



**SUPPORT FOR THE SUSTAINABLE DEVELOPMENT
OF THE INTERIOR -COLLECTIVE RIGHTS**

**SUPPORT TO THE TRADITIONAL AUTHORITY STRUCTURE OF
INDIGENOUS PEOPLES AND MAROONS IN SURINAME**

FINAL REPORT
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THE AMAZON CONSERVATION TEAM

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LIST OF ABBREVIATIONS

ACT	Amazon Conservation Team Suriname
CLIM	Commission Land Rights Indigenous Peoples Lower Marowijne
GOS	Government of Suriname
IACHR	Inter-American Court of Human Rights
IDB	Inter-American Development Bank
NGO	Non-Governmental Organizations
NTFP	Non Timber Forest Products
SSDI	Support for the Sustainable Development of the Interior

Executive Summary

Indigenous and maroon communities traditionally nominate a candidate to the Government after which the candidate is inaugurated as a formal representative of the traditional system. Traditional authority positions in indigenous groups are normally transferred from father to son. In maroon communities, in contrast, traditional functions are set through the hereditary matrilineal line.

Although the nomination process is not always smooth, traditional authorities may become in an impasse within the tribe. For instance, the Aluku recognize two *granmans* in case of dispute. Traditional authorities are appointed for life and discharge is near to impossible, even if they discredit their people. In conflict, the Government will act as a mediator to solve the dispute.

Traditional authorities function as administrative organ through which they coordinate activities with the central Government. However, these tasks are not defined in terms of rights and responsibilities. The traditional authorities receive a public honorarium from the Ministry of Regional Development which is based on soft law. Their amount of influence in the central government is defined by their presence in various national and regional government offices.

Socio-culturally are authorities responsible for the well being of the tribe. Traditional authorities safeguard leadership roles in politics and religion. Traditional authorities make rules in their territory, however under current Suriname law they have no mandate to speak law or justice. State law officers are only called when a serious crime occurs. The pluralistic system creates a rather arbitrary situation when traditional authorities react to an offense. Also, traditional leaders are often not as effective when dealing with modern problems as traditional issues, especially because of the diminishing respect for the system by youngsters.

Traditional authorities govern a specific territory and as such the relationship with land is defined. There are no specific responsibilities and duties of traditional authorities defined in the land-related legislation rather than that the customary laws of inhabitants of the interior are to be respected. The existing legal structure in Suriname provides a vague framework for respecting collective rights and participation of indigenous and maroon communities, as defined in the Peace accord of 1992 and the subsequent Buskondre protocol of 2000.

In addition, the Government has been judged for violation of human rights in the case of the twelve Saramacan clans and Ndyuka in Moiwana in the Inter American Human Rights Committee of the Organization of American States. In both cases, the state was sentenced to judicially oblige to adopt judicial and administrative measures to ensure the property and security right of the tribes.

Because of the historic role of traditional authorities, pluralism is the best way forward. However, the traditional role can only exist when complemented with a modern role that includes having capacity of dealing with the dominant western system. Within the groups, the capacity for western-oriented participation varies, ranging from limited capacity in the

Southern Trio and Wayana tribes to medium capacity with Ndyuka, Saramaka, Lokono and Kaliña tribes.

A legal framework for traditional authorities needs to be set in a framework law, that defines the institution of traditional authorities: positions and functions and relations to other members of the tribe and the Government. The customary function can be part of a newly proposed law on indigenous peoples and maroons that sets the specific rights, duties and responsibilities. The development function can be implemented through a subsidiary law on the management authority within the decentralization framework.

After consultation with relevant stakeholders, the indigenous and maroon groups preferred to establish a political organ called house of chiefs that has a formal representation in the Government. The house of chiefs will make umbrella decisions regarding the development in the interior, thereby defining the link between the land and the traditional stewardship role. Each tribe should establish a secretariat with a budget that is allocated to the development of villages. The secretariat should be trained in conflict resolution to deal with the increasing amount of conflicts between western and traditional worldviews.

Introduction

The Government of Suriname (GOS) with the support of the Inter-American Development Bank (IDB) and the Japan Special Fund (JSF), is undertaking the commitment articulated in the Government Declaration of 2006-2011 to improve the administration and development of the Interior. The GOS has recently embarked on a comprehensive approach for the planning and eventual implementation of a sustainable development program for the Interior. This approach includes a strong participatory methodology that ensures that the target beneficiaries are involved in the planning and implementation of their own development priorities and that the focus of the program is aligned around their rights and interests. Within the context of the work outlined above and after consultations with the Traditional Authorities and other stakeholders, recommendations for the legal framework that will be required to formally recognize the rights, duties and responsibilities of Indigenous and Maroon traditional authorities as they relate to land, natural resource management and use, and national representation.

This report gives an overview of the role, duties and responsibilities of the traditional authorities. It provides recommendations towards the development of a legal framework for traditional authorities in Suriname. For the purpose of this report, consultations have been held with the authorities of the Maroons tribes – Ndyuka, Kwinti, Matawai, Saramaka, Paramaka, Aluku – and the indigenous tribes – Trio and Wayana. However, the Kaliña and Lokono tribes did not participate in the project and their views have not been considered in the outcome of the study.

1. Traditional Authorities: Appointment, Succession, and Role

This chapter provides an overview of the existing mechanisms for appointing traditional authorities. It further elaborates on the current function of the traditional authorities in Suriname's society.

1.1 Appointment and Succession

Traditional system

The system of traditional authority consists of several functions. The highest authority function in Maroon and Indigenous ethnic groups is that of *granman* (also *gaanman* or *gaama*); the paramount chief. The chiefs are assisted by a council of elders, *hoofd-kapiteins* (head of the *lo* by maroons and head-village chiefs by indigenous peoples) and *kapiteins* (village chiefs). Most villages have two or three *kapiteins*. The *granman* and *kapiteins* are assisted by *basias* (also *basja*, *bassia*), who are administrative assistants. To date female granmans have not existed among the Maroons, but *kapiteins* and *basias* can be women. Among the southern Indigenous peoples, only men can fulfill the position of *kapitein*. The Wayana traditional authorities of Apetina said there is no insurmountable objection against the appointment of female *kapiteins*; they just never found anyone suitable.

Among the **Maroons**, the political offices of the *granman* and the *kapitein* are hereditary via the matrilineal line. Generally, the eldest son of the deceased *granman*'s (*kapitein*'s) eldest sister holds preference for succession. Yet other matrilineal relations may also qualify such as, for example, the son of the mother's brother. Because both skills and power play a role as well, succession is not straightforward (De Groot 1975; Hoogbergen 1990). Each new *granman* is typically chosen from one and the same *lo*, though in some groups there are two *lo* that may provide the *granman* (De Groot 1974). The (*hoofd*)*kapitein* also is followed up by a person from the same *lo*. The position of *basia* is often linked to the bee.

