Free, Prior and Informed Consent:
Two Cases from Suriname

FPIC Working Papers,
Forest Peoples Programme

March 2007

Free, Prior and Informed Consent:
Two Cases from Suriname

Forest Peoples Programme and Association of Saramaka Authorities

March 2007, Forest Peoples Programme, Moreton-in-Marsh

Free Prior and Informed Consent: Two Case Studies from Suriname was first published in 2007 by Forest Peoples Programme. This is the first in a series of working papers issued by the Forest Peoples Programme which explore the practical experiences of indigenous peoples seeking to exercise their right to Free, Prior and Informed Consent.
Others in the series include: *Habis Manis Sepuah di Buang* by Pokja Hutan Kaltim; *El Punto de Inicio: Libre Determinacion* by Racimos de Ungurahui, and *Making FPIC Work: Challenges and Prospects for Indigenous Peoples* by Marcus Colchester and Maurizio Farhan Ferrari

Original: English

Dutch edition:	Vrijelijk tot stand gekomen, voorafgaande en weloverwogen instemming (FPIC): twee case studies uit Suriname
Spanish edition:	Consentimiento Libre, Previo e Informado: Dos Casos en Surinam
Cover photograph:	Drill team, including two indigenous men from the Lokono communities in West Suriname, extracting bauxite for BHP Billiton in the Bakhuys Mountains, February 2005. (See page 12 of this report.) Photo courtesy of the Lokono people, West Suriname
Photographer:	Carla Madsian

Contents

Acronyms

ASA	Association of Saramaka Authorities
CBD	Convention on Biological Diversity
CI	Conservation International
COP	Conference of Parties
CSNR	Central Suriname Nature Reserve
ESIA	Environmental and social impact assessment
FPIC	Free, prior and informed consent
FPP	Forest Peoples Programme
FSC	Forest Stewardship Council
IACHR	Inter-American Commission on Human Rights
ICBG	International Conservation Biodiversity Group
ICMM	International Council on Metals and Mining
IP	Indigenous people
NGO	Non-governmental organisation
SBPI	Suriname Biodiversity Prospecting Initiative

Introduction

This study was undertaken jointly by the Association of Saramaka Authorities (ASA), a Surinamese tribal people's organization, and the Forest Peoples Programme with the generous support of SwedBio. It addresses two distinct situations in Suriname: 1) logging and bio-prospecting in the territory of the Saramaka people; and 2) mining and related issues in the territory of the Lokono indigenous people of west Suriname. The study's main focus is on how the Saramaka and Lokono peoples view the substantive and procedural aspects of the right to free, prior and informed consent (FPIC) in relation to activities that may affect their traditional knowledge and their various relationships with their traditional territories and the biological diversity therein.

While the analysis herein is framed by the Convention on Biological Diversity (CBD), particularly Articles 8(j), 10(c) and (d), the Bonn Guidelines, and the Akwe: Kon Guidelines, the inter-linkages between the substance of the CBD's provisions and human rights norms are also stressed. This is consistent with international law generally, which requires that international instruments be interpreted in light of general principles of international law and 'any relevant rules of international law applicable in the relations between the parties,'[1] as well as Article 22 of the CBD itself.[2] Respect for rights is also highly relevant to implementation of a number of legally binding decisions of the CBD's Conference of Parties (COP), including Decision VII/15.23 on Protected Areas.[3]

The first section of this study introduces Suriname and provides important background information for the two cases studies which are addressed in the second and third sections. The final section contains a number of concluding comments and recommendations on how FPIC should be further defined and operationalized by the CBD COP as well as at the national level.

---

[1] Vienna Convention on the Law of Treaties (1969), Article 31(3)(c). See, also, Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, *International Court of Justice Reporter* 16 (1971), at 31 – 'an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of its interpretation….'

[2] Article 22 of the CBD provides that: 'The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.'

[3] Decision VII/28.22 on Protected Areas, adopted at the 7th Conference of Parties to the Convention on Biological Diversity, which, among others, '*Recalls* the obligations of the Parties towards indigenous and local communities in accordance with article 8j and related provisions and *notes* that the establishment, management and monitoring of protected areas should take place with the full and effective participation, and the full respect for the rights of, indigenous and local communities consistent with domestic law and applicable international obligations.' Programme Element 2 of the Programme of Work on Protected Areas, on Governance, Participation, Equity and Benefit-sharing, which is annexed to Decision VII/28.22 is also relevant.

1 Indigenous peoples and Maroons in Suriname: Background

Suriname is a small former Dutch colony on the north east coast of South America, bordered by Guyana to the west, French Guiana to the east and Brazil to the south. It was first colonized by the English in the 1650s and then ceded to the Dutch in 1667. Apart from a short period of English control in the early 19th century, it remained under Dutch control until achieving independence in 1975. It has a small population of around 400,000, approximately 80 percent of whom live on a small coastal strip comprising about 10 percent of the country's total land mass. The population is drawn from eight different ethic groups: Creoles and Maroons, both of African descent; East Indians, the descendants of indentured labourers from India; Javanese, originally from Indonesia; indigenous peoples; Chinese; Lebanese and; a small group of Europeans, mostly of Dutch origin.

Until recently, Suriname's substantial tropical rainforests were regarded as one of the best prospects for long-term sustainable use and preservation in the region.[4] These forests cover between 80-90 percent of the surface area of the country and are biologically rich and high in endemic species. These forests are also the ancestral home of four distinct Indigenous peoples (Kalinya, Lokono, Trio and associated peoples, and Wayana) comprising up to five percent of the population. It is also home to six tribal peoples (known as Maroons) – Aucaner or N'djuka, Saramaka, Paramaka, Aluku, Kwinti and Matawai – totalling around 15 percent of the population. In real numbers, this translates to approximately 20,000 indigenous people and 60,000 tribal people. Over one-half of the approximately 200 indigenous and Maroon communities are directly affected by logging and mining activities and many others are indirectly affected.

Maroons are the descendants of escaped African slaves who fought for and won their freedom from the Dutch colonial administration in the 18th century. Their freedom from slavery and rights to territorial and political autonomy were recognized in treaties concluded with the Dutch and by two centuries of subsequent colonial administrative practice. They succeeded in establishing viable communities along the major rivers of the rainforest interior and consider themselves, and are perceived, to be culturally distinct from other sectors of Surinamese society, regulating themselves according to their own laws and customs. Consequently, they qualify as tribal peoples according to international definitional criteria and enjoy similar rights to indigenous peoples under international law.[5] Recognition of their autonomy has eroded in the past 50 years and the government now asserts that Maroons have no rights to their territories and, for the most part, refuses to recognize tribal authorities and law.[6]

One of the main problems affecting indigenous and tribal peoples in Suriname is the total absence of any effective legal safeguards for their traditional territories. Suriname has failed to legally recognize indigenous and tribal peoples' traditional ownership rights to their lands, territories and resources and not one community or people holds any form of communal title to their lands or territory or any

---

4 M. Colchester, FOREST POLITICS IN SURINAME. Utrecht: International Books/World Rainforest Movement, 1995, at 7.

5 See, article 1 of International Labour Organization Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989, which provides that 'This Convention applies to: (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.'

