the resources that exist in them.” The Court also stipulates that “In accordance with this, to implement projects like the three noted, one should obtain the consent of the Indigenous peoples, which implies that in these cases the Peoples have the authority to veto the project; in other cases when the consultation is developed in good faith, with appropriate methods and information, Indigenous Peoples have the right to participate in the elaboration of project, being obliged to the State to act under margins of reasonability, subject to norms, principles and values contained in the Political Constitution of the State, amongst others the principle of legality and the prohibition of arbitrariness, respecting the rights of the original communities, avoiding harmful impacts on their habitat and *modus vivendi*.”²¹ The Court also rules that the decisions of the Inter-American Court of Human Rights are applicable to Bolivia (Miranda et.al., 2012).

In Suriname, an important procedural matter in this regard is the impossibility of Indigenous Peoples and communities to defend their collective rights and interests before court due to the fact that they do not have any legal standing before the law. If individuals try to bring a case, it can be considered inadmissible because there are no formal legislative rules on representation of communities. In the few cases that have gone before court, the ruling has consistently been negative for the involved persons or communities, because of this reason, and there is justified skepticism among the affected persons or communities as well as among lawyers to even bring or defend a case before court. Many disputes are pragmatically settled outside of court, e.g. after

¹⁹ Corte Suprema, fallo recurso protección *Francisca Linconao vs. Forestal Palermo*, Recurso 7287/2009 – 30 nov, 2009

²⁰ SSCC No 45/06 de 2 de junio; 1420/04-R de 6 de septiembre; 1662/03-R de 17 de septiembre y 102/03-R de 4 de noviembre. Publicado en “RATIO DECIDENDI” de Arturo Yañez Cortez. Sucre – Bolivia 2007.

²¹ SENTENCIA CONSTITUCIONAL 2003/2010-R; Sucre 25 de octubre 2010. Expediente:2008-17547-36-RAC. Distrito: Tarija. Magistrado Relator: Dr. Marco Antonio Baldivieso Jinés

intervention by the District Commissioner, by the police or by VIDS. This is done precisely because it is common knowledge that court cases do not work in Suriname if it concerns the rights of indigenous peoples. An example is *Community members versus the State Suriname and mining company S*, where twelve members of the indigenous community PK filed a complaint in 2003 against the State Suriname and a mining company S., regarding gravel mining in the ancestral territory of the community causing harm to the community members' livelihood. The decision of the judge was to deny the plaintiffs' claim as well as the company's counterclaim, with as one of the main considerations that the plaintiffs do not have the status [as individual community members] to claim those measures as requested, because this is not supported by the law. The decision in this case is illustrative for the (lack of) legal protection of indigenous peoples' rights to their territories and resources, as well as of their rights to self-determination, to recognition of their authorities, to property, lifestyle and culture, among others, and thus for the legal situation of indigenous communities to exercise (legal) control and protection of their territories and resources.

The Inter-American Commission and Court of Human Rights have both acknowledged and rejected the insufficiency of Surinamese legislation and violation of the human rights of indigenous and tribal peoples by not legally recognizing their self-governance structures, self-determination and right to legal representation through their own freely chosen representative institutions. Suriname has already been ruled against by the Inter-American Court in the cases *Moiwana* and *Saramaka* cases²², while two petitions have been submitted to the Inter-American Commission on Human Rights which have been admitted for consideration by the Commission but not yet been submitted to the Court, namely the case of the Kali'na and Lokono peoples of the Lower Marowijne River²³ and of the Kali'na people of Maho.

Particularly the *Saramaka case* provides a landmark decision for the tribal maroon Saramaka people in particular, and for all indigenous and tribal peoples in Suriname and internationally as well. The Court ruled that the rights of indigenous and tribal peoples, as collectivities, are unambiguously recognized and given legal standing in court. The Court follows the interpretation of the Committee on Economic, Social, and Cultural Rights that the right to self-determination as stated in common Article 1 of the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights **is** applicable to indigenous peoples²⁴. Accordingly, by virtue of the right of indigenous peoples to self-determination recognized under said Article 1, they may "freely pursue their economic, social and cultural development", and may "freely dispose of their natural wealth and resources"

²² Official documents available at http://www.corteidh.or.cr/pais.cfm?id_Pais=11

²³ <http://cidh.org/annualrep/2007eng/Suriname198.07eng.htm>

²⁴ Cf. UNCESCR, Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations on Russian Federation (Thirty-first session), U.N. Doc. E/C.12/1/Add.94, December 12, 2003, para. 11

so as not to be “deprived of [their] own means of subsistence”. Building on previous judgments (among others the Mayagna (Sumo) Awas Tingni, Sawhoyamaya and Yakye Axa cases), the Court reiterated that both the private property of individuals and communal property of the members of [...] indigenous communities are protected by Article 21 of the American Convention, based upon the special relationship that members of indigenous and tribal peoples have with their territory, and on the need to protect their right to that territory in order to safeguard the physical and cultural survival of such peoples. In this sense, the Court has declared that the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. With regard to property rights over natural resources, the Court concluded that the natural resources found on and within indigenous and tribal people’s territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people’s way of life.

In emphasizing that the state has an obligation to have safeguards in place against restrictions on the right to property, the Court also quoted Article 32 of the UN Declaration on the Rights of Indigenous Peoples: *1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.* The Court explicitly stipulated that the state has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent (FPIC), according to their customs and traditions in case of large-scale development or investment projects that would have a major impact within Saramaka territory. The Court also addressed related issues of the conduct of Environmental and Social Impact Assessments and just benefit-sharing. Another important aspect of the judgment is the obligation of the state Suriname to legally recognize the juridical personality of the Saramaka people. The Court also repeated that for members of indigenous peoples “it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs.” Specifically, the Court held that, in order to guarantee members of indigenous peoples their right to communal property, States must establish “an effective means with due process guarantees [...] for them to claim traditional lands.” Finally, the Court convincingly addressed the ‘reasons’ (incl. lack of clarity regarding the land tenure system of the Saramaka people, and sensitivities regarding ‘special treatment’) why the state Suriname has still not legally recognized indigenous and tribal peoples rights to the use

and enjoyment of property in accordance with their system of communal property.