Among the **Trio and Wayana Indigenous peoples**, traditional authority positions are preferably transferred from father to son. Among the available sons certain qualities are looked for, and these are discussed in extensive *krutus*. The successful candidate has to have the trust of different families; be peaceful and not quarrelsome; and be respected in the Baptist church – preferably as a Baptist minister, church singer, or confidant. If no suitable person is found among the sons or other immediate family of the deceased, the *kapiteins* and *basias* may decide to pick someone else. This may even be someone from another sub-tribal group¹. For example, if a subtribal Alamajana *kapitein* dies and no good successor is found among the Alamajana, the next *kapitein* may be an Okomajana.

Appointment

Traditional authority positions are for life. Generally, when traditional authorities completed the internal process of selection, they **nominate** the candidate to the Ministry of Regional

¹ The Trio are a conglomerate of about twelve different ethnic indigenous groups.

Affairs for a formal procedure of appointment. The candidate is nominated on criteria of ethics, meeting techniques, vision, role model and ability to fulfill ceremonial functions on behalf of the tribe. One exception is the indigenous village of Bigi Poika, in which majority elections take place with a western voting system².

The candidate is **inaugurated** by the Government through a official appointment (*beschikking*). The *beschikking* states the rank of the authority and area the candidate is responsible for. The *beschikking* gives the leader only recognition from the Government for the authority over a specific area of Suriname, however, does not specify that the authority is part of the Government system. Also, a *beschikking* defines an customary relationship between the Minister of Regional Development and the elected traditional leader. Historically, the *beschikking* was used for recognition of authority by the government.

For example, the *granman* is inaugurated by his tribal group and generally, the central government does not meddle in the (s)election procedures³. The appointment of the *granman* is ratified by the Ministry of Regional Development after which an oath is administered by the President of the Republic of Suriname. By formalizing the position of traditional authorities the state maintains some influence over their functioning. In the first place, from the oath the *granman* takes (Box 1), one may deduce that he is subjected to the general laws of the country, and the directives from the central Government (the President as highest authority that executes through the Ministry of RO for the interior in particular). The fact that traditional authorities are instated by formal *beschikking* in the name of the country confirms that they must obey national laws.

Traditional leaders receive **a stipend** in their customary leadership functions. The number of people that has been appointed by the tribal groups, however, exceeds the government limit. Therefore *granmans* need to consult with the Government (*District commissaris*) priori to recommending a traditional leader for appointment (Betterson, 2003).

Box 1: I swear, I immediately or indirectly under whatsoever name or pretext, associated with the procurement of my appointment as granman, nothing has been given or promised, nor will give or promise. I swear, that I, to whatsoever in this regard, that no promises or presents will be received directly or indirectly.
I swear, that I am faithful, diligent and will oblige to the general laws and instructions.
I swear, that I will pursue the well-being of Suriname with to the best of my knowledge for the part of the population that is entrusted to me.
I swear, that I perform my duties fairly and diligently to the authorities, with sincerity and my faithful cooperation, where that is asked in the interests of the State. I pledge allegiance to the Republic of Suriname, so help me God Almighty (Betterson, 2003)

Difficulties and conflicts

Not all groups have appointed a granman. Out of the four main Indigenous groups, only the Trio indigenous tribe has a formalized *granman*. The Wayana indigenous tribe at the

² The elective system could not be described due to non-participation of the tribes.

³ There are exceptions though, as in the case of Gbosuma related above.

Tapanahony and Lawa River basins refer to respectively Nowahé (Apetina) and Ipomadi Pelenapin (Kawemhakan) as their *granman*, but technically these leaders are appointed and paid as *hoofd-kapiteins*. The Suriname Aluku, who don't have a *granman* on their side of the border, consider the *hoofdkapitein* of Cottica on the Lawa as their paramount chief. The fact that a *granman* has not been recognized by the central government does not mean that he has no or less authority over his tribe. It only has consequences with regard to the relationship with the Government and the fee attached to this relationship.

Among the Maroons and Indigenous groups **is the (s)election of a new *granman* or *kapitein* is not always a smooth process**. Difficulty occur when different families may wish to place their own candidate (from their own lo) in office in the maroon tribes. Similar problems have not been observed by indigenous groups who select traditional leaders from a single family line. Historic sources speak of a conflict between two Ndyuka *granman* candidates as early as 1790, after the death of *granman* Pamu, the first Ndyuka *granman* since the peace treaty of 1761 (De Groot 1975). In this case, when the quarrel became fierce, the Dutch colonial government was asked to intervene. It solved the matter by naming one candidate Paramount Chief of civil affairs and the other Paramount Chief of defense.

Similar matters have played during more recent cases of *granman* succession. The Maroon Aluku presently **recognize two *granmans***; both residing in French Guiana. Even though the French government only installed (and pays) one of them, both have been inaugurated by (different sections of) the tribe and carry the same amount of weight in tribal decisions.

More recently, succession of the late Maroon *granman* Songo Aboikoni (2006) caused conflict among the Saramaka. A group of tribal elders is of the opinion that current granman Belfon Aboikoni is **not the rightful heir** because the oracle, which is consulted in these cases, identified Jacob 'Oseni' Amiena as successor. In March 2006, this conflict escalated when Belfon Aboikoni was kidnapped from his residency in Asidonhopo. Even though the national government has by now formally inaugurated Belfon Aboikoni as the only Saramaka *granman*, discontent members of the Amiena group still refuse to respect his *granmanship*. They argue that traditional cultural rules carry more weight than political interference in tribal matters.

Also after the recent death of Maroon Matawai *granman* Oscar Lafanti (November 2008), different families have been quarreling about a possible successor. Villages of the lower Saramacca River have been **discontent about the way that this former *granman* used to represent the tribe**, and have been calling for their own *granman* (Zandgrond 2008). Strife about leadership positions also exists among the Trio and Wayana. Yet among these groups, dispute is typically expressed without drama and kept silent to the outside world.

Conflict Resolution

Even if the group is discontent with the person, to **discharge** a *granman* or *kapitein* in indigenous and maroon lands **is near to impossible** (with exception of Bigi Poika). As far as we could verify, only once has it occurred that a *granman* was expelled from his position, with Saramaka *granman* Gbosuma in 1835. The immediate cause was that the *granman* was offering refuge to nine runaway slaves. The response actions of the central government (taking prison ten Saramakans, and closing of the river) sharpened the existing divide among

the Saramaka vis-à-vis Gbosuma's granmanship. In a krutu of Saramaka *kapiteins* and government representatives it was decided that Gbosuma should be dismissed, and a Governmental letter ratified this fact.