6 See, generally, E-R. Kambel & F. MacKay, THE RIGHTS OF INDIGENOUS PEOPLES AND MAROONS IN SURINAME, IWGIA Doc. 96, International Work Group on Indigenous Affairs and Forest Peoples Programme: Copenhagen (1999).

part thereof. By law, the state owns all ungranted land and all natural resources and can issue resource exploitation concessions without regard for indigenous and tribal peoples' rights to land or otherwise.[7] Although legislation recognizes that they are entitled, but not by right, to use and enjoy their villages, settlements and current agricultural plots, should the state decide that these areas are required for other activities, indigenous and tribal 'privileges' (as the state calls them) are negated as a matter of law. There are no applicable judicial or administrative remedies that indigenous peoples may invoke should their rights be threatened or violated.[8]

Despite a number of promises to address this issue, the most recent in January 2006, the government has yet to take action to rectify this situation. Because of this, indigenous and tribal peoples, who have vociferously advocated for recognition of their land rights for decades, have been forced to seek the protection of the Inter-American Commission on and Inter-American Court of Human Rights. In 2005, the Court determined that Suriname had violated a tribal community's right to property and held that its property rights arise from its traditional occupation and use, as defined by its customary laws, and are not dependent for their existence on Suriname's domestic laws.[9] It ordered that Suriname establish constitutional and legislative mechanisms to recognize and secure the community's property rights and halt any third party activities in their traditional territory.[10] However, other than establishing a Commission on Land Rights in January 2006, Suriname has yet to implement this order of the Court.

In 2006, the Inter-American Commission reached the same conclusion. In this case, which involved logging and mining concessions in the territory of the Saramaka people, the Inter-American Commission stated unambiguously that 'in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples that the indigenous people's consent to natural resource exploitation activities on their traditional territories is always required by law.'[11] Suriname however failed to comply with the Commission's recommendations and that case is now pending before the Inter-American Court for a binding judgment.

Suriname's 2004 Mining Bill has also been deemed to be racially discriminatory by the UN Committee on the Elimination of Racial Discrimination on the grounds that it denies indigenous and

---

7 See, Inter-American Commission on Human Rights, *Report on Admissibility and Merits No. 09/06, Twelve Saramaka Clans*, Case 12.338 (Suriname), 2 March 2006, at para. 230 (finding that 'indigenous and Maroon communities lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community or other traditional collective entities that possess land;') and, *Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Judgment of 15 June 2005, Series C No. 124, at para. 86(5) (determining the following to be 'proven facts': 'Although individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective property rights').

8 *Id*. Twelve Saramaka Clans, at para. 241-43 (explaining that 'the classification of an activity as being in the 'general interest' is not actionable and constitutes a political issue that cannot be challenged in the Courts. What this does in effect is to remove land issues from the domain of judicial protection. The rights of indigenous and Maroon peoples … to their lands, territories and resources, and cultural identity are not explicitly recognized or guaranteed in the 1987 Constitution and, for that reason, there are no provisions contemplating judicial recourse if they are violated;') and, *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 14 (observing that 'indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons').

9 Moiwana Village v. Suriname, *supra*, para. 133-34.

10 *Id*. para. 209-11.

11 Twelve Saramaka Clans Case, *supra*, at para. 214.

tribal peoples equal access to judicial remedies and fails to require their agreement to mining.[12] The Committee concerns in this respect have been reiterated in two urgent action decisions issued in 2005 and 2006, both of which highlighted Suriname's obligations to recognize, secure and protect indigenous peoples' traditional lands, territories and resources.[13] Both decisions also drew the attention of the UN Secretary General, the 'High Commissioner for Human Rights as well as the competent United Nations bodies, in particular the Human Rights Council, to the particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname ….'[14]

The negative impact of the failure to guarantee territorial rights is further compounded by a substantial increase in resource exploitation activities over the past 15 years, particularly mining, large- and small-scale, and logging. Almost all of these activities have taken place without informing affected communities and without their participation or consent. These activities have led to environmental degradation, in some cases severe degradation; a loss of subsistence resources leading in some instances to chronic malnutrition; destruction of sites of religious and cultural significance; serious health concerns, especially malaria and sexually transmitted diseases; and social problems.

While some of the communities do gain some income from mining and logging, this is generally short lived and the imposed costs far outweigh any benefits. For example, a 2001 report on water quality in Suriname concludes that due to 'mercury contamination in the surface water, the water is in danger of becoming unusable in areas;'[15] and that the 'expansion of the gold mining industry has polluted many creeks and rivers, which the indigenous population uses for water supply.'[16] The same report further concludes that mercury contamination levels in the Suriname River are 2.97 milligrams per litre, some 2,970 times higher that the WHO limit of 0.001 milligrams per litre.[17]

Suriname acceded to the Convention on Biological Diversity (CBD) in 1994. Since that time, it has expanded its system of nature reserves from five percent of the country to 12 percent. Most of these nature reserves cover all or part of indigenous or Maroon territories and in no case was their consent or participation sought in relation to the establishment of the reserves or their management. The legislation that governs these areas substantially limits indigenous and tribal peoples' rights and in the majority of cases prohibits their access to protected areas. This has led to conflict between communities and the authorities.

Despite being a party to the CBD, Suriname has yet to develop framework environmental laws or laws that require and regulate environmental and social impact assessments (ESIA). If an ESIA is conducted, this is done either pursuant to an agreement between the government and a company or because the company in question is required to do so by its internal operating rules. Similarly,

---

[12] Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname. UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004, at para. 13 and 14. See, also, Follow–Up Procedure, Decision 3(66), Suriname. UN Doc. CERD/C/66/SUR/Dec.3, 9 March 2005, at para. 4.

[13] *Decision 1(67), Suriname*. UN Doc. CERD/C/DEC/SUR/2, 18 August 2005; and *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006

[14] *Id*. at para. 7 and 4, respectively.