In its operative decisions, the Court ordered Suriname, amongst others, to delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, to abstain from acts until delimitation, demarcation, and titling has been completed, unless the State obtains the free, informed and prior consent of the Saramaka people, to review existing concessions, to grant legal recognition of the collective juridical capacity of the Saramaka people, in accordance with their communal system, customary laws, and traditions, and to adopt legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied.

This judgment is of utmost importance for indigenous and tribal peoples of Suriname and of other countries that have accepted the jurisdiction of the Inter-American Court, but also for other indigenous peoples in the world as this is now part of established jurisprudence on the rights of indigenous peoples (VIDS, 2012).

Other important jurisprudence by the Inter-American Court of Human Right that is of great relevance to the rights of Indigenous Peoples in the region includes the *Awes Tingni vs. Nicaragua case* (2001) and two cases regarding Indigenous Peoples in Paraguay. In the *Awes Tingni case*, the Court recognized communal property of Indigenous Peoples over land, in light of Article 21 of the American Convention. It also recognized the validity of possession over land based in Indigenous custom as a foundation for property over these lands, even when a title is lacking, and the need to recognize and understand the broad relationship Indigenous Peoples have with their lands, which forms a fundamental basis for their cultures, their spiritual life, their integrity and their economic survival.²⁵ In 2005 the Court confirmed its interpretation on communal rights over ancestral lands in the *Yakye Axa vs. Paraguay* and *Sawhoyamaka vs. Paraguay cases*.²⁶ An important difference with the previous case was that both disputes concerned land that was also claimed as private property, but the Court ruled that these private property rights could be curtailed by the communal land claim provided a proper compensation was paid. In the *Sawhoyamaka case* it ruled that the ancestral rights of indigenous peoples could not be extinguished as long as there was a continuing material or spiritual relationship with the land.

3. IMPLEMENTATION

There are few supportive provisions for Indigenous Peoples in Canada to identify, govern, manage, or maintain a traditional relationship with protected areas.

²⁵ Corte IDH, Sentence in the *Awes Tingni vs. Nicaragua case*, 2001, para. 148 – 149 and 151.

²⁶ Corte IDH, Sentence in the *Yakye Axa vs. Paraguay case*, 2005, para 149 and Sentence in the *Sawhoyamaka vs. Paraguay case*, 2006, para 131.

Nevertheless, there are some very important potentially supportive provisions. These include the Constitution, the common law, and government-to-government constitutionally protected comprehensive and self-government agreements. They all contain provisions that demand respect for the legal rights of Indigenous Peoples. In Canada, there are signs that things are changing, but only slowly and haltingly. Over the past 10 years, federal, provincial and territorial governments have improved their awareness and understanding of Indigenous Peoples. Parks Canada created an Aboriginal Affairs Secretariat in 1999 (Parks Canada 2011a, referenced in Wilson, 2012)

In Panama, Indigenous Peoples are able to exercise rights to self-determination that are actually stronger in practice than they are according to formal law. The fundamental “Angmar Igar” Law of the Comarca of Guna Yala, for example, is not formally recognized by Panamanian law, but in practice the Kuna People is able to exercise its right to autonomy and self-determination within its territory, which also allows it to establish its own protected areas, such as *Galus and Birias*, the terrestrial and marine sacred natural sites of the Guna.

Having that said, despite the existence of a legal framework regarding the Comarca’s and collective lands, there is no physical demarcation of the territories and lands of Indigenous Peoples. This has created conflicts between those who invade these territories. National government authorities have ignored these conflicts, and at times increased them. This situation impacts negatively on the relevant biodiversity conservation areas as well. In general there has been little valuation of the importance of Indigenous conservation practices. (Masardule, 2012)

In Chile, the law formally allows for the identification of lands that have historically been occupied by Indigenous people or communities. Such lands can be registered with the National Corporation for Indigenous Development but in reality the State has not registered lands ancestrally owned by Indigenous peoples, but restricted registration only to lands previously acknowledged to them. As a result, most Indigenous lands have been subject to usurpation by non-Indigenous private individuals, especially during the 20th century. The Fund for Lands and Waters has mainly been used to sell fiscal lands to Indigenous families as private property.

In general, it should be highlighted that the strong economic orientation of Chile towards opening up its natural resources for exploitation for international markets and by international investors has seriously undermined conservation efforts by Indigenous peoples and local communities. The State, often under pressure of the free trade and bilateral investment agreements it has signed, has openly and actively promoted the large-scale industrial exploitation of natural resources on Indigenous lands. As a result, most ICCAs have survived exclusively as a result of the strong will and dedication of the Indigenous Peoples and local communities that *de facto* govern them, rather than due to any support from the Government (Aylwin, 2012).

As described above, the Bolivian legal framework is undoubtedly one of the most advanced in the entire continent as far as the recognition of Indigenous territorial rights and autonomy is concerned. However, the practice has been very different. The Bolivian Government has combined a discourse defending the “rights of Mother Earth” and the need for a ‘buen vivir’ (good life) in harmony with nature with an aggressive economic policy that prioritizes the exploitation of fossil fuel, mineral and other natural resources and large infrastructural projects. The promotion of mega-projects within the framework of regional infrastructure initiative of South America (IIRSA), mines, biofuel production, soy expansion and hydro-electric dams has been accompanied with a flexibilization of environmental regulations and a large number of social conflicts. The well-known conflict around the proposed road through the TIPNIS ICCA is but one example of the many conflicts these projects have triggered. Where Indigenous Peoples’ rights stood in the way of economic aspirations, they have often simply been ignored. There has been a clear tendency to prioritize the interests of powerful elites over the rights and needs of weaker groups in society. While Bolivia has ratified ILO Convention 169, it only grants the right to ‘prior and informed consult’ to indigenous Peoples when it concerns the exploration of fossil fuels and mineral resources on their territory. When Indigenous Peoples refuse to give their consent to mega-projects they are accused of causing conflicts.