A similar situation threatened to occur with late Maroon Matawai *granman* Oscar Lafanti. Already at the time of his inauguration in 1981, Lafanti's sympathy for the military regime was frowned upon by many Maroons. In following years, the *granman's* self-will and lack of proper consultation with his constituency further **discredited** the granman among his people. In 1991, the Matawai *kapiteins* terminated their trust in the granman, and notified the central government in writing. In the meantime, Lafanti had written the government that he would no longer fulfill his function. Interference of the central government hushed up the conflict, and Lafanti stayed on.

Whenever problems occur with succession and appointment of *granmans*, the Government will play the role of **mediator** and help to solve the dispute between the different tribal group interests. Such mediation occurred in the latest succession of leaders from both Saramaka and Matawai tribes.

1.2 Role of Traditional Authorities

The responsibilities and duties of the traditional authorities in the interior cannot be underestimated. In brief, their roles are the following:

- A political and administrative role, including maintaining relations with the national government
- A socio-cultural role; taking care of the well-being of his community, and protecting the tribe against adverse external influences. In addition, customary authorities are often the religious leaders of their group
- A juridical role; enforcing law and justice in his territory
- A function as land stewards and managers.

Political and administrative roles

The oldest political functions among the **Maroons**, which existed before the peace treaties (1760s) are that of *basia* and *gaama fu matu* (tribal chief of the forest). This latter position was assigned to the headmen of certain important lo/lö. Only with the closure of the peace treaties did the colonial government impose central leadership and introduced the position of *granman* (Scholtens, 1994). Then, the position of the granman was set by the peace treaties from the 18th century. The treaties explained that each granman successor should be approved by the central Government before appointment would take place. The traditional authority, by means of the *granman*, was responsible for order, dispersion of religion, keeping out outsiders, conflict resolution and peacekeeping. The *granman*

practiced the jurisdiction to govern his tribal members and their area of living. The tribal members sometimes not live in the territory but are members of the tribe (Betterson, 2003).

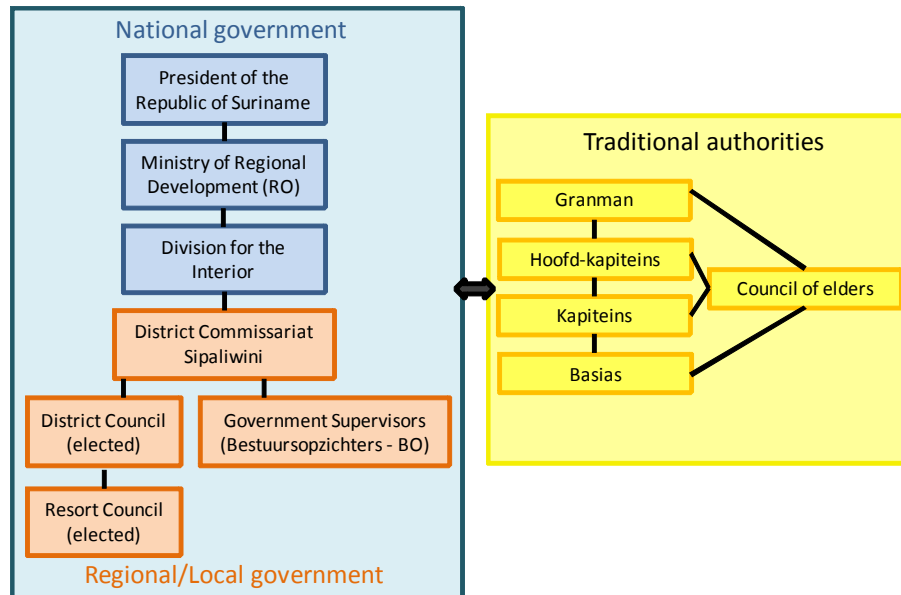
The **Southern Indigenous peoples** were not accustomed to centralized leadership prior to the formalization of their relation with the central government in the 1960s. Until the mid 20th century the Trio and Wayana lived in semi-nomadic family groups. When there were conflicts or disputes, these groups would split and continue as two autonomous groups (ACT, 2006). More formal leadership appeared with their clustering in larger villages at the instigation of the Baptist missionaries. In practice, this imposed form of tribal governance fits poorly with the traditional way of life of the southern Indigenous groups. It also is difficult to maintain given the large distances between villages and lack of access to reliable telecommunication means. As a result, village *kapiteins* tend to act rather autonomously from the *granman*. Also the northern Indigenous groups (Kaliña and Lokono) do not feature strong centralized leadership.

Administrative role

The *Government Ministry* responsible for **coordination** of all Government activities in the interior is the Ministry of Regional Development (*Regionale Ontwikkeling, RO*), particularly its Division for the Interior (*Directoraat Binnenland*) (Figure 1). This Division supervises the Districts Commissioner's office (*Districts Commissariaat, DC*), which serves as an intermediary between the Government of Suriname and the people and authorities of the interior. Interior representatives may approach the DC in person, through the elected District and Resort Councils, and through the appointed Governmental Inspectors (*Bestuurs Opzichters, BO*).

Figure 1 shows that the relationship between the *granman* and his *kapiteins* on the one hand, and the central government administration on the other hand, is not vertical. A *granman* does not consider himself as a subordinate of the district commissioner and is not regarded as such. Instead, the traditional government and the various central government offices concerned with the interior function as separate entities on the basis of mutual respect, where each one has its own particular functions. However, one person can have both a traditional function and a government function.

Figure 1 Relations between and among various national government offices concerned with the interior and customary leaders.



The Ministry of Regional Development has **no written documents that define the rights and responsibilities of traditional authorities**. However, there is an oral agreement with the indigenous groups from the coastal region (Kaliña and Lokono), that includes appointing one *kapitein* and four *basias* (two women and two men) to support the *kapiteins* for each village. With other groups are there no oral or written agreements.

Communication of traditional authorities with the government usually occurs by means of the DC, but it is not uncommon that tribal authorities address the Minister or even the President in person. We observe, for example, that *kapiteins* are nowadays more likely to directly address specific ministries (e.g. Ministry of Regional Development, Ministry of Education) to plea for the interests of their village.