[15] US Army Corp of Engineers, *Water Resources Assessment of Suriname*, December 2001, at i. Full report is available at:
http://www.sam.usace.army.mil/en/wra/Suriname/Suriname%20Water%20Resources%20Assessment.pdf
See, also, *Sectoral Analysis of Drinking Water Supply and Sanitation in Suriname,* Paramaribo 1999. Plan Regional de Inversiones en Ambiente y Salud. Serie Análisis No. 1 Part 9, Pan American Center for Sanitary Engineering and Environmental Services/Pan American Health Organization/World Health Organization.

[16] *Id*. at 9 (footnotes omitted).

[17] *Id*. at 12 (footnotes omitted), citing, Pan American Health Organization, *Assessment of Drinking Water and Sanitation 2000 in the Americas*. Available at:
http://www.cepis.ops-oms.org/enwww/eva2000/eva2000.html

Suriname has not developed any laws or procedures by which indigenous and tribal peoples' traditional knowledge and their rights thereto are protected. To the contrary, the state maintains that it owns all biological and genetic resources and any exploitation of traditional knowledge pertaining to those resources is property of the state.

Finally, given the preceding, it may come as some surprise to hear that Suriname maintains that it has established procedures by which indigenous and tribal peoples' consent is obtained in relation to resource extraction, protected areas, and uses of traditional knowledge. For instance, Suriname asserts that:

> When a mining right is granted or a logging concession advice is always obtained from the District Commissioner for which written permission is required from the traditional authorities for positive advice. However, this permission has not been incorporated in the law, but the executive power (the State) considers this to be a requirement of the decision-making process.[18]

The District Commissioner is a low-level government official who is responsible for administering certain processes in the interior of Suriname. According to the above statement, the DC must obtain 'permission' from indigenous and tribal traditional authorities before giving a green light to the concession or other activity in question. As Suriname notes, this is not incorporated into law and therefore is unenforceable should permission not be obtained. In fact, while a letter of 'no objection' is sometimes obtained from traditional authorities, often the DC fails to seek permission at all or simply overrides a statement of objection. Moreover, as we will see in the case studies below, the state and others frequently fail to understand or follow indigenous and tribal peoples' customary decision making processes when seeking permission from traditional authorities.

[18] Presentation by the Republic of Suriname at the 121st Session of the Inter-American Commission on Human Rights regarding petition No. 12.338 'Twelve Saramaka Lös (Communities)', no date, Annex D, at p. 1.

2 The Saramaka people

A Background

The Saramaka people are one of the six Maroon peoples living within Suriname's borders. Its freedom from slavery, rights to lands and territory, and right to political and cultural autonomy were recognized in treaties concluded with the Dutch colonial government in 1762 and 1835.[19] There are no accurate census data on the size of the contemporary Saramaka population. Estimates range from 25,000 to 34,000 persons.[20]

Saramaka society is primarily organized into 12 *lö* (matrilineal clans). Every Saramaka belongs to one and only one *lö*, a group which shares descent (through the female line) from members of a named early 18th century fighting band. These *lö* are spread over more than 70 major communities on the Upper Suriname River and areas to the north and northwest of the Afobaka dam. The *Gaama*, or paramount leader, holds the highest political office in Saramaka society. The *Gaama*, first established and installed in the 1760s pursuant to the treaty concluded with the Dutch, is chosen by a combination of descent and divination. The paramount authorities within the highly autonomous *lö* are the Head Captains and Captains, who are also chosen by a combination of descent and divination.

Saramaka territory comprises much of the catchment area of the Suriname River, starting at its source in central Suriname to approximately 100 km south of the Atlantic coast in the north. The Saramaka people have extensively occupied and used this area since the early of the 18th century – the only exception being when they were forcibly displaced in the 1960s by the construction of the Afobaka hydroelectric dam and reservoir that powers a bauxite refinery on the coast.

Saramaka territory is vested collectively in the Saramaka people and comprises the sum of those lands and resources that the Saramaka people have traditionally occupied and used in accordance with its customary law. The *lö* or clans are the primary land owning units within Saramaka society and the various lands and resources within Saramaka territory are vested collectively in the 12 *lö* with individual members and extended family units (*bëë*, in Saramakan) enjoying subsidiary rights of use and occupancy.[21] The traditional boundaries between the lands of the various *lö* and between the Saramaka people and their indigenous and Maroon neighbours are well understood, scrupulously observed, and encoded in oral history and tradition.

Anthropologist Richard Price describes Saramaka land tenure thus:

> The Saramaka people, the Saramaka nation, if we can call it that, as a whole, have a particular territory . . . . In terms of agricultural lands, and the lands in which they have their houses, they are held communally by large kinship groups, of which there are 13 or 14 in Saramaka, and the whole river is divided into large areas of several miles long owned by one of these particular groups. Every Saramaka belongs to one of these groups called Lö. They are what anthropologists call matrilineal clans, every Saramaka belongs to one and only one Lö. A person's Lö owns particular lands, and any member

[19] The full text of the 1762 Saramaka treaty is published in R. Price, TO SLAY THE HYDRA. DUTCH COLONIAL PERSPECTIVES ON THE SARAMAKA WARS, Karoma, Ann Arbor (1983), at 159-165. The text of the 1835 treaty with the Saramaka is printed in: van Vollenhoven, 'Politieke Contracten met de Boschnegers in Suriname' [Political Contracts with the Bushnegroes in Suriname]. In: VERSPREIDE GESCHRIFTEN, Part 3, 1916, at 374-80.

[20] Registered Patients of the Medical Mission, May 2005; Inter-American Development Bank, Policy Note on Indigenous Peoples and Maroons in Suriname, 14 November 2005.

[21] R. Price, SARAMAKA SOCIAL STRUCTURE. ANALYSIS OF A MAROON SOCIETY IN SURINAME, Institute of Caribbean Studies, University of Puerto Rico, 1975.

> of the Lö has rights to work, to ask the village Captain in the area where the Lö owns lands for an area to cut gardens. Any member of the Lö has a right to pick food from trees that grow in that area. Members of other Lös, other Saramakas, have to ask permission in order to pick food. But the land is held communally . . . so that if I am given a particular garden for the present, I do not have rights to pass that particular place on to my children, rather the matrilineal group as a whole . . ..[22]

While the *Gaama* is the paramount leader of the Saramaka people, under Saramaka law it is the *lö* that own the land and therefore, have authority over matters pertaining to lands and resources. The *Gaama* has no direct authority over land and resource rights and allocation thereof within and between the *lö*. In a 1998 letter to the President of Suriname, several Saramaka captains and *basias*[23] explained:

> [Since two hundred years ago] our ancestors regulated who had rights to fell trees, to make agriculture plots and to hunt game. According to the *Saamaka* law every *lö* may work where it has rights. Somebody who is not a member must ask permission from that clan before he can work in their forest. We ask permission from the clan, we do not ask permission from the Government in the city, we don't ask permission from the *Gaama*, because the *Saamaka* law was already made before they gave us a *Gaama*. Until now all *Saamaka* live according to that law. Our law has not been written on paper, but it remains a law.[24]

Finally, the economy of the Saramaka people is largely subsistence based, with hunting, fishing, gathering, and swidden agriculture providing for the majority of their basic needs.[25] Agriculture is based on a long-term rotational system as the poor soils of the rainforest can only support crop yields for 2-3 years followed by a 10-20 year fallow period. While some Saramaka, especially young men, find employment and a cash wage on the coast of Suriname or in French Guiana, this only supplements the subsistence economy.