There also has been a tendency to allow illegal settlements in Indigenous territories and protected areas. The Government is actively trying to resolve the pressure on land by expanding the agricultural frontier and handing over forest areas and protected areas in the lowlands to agrarian unions coming from the Andean region. Many economic policies are in complete contradiction to the “harmony with nature” that the Bolivian Government official embraces. The current economic policies even threaten the very survival of some of the smaller Indigenous peoples. So the sad paradox is that under the leadership of an Indigenous President Bolivia might be generating, in accelerating steps, the most widespread ethnocide in the history of the Bolivian State.

The previous UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, reported in 2009 that “Bolivia is a country rich in natural resources the exploitation of which, including of minerals in the Andean area and fossil fuels in the East of the country, has had negative impacts on Indigenous territories and societies. During the past decades, the inadequate socio-environmental regulation and the lack of oversight over corporate activities, together with the lack of mechanisms to regulate the consultation of affected Indigenous communities, has generated situations of severe environmental crises in the Indigenous territories of the country.”²⁷

²⁷ Naciones Unidas: “Informe del relator especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, Sr. Rodolfo Stavenhagen. Misión a Bolivia”. Oficina del Alto Comisionado de las Naciones Unidas para los derechos humanos en Bolivia, La Paz, marzo 2009.

It should also be pointed out that while there are still many claims pending, the Bolivian Government has declared that the process of recognizing TCOs has been ‘finalized’, and it has started to impose requirements in terms of population numbers, territorial continuity and management capacity that form serious obstacles for the recognition of many TCOs as the characteristic of many Indigenous communities is that they form small populations in very extensive areas. At this moment, there are 54 TCOs/TIOCs established in the lowlands, with a total of 161.673 inhabitants.

In summary, the old saying that “*La ley se acata pero no se cumple*” (the law is abided but not complied with) is still very relevant in Bolivia. It has one of the most advanced legal frameworks in the region as far as respect for Indigenous rights is concerned, but there is little political will to actually comply with these rights (Miranda et.al., 2012).

In Suriname, implementation of some of the policy and legal initiatives to recognize Indigenous rights has been weak as well. The Buskondre Dey Protocol of February 2000²⁸, accompanied by a Presidential Resolution of the then president Wijdenbosch, was an initiative of the government shortly before elections in May 2000, to ‘solve’ the land rights’ issue. A meeting with traditional authorities was called and concluded with a ‘Basic Orientation Agreement’ in which, among others, the government ‘recognizes the collective rights of indigenous and maroons’. The subsequent presidential resolution furthermore stated that their ‘living areas’ (*woongebieden*) would be mapped according to ‘natural boundaries’ and be ‘made available for free use’ to the respective traditional leaders. At the same time however, the protocol and resolution upheld the applicability of the Constitution, all relevant laws and ‘general interest’, all of which do not recognize the collective rights of indigenous and tribal peoples, thus making their status and value debatable (Kambel and Mackay, 2003). The provisions in these documents have also not been implemented.

There is a limited awareness in general on indigenous and tribal peoples’ rights in Suriname, including by lawmakers. Although there is a general recognition that there are such rights, there is limited clarity what exactly those are, if and how they should be recognized legally, and how this would affect other rights such as the rights of concession holders, individual ownership rights, and rights of other communities. There is a persistent top-down governance attitude in Suriname, where the government and its officials often act as the know-betters towards indigenous and maroon communities, not to be challenged by critical groups or persons who, if they do, can face consequences in the form of exclusion from the improvement of public services (e.g. electricity and water supply).

The non-recognition of indigenous peoples’ rights in Suriname, in particular legal recognition of land rights and traditional governance structures, is also a big issue in relation to governance and management. It results in ambiguous situations where

²⁸ Translation available at <http://www.forestpeoples.org/fr/node/1224>

indigenous communities cannot legally enforce their ownership, rules and control if the government issues exploitative concessions and other permits in their territories. The communities cannot make long-term planning in accordance with their own visions and aspirations; customary rules and traditions are overruled with force or court decisions if necessary; traditional leadership seems to be actively undermined in favor of party-political exponents (including in decentralized government structures); and communities suffer from general legal uncertainty and marginalization – in the words of an indigenous resource user: “as if we simply do not count and exist; the animals have more rights than us”. Moreover, the basic awareness of the existence of human rights standards seems to be limited to those persons that follow international processes *ex officio*. For example, the majority of persons interviewed during the review of recognition of ICCAs in Suriname (VIDS/ICCA Consortium; March 2012) had not heard of ICCAs before (VIDS, 2012).

4. COMMUNITY EXPERIENCES

It was, and to some degree remains, a common ethic of Indigenous Peoples in Canada to hold a strong connection to the land. Traditional cultures enhanced biological diversity and their continued exercise facilitate its retention (Wilson, 2007). Practice of these cultures, though interrupted as a result of Canadian government policies, has not been lost altogether and many Indigenous communities and individuals are working hard to retain or restore them (UNEP, 2003). Despite Canadian law – and to the extent possible in the face of invasive colonization – Indigenous Nations continue to govern and manage traditional territories for conservation. For most Indigenous Peoples these traditional laws and systems of governance are based on a concept of interconnectedness. The Algonquin speak of ‘ginawaydaganuk’ (McDermott and Wilson 2010) or ‘web of life’ and the Nuu-chah-nulth speak of ‘Hisuk ish ts’awalk’ or ‘oneness’ (Atleo, undated). In many traditional Indigenous cosmologies, the connection between the land and humanity is seamless.