Traditional authorities receive a **public honorarium** which is based on the formal relationship defined by regulation (*beschikking*). However, it remains unclear what this relationship means in practice and who carries what responsibility in the administration of day-to-day community affairs. Historically, the central Government has occasionally reprimanded traditional authorities for not being on the side of the Government (Scholtens, 1994). Even in present times this is occurring. For instance, in a meeting between the Trio *granman* and the Ministry of Regional Development, the Trio *granman* was asked to look after organizations working in the village on behalf of the Government. In most cases, traditional authorities feel the need to report to the Ministry of Regional Development regarding development or other issues. Some authorities have a stronger relationship with the Ministry of Regional Development than others.

One facet paralyzing the day-to-day works of the traditional authorities is their lack of administrative resources and an operational budget. The *granman* and his *kapiteins* typically

have no offices and lack reliable and regularly supplied transportation means (e.g. boat, outboard motor, fuel), writing materials, and/or communication tools (e.g. radio), however this varies between tribes. Tribes from the maroons are generally better situated than the southern indigenous groups. Hence, if traditional leaders want to discuss matters personally with government officials; build liaisons with national interest groups; seek donor assistance; or invest in community development, they first need to seek money from third parties. Transferring part of the funds for development of the interior to the traditional authorities would, with proper financial and administrative support and control mechanisms, be a logical outcome of the Government of Suriname's current decentralization efforts, supported by the Inter American Development Bank.

Political role

Neither in the Constitution nor in National laws has the political position of traditional authorities been defined. Instead, the relation between these customary leaders and the central government has developed based on custom, oral agreements, and practical considerations.

The amount of influence that the various ethnic groups have on national political decision making depends directly **on their presence in the various national and regional Government offices**. As compared to Indigenous peoples, the Maroons are much better integrated into the national political system. The limited political voice of Indigenous peoples has a direct impact on the levels of government attention and resources allocated to their communities in a country like Suriname, where personal alliances and ethnicity-based favoritism continue to shape policy making. However, with the recent Government elections, the indigenous representation has become more numerous.

Socio-Cultural Roles

Tribal organization

Among both the Indigenous and Maroon peoples, daily governance and organization are dealt with on the village level by the *kapiteins*, who are assisted by *basias* and village elders. The *kapitein* receives the jurisdiction from the *granman* **to make customary laws** in the area that he/she governs. The area is usually defined by the families that are the primary (historical) inhabitants of the area. However, the customary laws made by *kapiteins* can never be contradictory to those laws made by their *granman*.

Family level issues tend to be dealt with within each family. **Decision-making** may take days of gatherings or *krutus*. The content and relevance of the issue determines whether the *krutus* are held within the family, the village, a few villages, or at the residency of the *granman*. Usually the *krutus* are open to the entire group of interest. Traditional authorities and elders facilitate these meetings, but usually anyone may speak out. Decision making is based on consensus and should ideally avoid conflict and disputes. The most important decisions or stands are typically decided upon during prior smaller meetings. Decision making is democratic in the sense that the entire group of interest has a chance to participate. On the other hand, matrilineal succession rules reduce the power of democracy.

In addition to dealing with daily issues, traditional authorities are responsible for **safeguarding the well-being of tribal members**. Traditionally, this role included the redistribution of resources to ensure that the weakest in the community would have enough to eat. Reciprocal and caring relations form the social fabric of subsistence based communities in the interior, and the traditional authorities are (or were) responsible for maintaining these structures.

Leadership

With most Maroon groups, politics and religion are **interwoven**, with the *granman* and *kapiteins* being central persons in communication with the ancestors. Among the Christianized groups, the link between political and religious leadership tends to be weaker. Nevertheless, in religious ceremonies such as burials, the *aiti-dei* (eight day memorial of a death) and the *puu baaka* (end of the mourning period), traditional leaders typically play a central role. They also are the ones begging or thanking the ancestors at the end of *krutus*, suggesting their special connection with the supernatural.

Part of the socio-cultural role of traditional leaders concerns their religious role. The *granman*, *kapiteins*, and *basias* we find in the Trio and Wayana indigenous villages today were co-opted by US missionaries in the 1960's as part of their effort to cluster and Christianize the southern Indigenous groups. These Baptist missionaries promoted the installation leaders that were simultaneously (made into) the religious leaders of the village while the *piyai* were stripped of their power. Even though the US missionaries have left the villages, the influence of the church on village leadership must not be underestimated.

Difficulties and conflict

The use of an authority position for **self-enrichment and the well-being of the immediate family group is not uncommon**. Among the indigenous Trio tribe, for example, various customary leaders, including the *granman*, are running a store. The leaders use their working trips to town to buy urban goods for resale against exorbitant prices. It also is common practice that close family members are being pushed forward for jobs from the government and NGO's, regardless of their capacity.

With increased integration into the national economy, we see that some leaders are forfeiting their social caretaking role and instead use their privileged position for betterment of their kin group only. Such behavior has led to a withering of respect for traditional leaders, and a lesser willingness of especially youngsters to listen to them. A case in question is presented by late *granman* Oscar Lafanti of the Maroon tribe of the Matawai, who obtained a mining concession on Matawai land in the early 1990s. *Garimpeiros* were allowed to work on his concession against a percentage share (10% of earnings). The fact that the *granman* used earnings from communal Matawai land to live a luxury life in Paramaribo was not well received by the Matawai in the interior, most of who are still living without access to electricity, running water, and other basic services.

Indigenous and Maroon youngsters are **disappointed** in their traditional leaders, one also increasingly hears these leaders complain that young people no longer want to listen to

them. This trend is largely an (indirect) outcome of closer integration into the national economy and society. Youngsters, who become western educated and want to be part of the urban life, may feel that customary rules are old-fashioned and traditional leaders out of date. In the context of rights to land and a certain degree of self-governance and management of these lands, it is crucial that respect for traditional authorities is being strengthened.

Juridical role

Jurisdiction

When the Peace treaties were signed with the colonial Dutch government in the 1760's, the Ndyuka and Saramaka Maroons safeguarded their right to maintain their own legal system with related juridical measures, separate from that of the central government. While the concept agreement with the Ndyuka restricted (in Art. 13) their right to an own juridical system, the final treaty of 1760 did not say anything about this matter, thus accepting the status quo (Scholtens, 1994). The treaty with the Saramaka two years later explicitly recognizes their right to speak justice over their people including performance of the death penalty (Art. 11). Only in the case of problems involving white people, the central government was to be involved (ibid.). A renewal of the peace accord with the Ndyuka (1809) also addresses the right to speak justice explicitly in stating that Ndyuka who have committed a criminal act and subsequently flee to the areas inhabited by whites would, upon request of the *granman*, be arrested and extradited (Art. 10). The *granman* was then free to punish this person according to local regulations. Later renewals of the peace treaties with the various Maroon groups only confirmed that the Maroons have a right to their own legal and juridical systems.