B Logging

The flooding of Saramaka lands and forced displacement of Saramaka communities caused by the Afobaka dam has placed a severe pressure on the Saramaka people's remaining lands and resources. This land and resource base has been further reduced and degraded by the activities of logging concessionaires authorized by the State between 1997 and 2003. These concessions were issued without prior notice or any attempt to obtain the consent of the affected Saramaka *lö*, and the activities that took place in the logging concessions were conducted without regard for their property and other rights. The concessions were also issued without first conducting an Environmental and Social Impact Assessment, which is presently not required under Surinamese law.

The first logging company to begin operations in Saramaka territory was Tacoba NV, a locally registered subsidiary of a Chinese company known as China International Marine Containers

---

[22] *Testimony of Richard Price in the Aloeboetoe Et. Al. Case*, Inter-American Court of Human Rights (1993), at 91-2.

[23] '*Basias'* are the official assistants of and deputies of the Captains. The position in their respective communities is second only to that of the Captain.

[24] *Letter to the President of the Republic of Suriname*, 5 June 1998. The letter was written in light of timber activities in the area and served to inform the President 'that the forests of Papoto and Daumë [two of the lö] are not unused forests, so that they are not be issued to others'. It was signed by 11 Captains and basias from 5 villages and approved by another 8 *basias* and Captains from 3 other villages.

[25] *Id.* para. 3.1-3.6.

Limited, which commenced work in late 1997.[26] When challenged by Saramaka community members, Tacoba explained that it had permission from the government and any attempt to interfere with or challenge its operations would be punished by imprisonment.

Two years later, at the end 1999, Tacoba withdrew and another company, Ji Shen Wood Industries (also known as Jin Lin Wood Industries) began operating in and around the concession previously worked by Tacoba, as well as in additional areas. This company, which reportedly owns Tacoba, acquired the services of the Surinamese National Army to guard its concession. A military post was established in the concession and military forces actively prevented Saramaka from accessing hunting, fishing and farming areas within the concession. The soldiers were directly controlled by the logging company. Ji Shen ceased operations in December 2002.

The Tacoba and Ji Shen logging companies caused massive destruction of the Saramaka people's forests and the resources therein. These companies also destroyed Saramaka subsistence farms and other traditional resources, blocked and polluted creeks that are a major source of potable water for nearby Saramaka communities, and caused a substantial reduction in game animals, both due to their own hunting and because of the disruption caused by their operations. This is confirmed in, *inter alia*, a series of press reports published by *The Philadelphia Inquirer* in 2001. One of these reports states that environmental degradation

> was all too clear walking through the Jin Lin concession. The company had plowed large, muddy roads about 45 feet wide into the forest, churned up huge piles of earth, and created fetid pools of green and brown water. Upended and broken trees were everywhere and what were once plots of sweet potatoes, peanuts, ginger, cassava, palm and banana crops – planted in the forest by Maroon villagers – were muddy pits. [27]

The Saramaka filed numerous complaints about the activities of these logging companies with government authorities over a three year period. Not receiving any response from the state, in October 2000, Saramaka traditional authorities submitted a formal complaint against Suriname to the Inter-American Commission on Human Rights (IACHR). In March 2006, the IACHR reached a decision in their case: Case 12.338, *Twelve Saramaka Clans (Suriname)*.[28] In addition to finding a violation of the right to property, the IACHR held that remedies are unavailable in domestic law for the recognition and protection of the Saramaka peoples' land and resource rights.[29]

---

[26] *Annual Report of China International Marine Containers (Group) Ltd., 2001*, p. 18. Available at: http://www.cimc.com/UpFiles/Report/303.doc

[27] 'Raiding the Rain Forest. For a global treasure, a new threat: Asian companies in weakly regulated countries tamper with the ecosystem to fill a growing demand for hardwood'. Mark Jaffe, *Philadelphia Inquirer*, Sunday, May 20, 2001.

[28] Inter-American Commission on Human Rights, Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans, 2 March 2006.

[29] *Id.* at para. 230, 241-42 (stating that 'indigenous and Maroon communities lack legal status in Suriname and are not eligible to receive communal titles on behalf of the community or other traditional collective entities that possess land' and; that the general interest exception in Surinamese law 'substantially limit[s] the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favor of an eventual interest of the State that might compete with those rights. … What this does in effect is to remove land issues from the domain of judicial protection'). See, also, *Case of Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Judgment of 15 June 2005, Series C No. 124, at para. 86(5) (finding that 'Although individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective property rights').

With regard to property rights, the Commission observed that 'The State confirms that there is no domestic legal regime that establishes or recognizes a collective property title for indigenous or tribal peoples;'[30] and concluded that

> it is clear that the State has not established any legal mechanism for clarifying and protecting the property rights of the Saramaka people with regard to their territory [and]; it emerges from the case file that the current system for land titling, leasing, and granting permits under Suriname law does not either recognize or adequately protect the communal rights of the Saramaka people to the land they have traditionally used and occupied. … It is evident that ownership of the lands possessed by the Saramaka people resides with the State and that there are no provisions recognizing or protecting the communal interests of the Saramaka in those lands.[31]

With regard to the logging concessions, the Commission confirmed that, 'in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples that the indigenous people's consent to natural resource exploitation activities on their traditional territories is always required by law.'[32] It further observed that 'the State did not consult the affected people beforehand regarding those activities [logging], nor did it obtain its free and informed consent. Furthermore, the State did not regulate those activities or effectively supervise the way they would be carried out, all of which violate the right to property established in Article 21 of the American Convention ….'[33] As noted above, Suriname failed to implement the IACHR's recommendations and the case was transmitted to the Inter-American Court of Human Rights on 23 June 2006. It is expected that a hearing will be held before the Court in May 2007 and a legally binding judgment should be issued within one year of that date.