The Inuit of Nunavut have a comprehensive agreement that includes rights to self-government, but these rights are less than those delegated by the federal government to a territory. Inuit people are the dominant population in Nunavut and thus, by virtue of democratic governance, the Inuit of Nunavut have the opportunity to exercise customary law in areas that are restricted under the comprehensive agreement. The Inuit are taking up these opportunities. For example, the territorial government of Nunavut requires the application of Inuit knowledge (*Qaujimajatuqangi*) for the governance of the environment in Nunavut.

Once it became legal, Indigenous Peoples have actively pursued development of their own political organizations. This includes the creation of national Indigenous organizations and numerous regional and local political organizations as well as single issue advocacy groups that are working to promote greater respect for Indigenous rights. Indigenous Peoples are joining the professional ranks of Canada, training as

teachers, lawyers, accountants, journalists, business people, and medical professionals, allowing them to better serve their people. They are using the courts, participating in political debate, and using the arts and electronic media to advocate for their rights. In 2006, First Nation people formed the First Peoples National Party of Canada as a political voice for Indigenous Canadians (FPNP 2008).

Today relations between Indigenous Peoples and the Canadian Government range from cooperative engagement to protest marches and litigation. The list of protests that have or are occurring across the country is long and discouraging. There have been protests against developers, such as that at Caledonia, Ontario. There were protests against the 2010 winter Olympics by some First Nation activists. The Coast Salish protested destruction of a sacred site by surveyors. Yet, Indigenous peoples have demonstrated, time and again, their patience and perseverance in the face of rampant disregard for their rights. Having that said, many observers are concerned that a rise in conflict is inevitable in the face of continuing negligence (RCAP 1996; Hume 2006, referenced in Wilson, 2012)

In Panama, the Indigenous Peoples have persistently defended their own territorial rights and traditional governance structures. Their territories are not only threatened by the establishment of protected areas that limit their traditional lifestyles and lead to the erosion of their traditional knowledge, they are also threatened by development processes and infrastructural projects like mining and hydro-electric dams. Especially the Ngobe and Bugle People are involved in a profound struggle to defend their territory against the impacts of various development schemes, including a hydro-electric dam that has received finance from the Kyoto Protocol's Clean Development Mechanism. These projects form a serious assault on the cosmovision and ancestral knowledge of the Indigenous peoples, which is based on their respect for Mother Earth. Some of the struggles have been very successful, though. The Kuna People, for example, has developed its own mechanism for the protection of traditional knowledge and the implementation of the right to Free, Prior and Informed Consent, also related to its genetic resources and the conservation of biodiversity. This has allowed the Kuna People to protect its knowledge and traditional ways of life and to reaffirm its self-determination within its own laws and territories. The Kuna People have also declared all the natural resources and biodiversity within the Kuna Yala Comarca as patrimony of the Kuna People. The Law of the Comarca stipulates that the use, protection and conservation of biodiversity is realized according to the traditional practices established in the Statute of the Comarca (Masardule, 2012).

In Chile there has been a long and persistent resistance by Indigenous Peoples against the destruction of their territories and lands by extractive industries and other destructive activities like monoculture tree plantation development. This resistance is manifested through the strong defense of Indigenous territories against specific projects and investments, including mining projects in the North of the country and plantations in the South of the country. The formal establishment of ICCAs has been one instrument

used in this struggle. For example, the Diaguita decided in 2006 to formalize the establishment of 140,000 hectares of their communal territories as a private protected areas to protect their lands against the proposed Pascua Lama mining project. The Council of the Atacamenos Peoples has been a pioneer in demanding co-management of its lands and protected areas to protect them against the threats of mining concessions.

The Mapuche People have been most active in the defense of their territories. The Quinquen community, for example, has organized itself since the late eighties of the last century to stop logging of the *Auracaria* tree, which is sacred to them, and to demand the recognition of their ancestral territories. Subsequently they have led the protests against the expansion of monoculture tree plantations on their territories. Indigenous Peoples have also actively resisted the construction of dams in their rivers and campaigned partly successfully for the recognition of their rights regarding marine and coastal resources. The Mapuche have also been very vocal in campaigns defending their rights when protected areas were established. In November 2010, a large coalition of NGOs and Indigenous Peoples' Organizations sent a joint letter to the Chilean President demanding respect for Indigenous rights as recognized in ILO Convention 169 and UNDRIPs in protected area laws and policies.

Non-indigenous communities have been much weaker in their resistance, but there have been important citizens movements involving local communities campaigning for the protection of the Rio Cruces wetland, and non-Indigenous communities have also played an active role in campaigns against monoculture tree plantation expansion in the Araucania region and the establishment of hydro-electric dams in the Aysen region. One challenge faced by Indigenous Peoples and rural communities alike is that they often live in isolated natural regions, lack information about laws and public policies, and lack resources for legal action or other campaigns. Legal support NGOs like Observatorio Cuidania have played an important role in supporting legal actions in this respect (Aylwin, 2012).