The Peace Agreement of 1992 (Vredesaccord van 1992), that was signed in 1992 by the Government with the Jungle Commando, the Tucayana Amazonas and others was intended to put an end to the war that waged in the interior ever since 1986 for achieving peace throughout Suriname. The agreement provides a framework for the juridical role of traditional authorities. The agreement states that traditional authorities of the tribal citizens will indicate on the basis of which the individual members of a community are eligible for a real title to a plot in the areas in question. The Government would designate an economic zone around this area, where the communities of the tribal citizens would be able to engage in economic activities, including forestry, small-scale mining, fisheries and hunting.

Nevertheless, under current Suriname law, **customary authorities have no mandate to speak law and justice** and may not impose laws other than national laws. Indeed, in a 1921 agreement closed between the Ndyuka and the colonial government it is explicitly stated that the Ndyuka are obliged to pay respect and obedience to the Queen of the Netherlands, and honor the laws that are or will be implemented in Suriname (Art. 1 and 2; Scholtens, 1994). Thus, without clear guidelines in the current legal framework, we can conclude from the various historic legal documents that the Indigenous and Maroon peoples living in tribal societies have a right to their own legal and juridical systems as long as these systems are in

agreement with the national laws. It is unclear which system supersedes in the case of conflicting regulations.

Traditional authorities generally have large meetings (*gran krutu*) to take special decisions (laws) that are involving the whole tribe. These meetings are held on a frequency of 4-5 years. For instance, the Maroon *Aukaners* have a *gran krutu* every four years. The *Saramakaners* have a continuous collaborative arrangement between the Lo's. The coastal indigenous communities of Indigenous *Kaliña and Lokono*, organized in the VIDS, have a meeting with all traditional authorities every five years. The southern indigenous groups of *Trio* and *Wayana* meet once a year in a Baptist church setting and discuss the pending issues and ethics to continue their survival.

Enforcement

In practice, local authorities play a crucial role in maintaining law and order, and in promoting adherence to both customary and national laws. At a national policy level, it is tolerated that these authorities resolve small offenses such as theft and village fights through punishment after consultations in village meetings. In part, this policy of tolerance exists out of practical reasons. For many interior villages, the nearest Suriname police posts are many hours if not days of travel away. For another part, interior populations dislike too much meddling from the State into their affairs.

As a result of both local preference and state incapacity, **most criminal offences are dealt with at the village level** by the customary authorities. The *hoofdkapitein* decides for the disputes in Lo's and the *kapitein* decides for disputes in villages in the Maroon tribes. However, the *granman* has final say in each decision because he is seen as a person that is not bias. The *granman's* decision is enforced in a *krutu*. In the indigenous groups decisions are made by *kapiteins* on the village level. If the dispute cannot be resolved it is brought to the *granman*. In these cases, social structure and peer pressure are important assets to punish a wrongdoer (Misiedjan, 2004). The majority of punishment processes involve some sort of arrangement between the family of the wrongdoer and the aggrieved party. Possible sanctions vary per tribal group. They may include fines in money or goods, payment to the ancestors in *sopi* (liquor) or other goods, corporal punishment, and banishment from the community.

The Matawai are the only Maroon group that uses the whip to punish wrongdoers. A recent case concerned a man who had sexually abused a young girl. The mother of the girl also demanded payment of 2000 SRD but the *kapiteins* and *basias* did not agree with this demand. Instead the man was ordered to pay four bottles of *sopi* (liquor) which, after pleas from his advocates, was reduced to three bottles. Whipping is also used among the Trio, but here it was introduced by the Baptist church. This punishment is executed by the *basias*. In Kwamalasamutu, culprits also may be locked up in the storage room of the community building.

State law enforcement agents are only called in when a serious crime occurs; when a criminal act involves one or more outsiders and when the traditional authorities feel that they do not have the capacity or resources to deal with the problem. In those cases,

national police (or military) involvement is typically combined with customary responses to the case in question. In 2008, for example, Trio granman Asongo called for police assistance to investigate the production of, trade in, and use of marihuana in Kwamalasamutu. The direct motive for calling upon the police was the death of a 30-year old man who had allegedly committed suicide under the influence of drugs. While the police did its investigative work the Trio granman also took his own measures by ordering the inspection of luggages arriving in Kwamalasamutu; a rule that is still in place. As another example, in 1999, Ndyuka granman Gazon called for police assistance after the killing of a Ndyuka mine operator by a Brazilian man at Sella Creek. It took two days before the police arrived. In the meantime the traditional authorities had taken their responsibility in preventing Ndyuka miners from lynching random Brazilians in the area, in calming the local population, and in deciding about what to do. In the end, it was agreed that all Brazilians would have to leave Sella Creek to prevent such incidences in the future; a rule that is still in place.

Implications of pluralism

The strong reliance on the customary legal and juridical systems is not unproblematic, for four main reasons. In the first place, **actions of traditional authorities in reaction to crime and misconduct are rather arbitrary**. Offenders are punished according to the personal discretion of the village authorities and their advisors, which in turn is influenced by their relation to the culprit. For example, if the *kapitein* already had a conflict with the father of the accused, he/she likely gets punished more severely. On the other hand, close relations of the *granman* or *kapitein* or persons of standing in the community, such as in the Trio case, church ministers, will often remain unpunished. This situation violates the basic human rights of both crime victims and perpetrators.

A second problem is that the traditional authorities **do not have a formal mandate to arrest offenders or impose punishment**. This situation severely limits their options to maintain order and justice, especially where outsiders who do not recognize the customary laws are involved. An example is provided the arrival of Brazilian gold miners in the Sipaliwini savanna, near the village of Kwamalasamutu, in 2007. The Trio *granman* wanted to remove these unauthorized *garimpeiros* but had neither the authority nor the (police) force to back him up. Neither was it clear where he could turn to for assistance, and hence he elicited the help of an NGO, which could not intervene either. In the end, it took weeks of radio and phone discussions between the *granman*, the NGO, and the national army before the gold miners ultimately left by themselves.

Third, traditional authorities generally are skilled in dealing with traditional problems such as theft, village fights, sexual abuse, and the violation of customary land use rules. They may **not be as effective in deal with modern problems**. Drugs related issues as well as cases involving people from outside (e.g. Brazilian gold miners) are relatively new and it is difficult for especially elderly leaders to judge possible risks.