Despite Suriname's claims that it always seeks the permission of traditional authorities before issuing concessions, consent was not sought and the Saramaka were not even informed that the concessions had been issued. What is most interesting in the context of this study however is that even if consent had been sought under Suriname's administrative procedure, a problem would still have arisen. This is because Suriname would seek permission from the *Gaama* of the Saramaka people rather than the traditional land owning clans affected by the logging operations. It is these clans who have the right to give or withhold consent to logging on their lands not the *Gaama* alone. The better procedure would be to seek the assistance of the *Gaama* to identify and commence discussion with the relevant authorities of the clans or to otherwise exercise due diligence to ensure that the *Gaama* has conducted the requisite customary procedures to obtain the consent of the clans prior to himself expressing consent.

While the problem of the *Gaama* or clan-based authorities was not an issue in relation to the logging concessions discussed above, it has been an issue in relation to both a bio-prospecting initiative (discussed below) and the proposed expansion of a the Central Suriname Nature Reserve (CSNR) into Saramaka territory. Both of these initiatives are/were led by Conservation International, a US-based non-governmental conservation organization. In the case of the proposed expansion of the CSNR, CI had a letter signed by the *Gaama* authorizing its expansion and had submitted this to the government in support of its efforts to enlarge the reserve. The *Gaama* however failed to consult with and obtain the consent of the authorities of the land owning clans affected by expansion of the CSNR. Also, many Saramaka traditional authorities argued that the *Gaama* should consult all Saramaka communities given that expansion of the CSNR would take up to 40 percent of Saramaka territory and that this was significant enough to trigger the interest of the Saramaka people as a whole rather

[30] *Id.* at para. 189.

[31] *Id.* at para. 199.

[32] *Id.* at para. 214.

[33] *Id.* at para. 219.

than solely the affected clans. Internal conflict ensued and the proposed expansion of the CSNR was shelved.

Expansion of the CSNR is also of interest in relation to Decision VII/28 on Protected Areas, adopted by the 7th Conference of Parties to the CBD. This Decision provides that 'the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations.'[34] These applicable international obligations are defined, *inter alia*, in international human rights law including the jurisprudence of the IACHR and the Court, which includes the requirement that indigenous and tribal peoples' FPIC be obtaining in relation to any decision that affects their rights to traditional lands, territories and resources.[35]

C The Suriname Biodiversity Prospecting Initiative

For a number of years, the Suriname has sanctioned the Suriname Biodiversity Prospecting Initiative (SBPI) which involves obtaining knowledge about traditional medicine, in particular medicinal plants, from indigenous and Maroon traditional healers and shamans. The SBPI is a joint effort of Conservation International (CI), the BGVS (a state-owned pharmaceutical company), the National Herbarium of Suriname, the Virginia Polytechnic Institute, and the transnational pharmaceutical company, Bristol-Meyers Squibb.

Described by CI as 'the search for new, life-saving drugs,' the SBPI, again according to CI, 'recognizes the value of standing rainforest as a potential source of new medicines and fully incorporates the rights of indigenous and local people as botanical prospectors and guardians of their forest resources.'[36] In recent years, Bristol-Myers has screened and tested 788 extracts prepared from 394 plants gathered through the SBPI for potential use in developing drugs to combat cancer and AIDS.[37] As of 1999, work on more than 5000 extracts had led to the 'isolation of bioactive alkaloids, terpenoids, and polyketides as cytotoxic agents.'[38]

---

34 Decision VII/28 Protected Areas, at para. 22. In, Decisions Adopted by the Conference of Parties to the Convention on Biological Diversity at its Seventh Meeting. UNEP/BDP/COP/7/21, pps. 343-64.

35 *Inter alia*, *Report No. 40/04,* Maya Indigenous Communities of the Toledo District, Case 12.053 (Belize), 12 October 2004, para. 142 and *Report Nº 75/02,* Case Nº 11.140, Mary and Carrie Dann (United States), 27 December 2002. OEA/Ser.L/V/II.116, Doc 46, at para 131 (observing that Inter-American human rights law requires 'special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation'). These issues are discussed in greater detail in S.J. Anaya, 'Indigenous Peoples Participatory Rights in Relation to Natural Resource Extraction: The More Fundamental Issue of What Rights Indigenous Peoples have in Lands and Resources', *Arizona Journal of International & Comparative Law,* 22 (7), 2005. For UN jurisprudence affirming indigenous peoples' right to give or withhold consent, see, inter alia, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Ecuador. 21/03/2003.* UN Doc CERD/C/62/CO/2, at para 16; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Colombia. 30/11/2001.* UN Doc E/C.12/Add. 1/74, at para 12; and, *Concluding Observations of the Human Rights Committee: Canada, 20/04/2006.* UN Doc CCPR/C/CAN/CO/5. See, also, *Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples.* (New York, 17-19 January 2005). UN Doc. E/C.19/2005/3, 2005.

36 Conservation International, *Forest People Search for New Medicines: Initiative Builds Conservation-Based Industry*. (Press Release, Dec., 7, 1993, Washington D.C.), at 1.

37 http://www.conservation.org/web/fieldact/C-C_PROG/Econ/biopros.htm

38 Kingston et al, 'The Suriname International Cooperative Biodiversity Group Program: Lessons From The First Five Years', 37(1) *Pharmaceutical Biology* 22-34 (1999).

SBPI activities in indigenous and Maroon territories are based on 'agreements' with the respective traditional tribal leaders. In the case of the Saramaka, an agreement (actually a letter of intent) was made with the *Gaama* in May 1994. As stated by one of the participating scientists, 'out in the forest the local Granman, or tribal chieftain, has the authority to determine access to plants in the area under his control, and so the ICBG needed to obtain his approval also. Negotiations were initiated with the Granman of the Saramaka tribe, and resulted in the signing of an agreement between him and the ICBG (represented by Conservation International).'[39]

However, the negotiations and the letter of intent were done without meaningful consultation with the traditional authorities of the *lö*, who own land and resources, Saramaka traditional healers, or the members of the 70 Saramaka communities, the majority of whom know little if anything about the SBPI. Moreover, during the negotiations, the Saramaka did not have independent legal assistance but were advised by CI's lawyer, who also at the same time acted on behalf of CI.[40] The Saramaka, including the *Gaama*, are also not party to the agreement with the government, CI and the participating pharmaceutical companies, which was made in September 1993. Instead, the letter of intent, 'embodies the fiduciary relationship existing between CI and the Saramaka people' and CI undertakes to act in the best interests of the Saramaka people.[41]

The initiative seeks to place 50% of the benefits to Suriname (approximately 5% of the royalties from 'the future sales of any new ethno-botanically identified drug') in a 'Forest Peoples Fund' so that it can be made available to the people of the interior.[42] To ensure indigenous and Maroon participation in disbursement of these funds, a board was established consisting of representatives from the indigenous and Maroon community. However, in 1998, the board had met only once since its establishment and, according to one of the board members (an indigenous chief and member of the Association of Indigenous Village Leaders), the board members have never received any information about disbursement of the funds.