Bolivian Indigenous Peoples have a long tradition of campaigning and mass mobilization for the recognition of their rights. Especially since the 1990's there have been growing mobilizations of Indigenous movements that question policies of integration and social and political exclusion and that have demanded rights not only to land but to territories, natural resources and autonomy. The Indigenous Peoples of the lowlands, who are numerically smaller, have been instrumental in this struggle for the recognition of their rights as stipulated in ILO Convention 169 and the more recent UN Declaration on the Rights of Indigenous Peoples. The historical 750 kilometer-long march for "territory and dignity" lead by the Indigenous peoples of Beni in 1990 was instrumental in creating political support for TCOs and TIOCs as *sui generis* forms of ICCAs. In 1996 Indigenous Peoples organized a march to demand that their rights would be included in the new Land Law, in 2002 they marched in favor of their inclusion in the constituent assembly, in 2008 they marched in favor of the approval of the new Constitution and in 2010 they

marched for Indigenous autonomy. The most recent marches have taken place in 2011 and 2012 and are ongoing as this report was written. They aim to defend the Indigenous Territory and National Park Isiboro Secure (TIPNIS) against a proposed road that is planned to cut right through this ICCA of high biological and cultural importance. It is feared that the new road will trigger a large number of new illegal agrarian settlements, also in the light of the overall failure of the Bolivian government to prevent such illegal settlements.



Indigenous March to defend the TIPNIS ICCA (Photo Fundación Tierra: www.ftierra.org)

Currently, the following initiatives are being applied to counter threats to ICCAs: a) Demanding recognition and titling of TCOs, b) promoting Indigenous territorial management in recognized Indigenous territories, and c) insisting on FPIC and repositioning Indigenous Peoples in the political scene.

In light of the threat posed by the economic development policies of the Government, social organizations and indigenous peoples in Bolivia are actively campaigning to revert the exploitative development model and to rediscover the collective cultural roots of communities. This implies building a society based on collective responsibility and the communal and rational management of natural resources, in which peoples decide upon the destiny of natural wealth according to their organizational structures, their self-determination, their own norms and procedures and their vision of integral management of territories, which is demonstrated by their ICCAs (Miranda et.al., 2012).

As the traditional authority structure of the indigenous communities in Suriname, the Association of Indigenous Village Leaders in Suriname (VIDS) is a principal advocate for the legal recognition of indigenous peoples' rights, particularly land rights as the basis for indigenous peoples' lives, livelihoods, cultures, survival and identity. This will secure indigenous peoples' governance and management over their lands, territories and natural resources. VIDS participates proactively in all relevant national policy processes to advocate for legal recognition of indigenous and tribal peoples' rights in Suriname. Within its long-term strategy VIDS has an explicit focus on local empowerment, awareness-raising of the value of holistic customary territorial management and education in Indigenous languages.

Most protected areas were established without the prior knowledge of the indigenous communities in the area, some of who were informed many years after such establishment (VIDS/FPP 2009²⁹). Due to isolation and the other factors described earlier, there was not much to be done against such injustice at national level. In more recent years, VIDS has actively protested against the continued disinformation, non-participation and marginalization in policy-making and decision-taking and the multiple incidences of new concessions being given in indigenous lands. This was done through numerous letters to the relevant ministers, formal petitions to the President in accordance with article 22 of the Constitution, lobbying and advocacy, and many press releases, interviews and other publicity articles. One of the most blatant examples related to nature 'conservation' was the establishment of the Galibi Nature Reserve in 1969 where the indigenous villagers were literally driven away from their ancestral lands (personal communication villagers).

At village level, the indigenous communities have to put much effort in defending their territories and resources against intruders who are not seldom backed by government-supplied legal documents, individual persons and local companies but also large, well-known multinationals, mostly mining and logging companies. Some villages are adamant in simply refusing entry³⁰; others enter into (unequal) negotiations to try to force a win-win situation but are obviously very disadvantaged because of their weak and legally unsupported position.

International organizations (can) play an important role in constructive engagement of indigenous peoples. Among others, various organizations, particularly international environment organizations, have contributed to capacity strengthening of indigenous organizations and community-based organizations, mostly in relation to biodiversity

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

³⁰ Link newspaper article Pikin Poika puts up road block (in Dutch):
<http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/6410> or
<http://www.dwtonline.com/website/nieuws.asp?menuid=37&id=60134>

conservation and management, especially protected area management. They have also facilitated or advocated for more inclusive and participatory approaches where the government did not give (sufficient) attention or priority to those aspects. This role, however, has not been utilized to the full potential, particularly because of political sensitivities and a fear of being reprimanded by the Surinamese government of 'interfering with internal matters'. Another argument that is being used is that their mandate is restricted to environmental themes and particularly the establishment or management of protected areas. In a few cases (and fortunately only with one or two NGOs) it even happens that the local subsidiaries of environment NGOs are acting against indigenous peoples' rights, supporting obsolete government perspectives on land and resource rights, acting in a similar top-down manner, insufficiently respecting indigenous peoples' rights over traditional knowledge or proactively advocating for the establishment of protected areas in indigenous territories without adhering to standards of respecting indigenous peoples' rights in particular the right to free, prior and informed consent.

New potential threats to indigenous peoples' rights, and rapidly increasing in importance, are the increasing efforts of government and NGOs to enter into REDD+, carbon offset, clean development mechanism (CDM) or payment for ecosystem services schemes. While these schemes are pictured as offering great opportunities for indigenous peoples to get economic income from the carbon market, they may actually work counterproductive in Suriname where indigenous peoples' rights are by no means legally recognized. In addition to the various conceptual weaknesses, such as the commercialization and monetizing of nature and disregard of the holistic worldview of indigenous peoples and of spiritual and cultural values, such schemes can be an additional reason for land hunger and the appropriation of indigenous lands and resources³¹ (VIDS, 2012).