A fourth problem is that in some communities **respect for traditional authorities is withering**, with the result that they no longer have the power to fulfill their tasks as local judges and order keepers. Wayana traditional leaders in Apetina, for example, lamented that they are losing grip on village youngsters. The use of drugs (incl. crack cocaine) and related petty crime have become serious problems yet not much is done to either punish

the culprits. In just two months, a digital camera of one of the teachers, gasoline from an NGO, and the watch of the granman, among other things, were stolen. Fear for the wrath of the punished person and his/her family, who may use *pīyai* (magic) on the plaintiff or judge, was named among the reasons that thieves are not held accountable.

Traditional authorities as land stewards

For centuries, tribes have continually created and adapted land and resource utilization practices to ensure physical and cultural survival (adaptation of hunting- and fishing skills, use of certain spaces). Consulted studies document a wide range of traditional customary practices that regulate natural resources and show that traditional authorities could take leadership in a sustainable land use system.

Land- and resources stewardship

Globally, three complementary parts in land and resources stewardship are important to mention: Ownership of the used land, benefits of the land use, and management of the used lands.

A} Ownership of the used land.

In Suriname, from a legal point of view, all land in the interior is owned by the State or contracted as concession or permit and tribal people do not have the formal right to utilize the land. However, the tribal authorities have a system of granting land to their tribal members that is extensively described elsewhere⁴. The country is blessed with a low population to land ratio so compared with a lot of similar countries; land per se should not be the hot issue. Community people must have the ownership of the natural resources they need for subsistence use. One can hereby think of cultivation plots, forest products, fishing and hunting resources.

B} Benefits of land use. There is a wide variety of possibilities in the benefits of land use, ranging from the pure subsistence agriculture and NTFP use up to partnerships with private sector investors.

C} Management of the used land. When people feel involved and when they own something (A) that gives them benefit (B), the motivation for implementing a good management is often a natural result.

Environmental management

As political and social leaders, **customary authorities have the responsibility to look after the sustainable use of natural resources**; to establish and endorse rules that support environmentally sound practices; and to place sanctions on those who violate these unwritten rules. History tells us that in some cases the chiefs yield to the temptation and give permissions for mining (gold, diamonds, bauxite) and/or logging in their surrounding areas where the resources are required by the local communities for their subsistence life. For example HKV leases, a practice that was legally in place until 1992, were registered in the personal names of the chiefs of the villages and it was not unusual that that outside loggers closed deals with captains who were given permits to cut and remove timber. The

⁴ SSDI/IDB report on "Land Use, Tenure and Rights of Indigenos Peoples and Maroons in Suriname".

contested involvement of traditional leaders in gold mining has been extensively discussed above.

The use of leadership to prevent unsustainable use is found in West-Suriname for instance, where the village councils of Apura (Arowak), Wasjabo (Arowak) and Witagron (Kwinti) have joint forces against the Brazilian gold miners. Also in south-central Suriname, Wayana granman Nowahé, has to date rejected all requests from gold miners to come work in the Wayana area. Another example regards the late granman Lafanti of the Matawai who was opposed to the use of finely woven fishing nets in the Saramacca River and who removed the nets personally in order to keep a “healthy” fish breeding pond. Another example occurred of couple of years ago, when Ndyuka granman Gazon temporarily prohibited fishing through *ponsu* (Sranan: *neku*); the use of a specific type of liana that stupefies fish when placed in the water. In the dry season, when fish get trapped in smaller ponds, Maroon and Indigenous peoples use this technique to catch a lot of fish with relatively little effort. Concern about the low fish stand in the Tapanahony River motivated granman Gazon to put a temporary halt to this practice.

Stewards of the forest

Legislation on forestry and forest-related use are vague on the rights of indigenous peoples and maroons. This implies that also the **responsibilities and duties of traditional authorities in these laws are not regulated**. For instance, the Forest Management Act 1992 (Wet Bosbeheer 1992), Article 41 paragraph 2, provide a legal arrangement for traditional communities: the Article states that after consultation with the Minister of Regional Development, the Minister of Physical Planning, Land and Forest Management designates certain forest areas as communal forest on behalf of the inhabitants of the interior who live in villages and settlements and also for the tribal inhabitants. The utilization and the control of the communal forest will be further regulated by State decree. These communal forest are assigned by formal regulation (*beschikking*). The *beschikking* states that the chiefs are representing the communities in the communal forest undertakings. The rights associated with community forests are vague and difficult to define when collectivity itself is not defined in the civil law system.

However, the Nature Conservation Act 1954 (Natuurbeschermingswet 1954) Article 5 provides some prohibition provisions. It is, for example, prohibited to intentionally or due to negligence damage the condition of the soil, the natural beauty, the fauna, and the flora or to perform acts that may impair the value of the reserve as such. It is also prohibited to hunt and to fish and persons are also not allowed to have with them dogs, firearms, and any hunting or catching device, without the required license thereto. This is contrary to the tradition of the inhabitants of the interior who live off of hunting and fishing. **The Nature Conservation Act does not allow for any exceptions for Indigenous people and Maroons** (ACTS, 2007).

The relationship with the forest and communal peoples are also based on Non Timber Forest Product (NTFP). The remarkable traditional knowledge with regard to the use of the forest products is a source of ethno botanical information and much of the knowledge

gained from the Indigenous people is the foundation of the herbal medicinal industry today. Unwritten rules (young and pregnant animals are not be killed, members are only allowed to take out of the forest what they need and will use) ensure that biological resources are not over harvested. When thinking of valuation of the natural forest, tribal communities should also play a significant role.

Stewards of agricultural lands

The main factors influencing the national context in agriculture that are highlighted in the Agriculture Sector Plan (ASP) include: 1) Labor and income for the population in a diversified economy; 2) Food security for the population with the emphasis on accessibility to safe and healthy foods; 3) a positive contribution by the agricultural sector to the national economy.

Food safety lies at the forefront of concerns. Indigenous people and Maroon communities typically cultivate many crops and multiple varieties of each crop in space and time and by doing so, harvest security is enhanced and diet diversity is promoted. The tribes have maintained and adapted different forms of agricultural systems for centuries and could be called the founders of agricultural land stewardship. Their knowledge, traditions, land use and resources management are of immeasurable value for further development. Note that, for the agriculture part, there is only one agricultural research institute in all of Suriname and this is, unfortunately, located in the capital. Recently, the Ministry of Regional Development initiated an agricultural unit to directly support agricultural production in the interior.