Concerning intellectual property rights, the SBPI seeks: 'At the local level – Drug patents to traditional healers: In the event of a drug discovery, the local person who identified the medicinal plant will be eligible for patent and joint patent rights. This represents a major step towards the international recognition of intellectual property rights for local people.'[43] While this may be viewed as progressive by some, it is clearly problematic; indigenous knowledge is generally not the property of individuals and therefore it would be inappropriate for patents to be issued to just one person. Also, patents are simply one step, perhaps even a counterproductive one, in a larger process relating to recognition of and respect for indigenous and tribal intellectual and cultural heritage rights.

---

39 D. Kingston, 'Biodiversity conservation and drug discovery in Suriname. Explorations in nature's combinatorial library', 73(3) *Pure Appl. Chem.*, 595–599 (2001), at 596.

40 Pers. Com. from Conservation International's lawyer, August 1995.

41 Bowles, Ian, Marianne Guérin-McManus, Lisa Famolare, Russell Mittermeier, and Amy Rosenfel. *Bioprospecting in Practice: A Case Study of the Suriname ICBG Project and Benefits Sharing under the Convention on Biological Diversity*. Montreal: Convention on Biological Diversity, Nov. 2001, unpublished, at p. 4. Available at: http://bcsia.ksg.harvard.edu/BCSIA_content/documents/pdf2.pdf

42 Conservation International, *Forest People Search for New Medicines: Initiative Builds Conservation-Based Industry*. (Press Release, Dec., 7, 1993, Washington D.C.), at 2.

43 *Id.* at 3.

3 The Lokono people of west Suriname[44]

The Lokono indigenous communities of Apoera, Washabo and Section are directly affected by bauxite mining plans in their traditional territory. A number of Trio indigenous communities are indirectly affected by these plans. Archival and archaeological research indicates that the Lokono have continuously occupied their territory in west Suriname for thousands of years. Today the Lokono villages have a resident population of around 1,000 persons.

The traditional government in the Lokono communities is a village council, which is comprised of a Captain and two or more assistants known as Basias. Decisions are made by consensus following a series of village meetings and extended and diffused discussion periods. Consensus does not mean that every member of the community is in agreement, but rather that the vast majority are in favour and those who have reservation choose not to express them. Community members indicate that this is how they have made decisions since time immemorial, the only difference today being that prior to 1992 only one council existed for all three villages. Decisions are thus made individually on internal village affairs and collectively when the common interest is at stake.

Lokono territory in west Suriname is collectively owned by the Lokono people. The three villages and extended kinship groups associated with these villages hold subsidiary right to specified areas of the territory for the purposes of residence and to a lesser extent farming, while hunting and fishing areas are in the first instance communally held and available to any member of the villages. Their traditional territory is of considerable size and is extensively used for a wide range or traditional and some non-traditional activities. Maps made by the Lokono and by their Trio neighbours to the south clearly locate areas of intensive use as well as areas of high cultural or religious significance. The boundaries between Trio and Lokono lands are also well understood and accepted.

In 2003, Suriname granted a 2,800 sq km concession and bauxite exploration permits to the locally registered, wholly-owned subsidiaries of BHP Billiton and Alcoa in the Bakhuys Mountains, part of the Lokono people's traditional territory. While the companies and their contractors acknowledge that the Lokono are 'stakeholders' in the mine project, on a number of occasions they have argued that there are no indigenous peoples living within the concession and therefore that traditional land rights are not an issue.[45] Maps produced by the Lokono clearly show that although they do not live within the concession, they nonetheless use the area and consider it to be an integral part of their traditional territory.

The concession and exploration permit were both issued without any prior notification to or agreement with the affected communities. An environmental and social impact assessment was not conducted for the exploration work, which is now concluded, even though the concession is in a traditional indigenous territory and exploration involved widespread impacts on primary tropical rainforests.[46] For example, approximately 330 km of roads and 650 km of drill lines were cleared

---

44 The situation in west Suriname is discussed extensively in V. Weitzner, Interacting with Indigenous Communities in the 'Right' Way? A bottom-up examination of BHP Billiton, Alcoa and the Government of Suriname's interactions in West Suriname. Draft Final Synthesis Report: Suriname Pilot Project. A collaborative project between The Association of Indigenous Leaders in Suriname (VIDS) And The North-South Institute (NSI), January 2007, p. 35. Available at: http://www.nsi-ins.ca/support/public/DRAFT_final_March_2007.zip

45 V. Weitzner, Interacting with Indigenous Communities in the 'Right' Way?, supra, p. 41

46 R. Goodland, *Environmental and Social Reconnaissance: The Bakhuys Bauxite Mine Project. A report prepared for The Association of Indigenous Village Leaders of Suriname and The North-South Institute*, 2006, p. 6 – 'BHP/Billiton are to be commended for publicly apologizing in August 2005 for failing to assess the environmental and social impacts of their exploration or pre-feasibility phase which was scheduled to end

during the exploration phase, with some 7,700 boreholes dug (i.e., some 50,000m in total); and the total area drilled was some 8,890 ha, with the total area 'visited on-the-ground' estimated at 52,800 ha.[47]

During the exploration phase, the Lokono were excluded from the concession area and may no longer conduct subsistence activities therein: 'Carlo Lewis, Village Chief of Apura, mentions that because of the developments in their territory they are forced to change their way of living. 'We are not against the developments, but our way of living has to be taken into account. We are already no longer allowed to hunt in the Bakhuys territory and we cannot go to the supermarket like the people in the city, because we live from the forest.'[48]

In 2005, the UN Committee on the Elimination of Racial Discrimination indirectly referred to the Bakhuys project in an urgent action decision, where it expressed its deep concern that Suriname is 'authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.'[49] This was widely publicized in the local press and copies were transmitted to BHP Billiton and Alcoa.