³¹ See also news article in Mongabay 2011 http://news.mongabay.com/2011/0731-hance_suriname_rights.html

PART III

CONCLUSIONS AND RECOMMENDATIONS

5. CONCLUSIONS AND LEGAL AND POLICY REFORM

As the report on Panama concluded (Masardule, 2012), customary laws and practices of Indigenous Peoples and local communities have led to resilient ICCAs that share a number of characteristics, including:

- They are spaces that have been protected by Indigenous peoples and local communities for a very long time;
- They have a cultural and cosmogonic value that contributes to the care for nature;
- They form a basis for the cultural, spiritual and alimentary means of life of Indigenous peoples;
- They contribute to the production and protection of water sources;
- They serve as spaces for the reproduction of plants and animals;
- They include sacred sites that are used by Indigenous Peoples;
- They form cultural and biological corridors that help to establish the connection between conservation areas;
- They have enabled the development of knowledge and techniques that contribute to the management of resources like rotational agriculture that permits the natural regeneration of soils, territorial planning, and agroforestry; and
- The collective management of Indigenous communities, based on local norms and organization, permits the sustainable use of resources and a more equitable distribution of benefits.

First nations have always practised conservation. Our very existence as nations and peoples depends on the continued existence of the marine ecosystems. We would not exist without the seas and aquatic resources that were once bountiful on this coast. In your rush to protect some of the last remaining areas on the coast, you must consider and respect our place in the environment. Many of you who espouse the virtues of biodiversity seem to overlook the place that our peoples and our cultures have in the fabric of life. We have lived as part of these same areas or ecosystems that you are now trying to protect since time immemorial. Therefore, you must also protect our place in those areas and ecosystems. Also, many of the areas being considered for protection represent some of our last opportunities to regain self-reliance. Protection of these areas is now necessary only because your cultures try to consume and develop everything that is in sight. Now that there is only a little bit left, you decide to protect it. First nations must not be made to suffer the burden of conservation, when the system of overuse and over-harvest was not of our making. (House of Commons, 2001)

However, the analysis of the situation around ICCAs demonstrates that in most countries, the conservation and sustainable use of territories and lands by Indigenous

peoples and local communities is neither recognized nor properly valued. This has often led to conflicts between the authorities responsible for protected areas and Indigenous peoples, as governmental institutions promote the creation of protected areas without taking into account the traditional conservation practices of Indigenous peoples and local communities.

It is impossible to analyze the legal status of ICCAs in the Americas without full awareness of the colonial history and actual situation of most of the continent. The original inhabitants of the Americas still live in a situation of *de facto* and *de jure* occupation. Most Indigenous Peoples have received recognition of a fraction of their original territorial rights only, if at all, and even then this seldom implies a recognition of their full autonomy and the right to self-governance. These rights are enshrined in the UN Declaration on the Rights of Indigenous Peoples which by now has been received the explicit support of almost every country on the continent. While not a legally binding instrument by itself, the jurisprudence in this report demonstrates that an increasing number of lawyers consider many of the rights enshrined in this declaration as binding, which implies that these rights could be considered binding customary law. However, only the new Constitution of Bolivia, the continent's first nation with an Indigenous president, has explicitly stated that it considers the entire declaration as binding, and its national laws clearly recognize the territorial rights of Indigenous Peoples. Implementation of these laws is weak and the livelihood and even survival of some of the smaller Indigenous Peoples in Bolivia is severely threatened due to the expansion of agro-industrial monocultures and mega-projects. In all the countries analyzed, Indigenous Peoples are engaged in active legal and political struggles to seek full recognition of their territorial and other inherent rights.

The origin of the denial of their rights is rooted in the Doctrine of Discovery. This doctrine finds its basis in a ruling by the USA Supreme Court, *Johnson v. M'Intosh*, where the Court claimed that the original rights of American Indians, "to complete sovereignty, as independent nations," had been "necessarily diminished" by the right of discovery. This "right" of "discovery," said the Court, was confined to countries "unknown to Christian people."... To give themselves unfettered access to the lands, territories, and resources of indigenous peoples, the Christian States of Europe, and later state actors considered this principle only applicable to themselves (United Nations Special Rapporteur, 2010).

The former vice-president of the UN Permanent Forum on Indigenous Issues, Ms. Tonya Gonnella Frichner, describes this doctrine as follows: *"[It] has been institutionalized in law and policy, on national and international levels, and lies at the root of the violations of indigenous peoples' human rights, both individual and collective. This has resulted in state claims to and the mass appropriation of the lands, territories, and resources of indigenous peoples. Both the Doctrine of Discovery and a holistic structure that we term the Framework of Dominance have resulted in centuries of virtually unlimited resource extraction from the traditional territories of indigenous peoples. This, in turn, has*

resulted in the dispossession and impoverishment of indigenous peoples, and the host of problems that they face today on a daily basis (United Nations Economic and Social Council Permanent Forum on Indigenous Issues, 2010).

The UN Permanent Forum on Indigenous Issues itself concluded in 2012³²:

"Legal and political justification for the dispossession of indigenous peoples from their lands, their disenfranchisement and the abrogation of their rights such as the doctrine of discovery, the doctrine of domination, "conquest", "discovery", terra nullius or the Regalian doctrine were adopted by colonizers throughout the world. While these nefarious doctrines were promoted as the authority for the acquisition of the lands and territories of indigenous peoples, there were broader assumptions implicit in the doctrines, which became the basis for the assertion of authority and control over the lives of indigenous peoples and their lands, territories and resources. Indigenous peoples were constructed as "savages", "barbarians", "backward" and "inferior and uncivilized" by the colonizers who used such constructs to subjugate, dominate and exploit indigenous peoples and their lands, territories and resources. The Permanent Forum calls upon States to repudiate such doctrines as the basis for denying indigenous peoples' human rights.....International human rights law, including norms on equality and non-discrimination such as those affirmed in the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples, demand that States rectify past wrongs caused by such doctrines, including the violation of the land rights of indigenous peoples, through law and policy reform, restitution and other forms of redress for the violation of their land rights, including those referred to in articles 27 and 28 of the United Nations Declaration." (UNPFII, 2012)