As political and social leaders, customary authorities have the responsibility to look after the sustainable use of natural resources; to establish and endorse rules that support environmentally sound practices; and to place sanctions on those who violate these unwritten rules. Legally, the Forest Management Act 1992 (Wet Bosbeheer 1992) provides a protection clause for Indigenous people and Maroons as mentioned in article 41 paragraph 1a sub 4 and reads as follows: **“The customary laws of the tribal inhabitants of the interior in their villages and settlements and their agricultural plots shall be respected as far as possible”**. However, being a ‘traditional’ Indigenous or Maroon individual and being a leader does not automatically make one into a wise and responsible land steward. There are numerous examples of leaders that have used their power, or adversely, not carried sufficient power, to practice or endorse practices that exhaust or destroy the land and its resources.

2. Existing Legal Structure in Suriname

Suriname effectively has two legal systems: a formal system of written laws and structure introduced into the country during the period of European settlement; and an indigenous system based on the social structures of those populations. Given the historically divided nature of Suriname's development, these systems of rules have effectively evolved independently of one another.

Formal system: Suriname has a civil law system, resembling the Dutch legal system adopted from its colonial history. The basic documents of this system are the post independence Constitution and core codes related to civil, criminal, and commercial law. Primary legislation is enacted by the National Assembly with subsidiary legislation enacted by the Council of Ministers or individual Ministers. Resolutions and regulations may be issued by the President or individual Ministers based on their legal mandate to do so (ACT, 2006).

The traditional authorities legally fall under the execution of the Ministry of Regional Development. According to the State Decree on the Job Descriptions of Departments (Staatsbesluit Taakomschrijving Departementen, S.B 1991 no. 58 as amended S.B 2005 no. 94), the Ministry of Regional Development, among other things, is assigned the task with respect to traditional authorities:

- The regional administration;
- The relationship between the regional and the central Government;
- An integrated acting of Government, aimed at regional development and improvement of the quality of life of the inhabitants of the districts and the reconstruction of the interior;
- Developing administrative procedures for the further policy development with regard to promoting participation in the decision-making at local council and district level;
- Maintaining relationships of the central Government with dignitaries and inhabitants of the interior.

Traditional system: The traditional system for both maroon and indigenous populations is based on social structures and relationships. These 'rules' are not recorded in writing, but are understood by all members of the society and are part of the socialization process that the young go through early in life. In the Suriname context the highest authority is the *Granman* with assistance by *Kapiteins* and *Basias*.

The *granman* has supreme authority over all member of the tribe within the tribal territory. This office has both an administrative as well and socio-economic role to play, addressing day to day issues within the territory as well as a representational role to the outside. This role is not formally written, but has developed through custom and practice. It includes, but is not limited to:

- ensuring the well being of his community (natural resource use and management, rituals, rights, information flow, financial management and effective decision-making).
- enforcing law and custom within his territory and dispensing justice when appropriate (conflict resolution, enforcement of penalties, lawmaking).
- protecting his tribe from outside influences and representing their interests to outsiders (selection and involvement of outsiders, consultation process, payments for services).
- being the religious leader of his community, undertaking ceremonial roles that preserve the societal cohesion
- being the administrative leader of his community, ensuring that the tribal hierarchy functions, that services are provided, and that the community remains viable (ACT, 2006).

These tasks can be seen as a customary regulation. None of these are actually legally bound.

As in most traditional societies, decision making that affects the entire village is based on reaching a consensus following extensive discussions. Traditional authorities facilitate these discussions, but generally all members of the community have an opportunity to speak out and raise issues of concern, or express an opinion about the subject matter under discussion. While the authority figure may guide the discussion, there is a tendency to allow everyone to have their say, and eventually a consensus is reached. In some groups attendance at these village meetings is mandatory ensuring that, at the very least, an acquiescence (given participation in the meeting) to the decisions being reached. This is a very powerful tool to maintain cohesion in these social structures and to minimize a sense of alienation from the decision making process.

Relationship to Central government

The Ministry of Regional Development is responsible for development of the interior. Specifically there are a number of departments responsible for employment, business development, village development, and tribal affairs. For example, village development concentrates on small basic people oriented projects that have been developed with the community and negotiated to determine how the government can support them to do it.

The Granman is selected from family lines's in both indigenous and maroons groups, and then formally appointed by the government and receives a stipend from it. However, the relationship of the Granman to the government is not a hierarchical one, but one more of mutual respect and maintenance of separate positions of authority. Formally the District Commissioner (DC) is responsible for the district and the Granmans residing within it. However, all Granmans do not consider themselves subordinate to the DC, but rather a partner in the maintenance of public order within the region (Heemskerk et al. 2005). This perception of granman's explains the need for a permanent collaborative structure between Government and tribal authorities.

The government has made a decision to move toward greater levels of decentralization. In doing so the interior is to be divided into 7 resorts, each having its own DC residing there. (At present the single DC responsible for the interior resides in Paramaribo). The decentralization activity will establish a complete government structure (government offices, civil registry, social security, police, etc). This process was planned to begin in 2008,

but is underway. Some local structures are already in place (resort councils and district councils are locally elected), but the existing government representatives are ineffective.

Each DC will then be responsible for the drafting a development plan and budget with the goal to function relatively independent of central government. Initial budgetary support will come from central government, since at present revenue from large companies go to the central government and only revenues from smaller companies stay at the local level.

This move towards decentralization could have a significant influence on the central government/traditional authority (Maroon and Indigenous) structures. Given that the new structure will bring a greater presence of central administration into the interior, the possibility of increased conflicts over authority/jurisdiction in the management of day to day affairs is likely to increase.

2.1 National Legal framework

The legal framework for the relationship between tribal authorities and Government is established in the Peace Accord of 1992, and the subsequent Presidential decree (Buskondre protocol) it was decided that as of April 1, 2000. This decree states that the Republic of Suriname recognizes

- a. the residential areas of Indigenous peoples and Maroons in accordance with the principle of natural boundaries
- b. the collective rights
- c. Indigenous people and descendants of Maroons have the free use of an area to be indicated later, starting from the principle of natural boundaries
- d. The national economic interest requires that, part of the territory, also within the areas referred to under a), must be used for national economic development, the Government will make use of the authorities on the basis of its constitutional and legal responsibilities and the obligations there under, and that the Government will precede a decision for the intended use by participation of the traditional authorities of the Indigenous and the Maroons. It must be examined to what extent this economic activity can cause damage; possible damage to individuals or collectivities in the villages in the interior must be compensated. Compensation needs to be determined before the economic activities take place.
- f. A fund will be established whereby a percentage of the income of the potential interior economic activities will flow back to the respective areas and/or villages or collectivities of villages
- g. It will be prevented that the inhabitants of the interior are in any manner whatsoever curtailed or hindered.