It was recently announced that the companies and Government will reach an agreement on the granting of permits for mining and possible construction of a hydroelectric dam by the end of 2007.[50] The companies contracted a firm to conduct an Environmental and Social Impact Assessment for the mining operations in September 2005 even though this is not required by Surinamese law. A critique of the ESIA by Canadian researchers and the Association of Indigenous Village Leaders in Suriname concluded that

- The communities were not consulted and did not participate in the 'screening' or initial 'scoping' phase of the Mine ESIA. Company consultants noted that only 'high level' consultations took place (i.e., with government and company officials in Paramaribo, as well as select NGOs), denigrating and disrespecting the 'level' and authority of the traditional leadership;

- ESIA studies started well in advance of any presentations at the community level or feedback;[51] and,

- the lack of consultation with indigenous and Maroon communities was apparent in the quality and scope of the original (August 2005) Plan of Study (PoS) for the ESIA, which highlighted concerns related to environmental impacts on the Central Suriname Nature Reserve, without mentioning the need to carefully study the impacts on the watershed and creeks the indigenous and Maroon communities use. The PoS claimed there are no communities within the concession area[52] without providing evidence to back this up, but more importantly revealing ignorance that

---

in October 2005.' Available at: http://www.nsi-ins.ca/english/pdf/Robert_Goodland_Suriname_ESA_Report.pdf

47 V. Weitzner, Interacting with Indigenous Communities in the 'Right' Way?, supra, p. 35.

48 'Implementation of the Kabalebo Project: Land Rights Capture the attention of Indigenous Peoples in Southern Suriname', *De Ware Tijd*, 05 May 2005 [Original in Dutch]

49 *Decision 1(67), Suriname*. UN Doc. CERD/C/DEC/SUR/2, 18 August 2005, at para. 3.

50 See, 'Bauxite negotiations this month: New bauxite deal to improve on the Brokopondo agreement', *De Ware Tijd*, 02 May 2006.

51 V. Weitzner, Interacting with Indigenous Communities in the 'Right' Way?, supra, p. 37.

52 *Id*, p. 41, citing: SRK Consulting, Environmental and Social Impact Assessment for the Proposed Bakhuis Bauxite Mine, Plan of Study. Report No 346217/3. August 2005.

> while communities may not live in the concession area, this area is used by both Maroon and Indigenous Peoples....[53]

Robert Goodland, the former head of the World Bank's Environment Department, has also strongly criticized both the impact assessment plan, for failing to adequately account for indigenous peoples' issues and participation, and the process leading to bauxite mining itself, for failing to respect the rights of indigenous peoples.[54] In an extensive 2006 report, he states that

> The Bakhuys bauxite mine project is a classic case of asymmetric power. Unsustainable mining confronts sustainable traditional societies. Rich and powerful multinationals will impose potentially severe impacts on inexperienced, weak, largely illiterate and poor Indigenous Peoples. Multinationals have great difficulty even in communicating with the affected people. Practically all the benefits will accrue to two stakeholders, namely the multinationals as they will reap a saleable commodity (bauxite) and the government as they will reap taxes and royalties. These two stakeholders will gain substantial benefits, but bear no adverse impacts. The Indigenous Peoples, on the contrary, will bear practically all the negative impacts and few, if any, of the benefits....[55]

With regard to the proposed dam, Dr. Goodland observes that

> Current plans suggest three reservoirs totalling 2,460 sq km in area. ... Most of the area to be impounded is fairly intact Rain Forest, which is also the traditional territory of Indigenous Peoples on which they depend for their livelihoods. Loss of at least 2,460 sq km of forest means that much less habitat from which the forest dwellers can harvest.[56]

BHP Billiton and Alcoa both have company policies that commit them to observe and uphold international human rights standards. Both companies are also members of the International Council on Metals and Mining (ICMM) and have subscribed to its Sustainable Development Principles. These principles provide that ICMM members will implement and measure their performance against, among others, the following principle: 'Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities,' including '[r]espect the culture and heritage of local communities, including indigenous peoples.'[57]

BHP Billiton is the lead company on the mining project. Its corporate policy goes further and explains that 'Wherever we operate we will develop, implement and maintain management systems for sustainable development that drive continual improvement and ensure we: ... understand, promote and uphold fundamental human rights within our sphere of influence, respecting the traditional rights of Indigenous peoples and valuing cultural heritage.'[58]

---

53 *Id.*

54 R. Goodland, *supra*. One important criticism is found on p. 9-10, which states that 'SRK's [the company contracted to conduct the ESIA] repeated but unsubstantiated claims that there are no Indigenous Peoples living in the bauxite concession, is moot, misleading and risky. ... As there are at least four distinct vulnerable ethnic minorities (Arawak, Warau, Trio, Karinya/Carib) in the indigenous communities likely to be impacted by Bakhuys, this gap in SRK's Plan of Study needs to be rectified. Affected Amerindian communities would include: downstream of the Nickerie, Tapoeripa, Post, Utrecht and Cupido; downstream of the Wayambo, Donderskamp and Corneliskondre; downstream of the Kabalebo and Corantijn, Apoera, Section, Washabo, Zandlanding and several Guyanese villages including Orealla and Siperuta.'

55 *Id.* at p. 4.

56 *Id.* at p. 21.

57 *ICMM Sustainable Development Principles*, Principle 3. Available at: http://www.icmm.com/icmm_principles.php ICMM is made up of 15 of the largest mining and metal companies, and 24 national mining and global commodities associations.

58 *BHP/Billiton's Sustainable Development Policy*, September 2005, at p.1. Available at: http://www.bhpbilliton.com/bbContentRepository/docs/SustainableDevelopment/policiesAndKeyDocument

Despite these policy statements and relatively sophisticated management and assessment procedures (including audits), when the Lokono requested that the companies respect their rights, and in particular negotiate a protocol that defines and protects 'traditional rights', the companies responded as follows: 'until such time as traditional rights are recognized by the Republic of Suriname and incorporated into Surinamese law, formal endorsement by BHP Billiton and Alcoa of such claims would be premature.'[59]

Apart from contradicting their public commitments, which clearly do endorse respect for traditional rights, there is nothing in Surinamese law that would preclude the companies from negotiating a common understanding of the term 'traditional rights and how these rights will be respected. To allay any doubts, the companies could seek the State's endorsement of this protocol or seek to involve it directly in the negotiations. Moreover, conducting an ESIA is neither required nor prohibited by Surinamese law, yet, however belatedly, the companies are presently conducting such an assessment.

Additionally, 'traditional rights' by definition are rights held and exercised in accordance with custom or tradition and do not therefore rely on national law for their existence. This is acknowledged in BHP Billiton's 2006 Sustainability Report, which states that

> We include consideration for peoples with recognised legal interests in land, as well as those that do not have such an interest. For example, Indigenous peoples may not have a recognised legal interest but nonetheless are connected to the land by tradition and custom. These peoples may also be leading a traditional lifestyle and be dependent, to a greater or lesser extent, on the land for their existence.[60]

However, rather than comply with their policy commitments, the companies have chosen to hide behind national law – a law that has been declared in violation of international human rights law by the two highest human rights bodies in the hemisphere in 2005 and 2006, and by two UN bodies in 2004 – and to knowingly proceed with their operations in direct contravention of Suriname's human rights obligations.