The main threats to communities' local governance of their territories, areas and natural resources and to indigenous peoples' cultures, are very similar to the threats to biodiversity and ecosystems (adapted from VIDS, 2012). The most important threat is the non-recognition of indigenous peoples' rights in most national legislation on the continent, with a partial exception of Bolivia and to some extent Panama. The absence of legal recognition of these rights allows for the issuance by government of concession rights over natural resources without meaningful participation in decision-taking, management or monitoring by the affected indigenous communities. This leads to (over-) exploitation of these resources by the concession holders, with the accompanying impacts on the livelihoods, cultures and traditions of indigenous peoples and on biodiversity, ecosystems and environment in general. These violations of indigenous peoples' rights have increased in recent years due to the intensified focus on natural resources' exploitation, partly triggered by aggressive exploitation oriented

³² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/359/17/PDF/N1235917.pdf?OpenElement>

economic policies (Bolivia) and free trade agreements (Chile). This creates an environment of uncertainty, fear and indecisiveness in indigenous communities who have no recourse mechanisms and are marginalized in legal and political policy-making and decision-making.

Closely linked to this non-recognition of Indigenous peoples' rights is the unilateral character of the existing nature conservation legislation. In almost all countries, all environmental decisions are taken by governmental bodies without a prescribed participation in decision taking and shared responsibilities. Only in the recognized Comarca's in Panama, in TCOs/TIOCs in Bolivia, the one "Marine and Coastal Space of Aboriginal Peoples" that has been recognized by the Government of Chile until now, and to some extent in areas that are subject to a comprehensive agreement in Canada, Indigenous Peoples have a formal right to co-management or even autonomous management of their own lands and resources. The establishment and management of protected areas (which are almost always located within or overlapping with the traditional territories of Indigenous peoples) conflicts with traditional land and resource management, as there are two different and sometimes conflicting frameworks of rules and regulations (the traditional and the governmental/legal one) that the communities have to deal with. In this atmosphere of legal uncertainty and often-times harsh enforcement of governmental rules, the communities may put less effort in conserving and sustainably using biodiversity and ecosystems according to their own customary rules and practices. This goes hand-in-hand with a corresponding loss of traditional knowledge, customs and traditions, but also to the loss of traditional custodianship over these areas and species, making them prone to 'lawlessness' and unsustainable use or depletion.

Again linked with the non-recognition of land and other rights, uncertainty over the ownership and use of their territories and natural resources, the invasion by companies, illegal settlers or other outsiders, combined with a growing importance of the monetary economy at local level (which comes with an increasing need for cash) various members of the Indigenous communities make narrower and shorter-term decisions with regards to their natural environment, increasingly focusing on short-term, unsustainable 'modern' uses of natural resources instead of long-term traditional use. The transmission of traditional knowledge and rules relating to nature conservation and management to the younger generation is decreasing, as a result of the lack of culturally appropriate education and economic opportunities in the communities, forcing school kids to leave their village early. In most parts of the continent, Christianization and assimilative education methods also lead to decreased use and transmission of culture, language and traditional customs, beliefs and rules. There also is an increasing pressure to have monetary income e.g. cash to pay for school fees and living expenses of school children in the city, and for transport facilities. This can result in the use of less sustainable methods for more or faster utilization of natural resources to have a monetary income.

Another threat is the lack of legal recognition of the traditional authorities of Indigenous and tribal peoples. In countries like Suriname and Chile the official administrative system formally only knows political representative structures (Resort and District Councils and officials (government supervisors or '*bestuursopzichters*') or Western-style organizations (like the associations Indigenous Peoples in Chile were forced to set up) and local government structures (local government service or '*bestuursdienst*') that do not necessarily represent the opinions and aspirations of the communities and who, in the case of Suriname, are often affiliated to and influenced by political parties. It is often easy for outsiders to 'consult' with those structures and obtain their agreement, instead of with the legitimate traditional authorities. This has substantial impacts and constitutes a threat to traditional community governance, including governance related to territorial and resource management. The intrusion of extractive industries and agro-industrial expansion, including of monoculture tree plantations, is in itself also posing a threat to local governance, and by extension, biodiversity, the environment, human health, internal security and the safety of the indigenous communities.

The authors of the national reports provide a large number of recommendations for reforming and improving the development and implementation of laws and policies to more effectively recognize, protect and support ICCAs:

Recognize Indigenous Peoples' Rights

1. First and foremost, adopt and ensure effective compliance with overall legislation recognizing and formalizing the rights of indigenous and tribal peoples, in accordance with international standards and obligations. This includes recognizing the inherent rights of Indigenous Peoples, including rights to land and self-government;
2. Move away from colonialist cultural hegemony and embrace reconciliation of Indigenous cultures, laws, and worldviews;
3. Show greater regard for Indigenous epistemologies, which includes acknowledging that humanity is part of the landscape, that all lands and the people are connected, and that we must treat all of the land with respect and care for future generations;
4. Full implementation of ILO 169 and the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples*, particularly Articles 12, 29, and 32 and ensure the effective implementation of the right to free prior and informed consent, especially when it concerns proposed projects on Indigenous territories or community conserved areas;
5. Establish mechanisms and guidance for obtaining the free, prior and informed consent of indigenous peoples for activities that may affect them;
6. The State should protect the interests of social groups in a position of disadvantage, discrimination and vulnerability and fully respect their right to FPIC; and

7. Engage Indigenous governments and other traditional authorities in land use decision making processes that allow Indigenous Peoples and local communities to achieve their aspirations, and move away from unilateral decision making or cursory consultation.