The companies also rejected the inclusion of indigenous peoples' right to FPIC to mining on their lands in the proposed protocol on the grounds that 'there is a lack of international consensus on the application of FPIC … and we reiterate that neither BHP Billiton nor Alcoa have a commitment to FPIC in their corporate policies.'[61] International consensus or not, the IACHR has repeatedly held that indigenous peoples' FPIC is required in relation to resource exploitation,[62] and the Inter-American Court has held that the failure of states to delimit, demarcate and title lands and territories belonging to indigenous peoples gives rise to, *inter alia*, an obligation not to allow 'third parties' to interfere with the enjoyment of their property rights in those areas.[63] Clearly, in the Americas, FPIC

---

s/HSECPolicy.pdf Using almost the same words, BHP Billiton's Health, Safety, Environment and Community Policy provides that 'Where ever we operate we will … support the fundamental rights of employees, contractors and the communities in which we operate [and] respect the traditional rights of Indigenous peoples.' *BHP Billiton's Health, Safety, Environment and Community Policy*, at p.1. Available at www.bhpbilliton.com

59 Letter to the indigenous leaders of Apoera, Section and Washabo from E. Sholtz, Managing Director, BHP Billiton Suriname and W. Pederson, Managing Director, Suralco L.L.C., 4 November 2006, (ref. 170/EGS/hc), at p. 2.

60 BHP Billiton Sustainability Report 2006, supra, at p. 418.

61 Letter to the indigenous leaders of Apoera, Section and Washabo from E. Sholtz, Managing Director, BHP Billiton Suriname and W. Pederson, Managing Director, Suralco L.L.C, at p. 3.

62 Twelve Saramaka Clans Case, *supra*, at para. 214.

63 *Inter alia*, Moiwana Village Case, *supra*, at para. 211; and *Mayagna (Sumo) Awas Tingni Community Case,* Judgment of August 31, 2001. Series C No. 79, para. 164.

and protection of indigenous territories are part of regional international human rights law, which both companies have agreed to uphold.

It is also important to note that in May 2005, BHP Billiton's local manager did agree to negotiate a protocol on how the Lokono's FPIC would be obtained in relation to the project.[64] The need for such a protocol was raised by community leaders at all meetings with the companies and their consultants, as was their request that they to be considered 'rights-holders' rather than just another 'stakeholder' to be consulted. However, in meetings in November 2005 and February 2006, the companies back-peddled from their public commitment, and stressed that they support free, prior and informed *consultation* not FPIC. They also committed to obtaining the 'broad community support' of the affected communities at a later date, although again at the same time rejecting FPIC.

Representatives of BHP Billiton, Suralco, Alcoa and SRK (front, left) meet the captains of Apura, Section and Washabo and members of the community (back) to discuss bauxite mining plans, February 2006. Photo: Carla Madsian (Photo courtesy of the Lokono people, West Suriname)

The Lokono people also wrote to ICMM to highlight inconsistencies between BHP Billiton and Alcoa's behaviour and ICMM's Sustainable Development Principle 3, quoted above, as well as its 2006 draft Position Statement on Indigenous Peoples. ICMM's response observes that, while FPIC is provided for in the draft Position Statement at Commitment 5:

> it is incorrect to interpret these documents as supporting the broad scale adoption of Free Prior Informed Consent (FPIC) without further understanding how it can be implemented. ICMM's view is that practical implementation of FPIC presents significant challenges for government authorities as well as affected companies as the concept is not well defined and with very few exceptions, is not enshrined in local legislation. … We also recognise the primary role of sovereign states in determining how their mineral endowments are managed.[65]

---

64 V. Weitzner, Interacting with Indigenous Communities in the 'Right' Way?, supra, p. 43.

65 Letter to the indigenous leaders of Apoera, Section and Washabo from A-M Fleury, Association Programme Director, ICMM, 23 October 2006, at p.1.

Lokono leaders again asked why the mining companies, in this case the ICMM, have a policy, albeit still in draft form, if that policy means little or nothing in practice. It should be noted that the ICMM's draft Position Statement also contemplates situations such as that pertaining in Suriname by providing that member companies will follow national laws pertaining to indigenous peoples but, 'Where these do not exist ICMM members reaffirm their commitment to the ICMM Sustainable Development Framework and this position statement.'[66] However, while this provision may be applicable in Suriname, in the vast majority of cases where a national legal framework does it exist however inadequate that framework may be, it will void the application of the Position Statement altogether.

[66] *ICMM, Draft Position Statement, Indigenous Peoples and Mining Issues*, March 2006, at Recognition Statements No. 6. Available at: http://www.icmm.com/library_pub_detail.php?rcd=190

4 Conclusions and Recommendations

The Saramaka and Lokono case studies both illustrate a number of points in relation to FPIC, both in general and as related to issued specific to the CBD. These points are:

- Indigenous and tribal peoples' rights to lands, territories and resources must be secured in law and these lands and territories must be properly delimited, demarcated and titled for FPIC to be effective;

- While it may be time consuming, the identification of indigenous and tribal institutions and customary norms concerning FPIC is nevertheless essential. This is the case both for indigenous and tribal peoples and for those who seek to interact with them;

- The 'take me to your leader' approach is not necessarily an appropriate avenue in relation to FPIC, although it may be a place to start;

- FPIC needs to be incorporated into domestic law to be effective. As shown in the Lokono case, companies will hide behind deficient national laws to evade respect for indigenous and tribal peoples' rights;

- Mechanisms to verify that FPIC has been given need to be in place;

- It is important that indigenous and tribal peoples are proactive in identifying potential threats to their territories and resources as well as in defining for themselves what are the elements of an FPIC process. The Lokono attempted to do this by drafting a protocol on traditional rights and FPIC and trying to get the companies to agree to the terms. Even when the companies refused, they communities incorporated their protocol into a village regulation that they insist outsiders must respect if they are to engage in consultation and other processes with the communities.

This report describes how the concept of free, prior and informed consent (FPIC) has been experienced by the Saramaka and Lokono communities in Suriname. This is particularly in the context of the impacts that commercial activities have on their traditional knowledge and on the biological diversity of their traditional territories.
Two distinct situations in Suriname are addressed: 1) logging and bio-prospecting in the territory of the Saramaka people; and 2) mining and related issues in the territory of the Lokono indigenous people of west Suriname.

Forest Peoples Programme

1c Fosseway Business Centre, Stratford Road,
Moreton-in-Marsh GL56 9NQ, England
tel : +44 (0)1608 652893 fax: +44 (0)1608 652878
info@forestpeoples.org www.forestpeoples.org