Establish Policies and Regulations to Recognize, Protect and Support ICCAs

1. Build the awareness of decision-makers on the importance of ICCAs and to enter into dialogue so as to mobilize effective legal and political support for ICCAs, including through new laws that explicitly recognize them;
2. Mobilize sufficient financial resources to provide effective support to ICCAs and traditional biodiversity conservation practices;
3. Strengthen traditional institutions of Indigenous peoples and local communities in the governance of the territories and lands under their control;
4. Further strengthen the capacity of Indigenous Peoples and local communities to effectively manage their own lands and territories, including through providing:
a) financial support; b) education, training, and capacity building; c) tools and equipment; d) research capacity; and e) translation services;
5. Take legislative and policy measures to ensure the effective protection of sacred natural sites, ensuring their governance by Indigenous Peoples and local communities;
6. Recognize and disseminate interesting and successful examples of Indigenous territorial management plans;
7. Design a procedure that allows Governments to recognize and respect the traditional practices and initiatives of Indigenous Peoples and local communities to conserve biodiversity within their lands and territories, without the need to create new formally protected areas, and to include ICCAs as an alternative to protected areas;

Reform Environmental and Natural Resources Laws to Ensure Greater Participation and Coherence with Human Rights

1. Promote a much more active role of the State in supporting the sustainable management of natural resources by Indigenous Peoples and local communities;
2. Establish a constructive dialogue on rights-based arrangements related to protected areas, building on internationally agreed standards and best practices such as mentioned in the UNDRIP, CBD Programme of Work on Protected Areas, World Conservation Congress and the World Parks Congress;
3. Review protected areas systems and governance structures so that the territorial rights and lands of Indigenous Peoples and local communities are fully respected and to develop partnerships between Indigenous and State governments for co-governance of protected areas;
4. Promote the modification of environmental laws in the country with the aim of ensuring their coherence with Indigenous rights and the laws of Indigenous

- authorities regarding access to and use of the natural resources in Indigenous territories;
5. Evaluate the impacts of protected areas on Indigenous Peoples and local communities, especially when they are located within Indigenous territories, and identify and resolve conflicts between Indigenous Peoples and protected areas, based on full respect for the rights of Indigenous Peoples. Traditional authorities of Indigenous peoples should be fully involved in such conflict resolution mechanisms;
 6. Ensure the full and effective participation of Indigenous Peoples and local communities in decision-making related to biodiversity conservation and the establishment of protected areas and other legislative and policy reforms, including in particular the participation of women;
 7. Provide greater financial and other capacity building support to Indigenous Peoples to facilitate their effective involvement in governance of protected areas;
 8. In general it should be ensured that ICCAs and sacred natural sites are effectively protected against destructive activities like mining, monoculture tree plantations, roads and other infrastructural projects;
 9. It should be ensured that free trade agreements and investment treaties do not undermine Indigenous rights. The trend to privatize indigenous territories and community lands and/or grant concessions for the exploitation of natural resources by outsiders should be halted;
 10. Withhold the issuance of new, and review existing concessions and other conflicting land or resource titles (including protected areas) in indigenous territories

Reform Policies and Laws to Effectively Protect and Promote Traditional Knowledge and Management Practices

1. Design and implement a program to value, systematize, and strengthen indigenous knowledge and traditional practices related to biodiversity conservation, also by establishing alliances with academic and other research institutions and support organizations dedicated to the analysis, conservation and recuperation of traditional knowledge;
2. Develop legal regimes fully accepted by Indigenous Peoples that protect the collective rights of Indigenous Peoples over their traditional knowledge, as well as strategies that guarantee their effective protection against external and internal threats and promote revitalization, guaranteeing the integrity of indigenous knowledge innovation and practices as part of the cultural, social and economic integrity of Indigenous Peoples;

Recommendations for Non-governmental Actors

1. For indigenous organizations: Intensify awareness (to the communities and general public) on indigenous peoples' rights, lifestyles and sustainable management of natural resources; and intensify lobbying and advocacy;
2. For environment NGOs: Adhere to international standards and best practices on the rights of indigenous peoples and proactively partner with indigenous peoples to identify and pursue common objectives;
3. For international and donor organizations: Focus the attention, monitoring and support on issues that really matter in the daily lives of indigenous peoples. Truly apply the much-referenced human rights-based approach, defining objectives in light of achieving human rights' objectives and empowering rights-holders and duty-bearers. Monitor the compliance of countries with human rights, CBD and other internationally agreed obligations and standards.

The main recommendation is therefore not to 'pragmatically' seek recognition of ICCAs but to fully recognize indigenous peoples' rights as agreed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169, as the basis and starting point to achieve equal and respectful partnerships in achieving common (environmental) objectives from a more holistic, rights-based perspective. As the authors of the Suriname report stated: *"At this stage, we are not recommending to revise the protected area system in itself or to establish or recognize ICCAs, as long as the basic requirements, namely formalizing indigenous peoples' rights over their territories and resources, are not in place first."* (VIDS, 2012)

For Indigenous Peoples, recognition of their rightful place as a third order of government with shared responsibility for land use decisions is the key issue for conservation. (Wilson, 2012)

In essence, all countries on the American continent should muster the necessary political will to develop a new relationship with Indigenous Peoples and local communities. This includes a willingness to respect the rule of law and to recognize fundamental injustices that have been committed through the historical denial of the rights of Indigenous Peoples, including in particular their territorial rights. Substantial legal reform is required to meet the Constitutional and common law obligations owed to Indigenous Peoples and to address the many historical injustices that have been triggered by the Doctrine of Discovery. Greater effort must be made on the part of the Governments to move this agenda forward. This includes reconciliation of Indigenous and formal Governmental laws about environmental protection and conservation and development of natural resources.

In light of this reality, it is essential to establish governance systems that respond to and respect the management of the territories and lands by Indigenous Peoples and local communities, with the understanding that these governance systems should grant the full responsibility to indigenous peoples and local communities to govern their own lands and territories, whether they are declared protected area or not.

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