This Presidential Decree is part of the Suriname legislation. It is subordinate to the constitution and a law in a formal sense. The Government can use this decree as a framework for defining a formal traditional authority structure. According to the guiding task of the Ministry of Regional Development in ensuring that traditional authorities function properly into the Government administration as well as for their people in the

traditional way, the Presidential degree would facilitate a well situated planning framework from national- to regional and then the local planning structure fulfilled by *Bestuursopzichters*, *ressortraadsleden* and traditional authority. However, the political feasibility of this agreement is limited. Therefore, the consultants propose to establish a new framework law defining the rights of indigenous peoples and maroons.

The new law should include the following rights:

- The rights of the Indigenous peoples and the Maroons to the land that they traditionally occupy, use and have historical access to for their traditional practices must be recognized by law. For those purposes, they will obtain a title that will provide them permanent, exclusive, alienable, imprescriptibly and indefeasible right.
- For the legal recognition of the rights of the communities, the State will have to safeguard the delimitation, demarcation and the titling.
- The titles to the lands may only be amended with mutual consent of the State and the communities in question.
- These communities have the right to judicial protection of their rights with regard to the natural resources *on* their land.
- With regard to the subsoil minerals or resources, the state in consultation with the communities will have to establish rules for public participation in decision making as all minerals within the territory of the state of Suriname belong in ownership to the State (article 2 of the Forest Management Act in conjunction with article 41 of the Constitution). Participation is necessary since exploitation of these minerals will influence their lives.
- Indigenous and Maroon communities shall not be forcibly removed or resettled from their lands or territories traditionally owned or otherwise occupied and used. In exceptional cases, resettlement shall only take place with the free, prior and informed consent of the communities concerned and after agreement on just and fair compensation and benefits and, where possible, with the option of return once the reasons for resettlement have ceased to exist.
- The State shall take all measures to avert, prevent and to punish any intrusion or the use of the lands inhabited and used by Indigenous and Maroon communities, by unauthorized parties .
- The Indigenous and Maroon communities have the right to restitution of their land, territories and resources that they use traditionally, if these have been taken, damaged or used. If restitution is not possible, they have the right to compensation in pursuance of priory set criteria (ACT, 2006a).

2.2 International legal ruling

On June 8, 1977, Suriname joined the convention on the establishment of the Organization of American States (OAS). On November 12, 1987, Suriname also joined the American Convention on Human Rights and unconditionally accepted the jurisdiction of the International Court of Human Rights. The Inter-American Human Rights Committee (IACRM), that monitors the compliance with the human rights instruments. In the Inter-American Human Rights System, individuals do not have the right to directly submit a case to the Court. This may solely be done through the mediation of the IACRM. If the case is considered well founded, it may be forwarded to the IACRM. The court rulings are binding to the States, including Suriname, that have recognized the authority of the court.⁵ The rulings of this court are also final and conclusive, in other words they are not open to appeal. Maroons have turned to the Inter-American Human Rights System at least 3 times, more in particular:

- The Aliboetoe case with the Court
- The Moiwana case with the Court
- The Association of Saramaccan Authorities and the 12 Captains on behalf of their *lo's* to the IACRM.

Of the above mentioned, the Moiwana and the twelve Saramaccan clans has an impact on the rights status of traditional authorities.

The Case of Moiwana vs. the State of Suriname⁶

This case concerns the slaughtering of more than 40 Ndyuka Maroon men, women and children by the Suriname army in the village of Moiwana. This case was submitted to the IACRM, after which it was presented to the Court.

On June 27, 1997 the human rights organization Moiwana '86 filed a petition before the Inter-American Committee.

On February 28, 2002, the Committee made the following recommendations to the State:

1. That the State of Suriname open a serious, impartial, and effective investigation into the facts so that an official report can be produced on the circumstances surrounding the Moiwana massacre and [so that the perpetrators may be] duly tried and punished.
2. That the necessary steps be taken to complete, as soon as possible and in absolute conformity with [the] law, the judicial and administrative proceedings concerning all the persons involved in the violations cited in the [...] conclusions [of Report No. 35/02], in order to investigate, prosecute and duly punish the responsible persons.
3. That the State of Suriname repair the consequences of these violations of rights to the victims, their families, and rightful claimants who have been prejudiced by the aforesaid violations of rights, [whose] reparation is to be based on the concept of family established by the Inter-American Court of Human Rights.

⁵ Rudge, E.P.: Suriname and the Inter-American Human Rights System, April 2001

⁶ www.oas.org

4. That the State of Suriname take necessary legislative and judicial measures to repeal [and] nullify the Amnesty law for this case, in so far as it allows for impunity for human rights violations, and crimes against humanity.

In June 2005, the Court pronounced a ruling in this case:

1. "The State shall implement the measures ordered with respect to its obligation to investigate the facts of the case, as well as identify, prosecute, and punish the responsible parties.
2. The State shall, as soon as possible, recover the remains of the Moiwana community members killed during the events of November 29, 1986, and deliver them to the surviving community members.
3. The State shall adopt such legislative, administrative, and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for the members' use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories.
4. The State shall guarantee the safety of those community members who decide to return to Moiwana Village.
5. The State shall establish a community development fund.
6. The State shall carry out a public ceremony, whereby Suriname recognizes its international responsibility and issues an apology.
7. The State shall build a memorial in a suitable public location.
8. The State shall pay the compensation ordered in paragraph 187 of the instant judgment to the Moiwana community members for material damages.
9. The State shall pay the compensation ordered in paragraph 196 of the instant judgment to the Moiwana community members for moral damages.
10. The State shall pay the compensation ordered in paragraph 223 of the instant judgment for costs.
11. The Court will monitor compliance with this judgment and will close this case once the State has fully implemented all of the provisions. Within one year of the date of notification of this judgment, the State shall furnish the Court with a report on the measures taken in compliance therewith, in the terms of paragraph 232 of said judgment."

The Case of the Twelve Saramacca Clans

The Association of Saramaccan Authorities (VSG), representing the Saramacca people, *lo's* and communities of the upper Suriname river, and twelve Saramacca Captains acting in their individual capacity on behalf of the twelve Saramacca *lo's* submitted a petition to the IACRM.

A petition was submitted because logging and mining concessions on Saramaccan territory are still issued to third parties without the territorial rights of the Saramaccaners being recognized. The petitioners stated that the State has committed the following violations:

1. the right to property and to effective measures to recognize and secure property

2. the right to be consulted and to participate in decision-making
3. the right to cultural integrity
4. the right to petition and to receive a quick response
5. the obligation to effectively ensure respect for rights and to give effect to those rights
6. the right to due process of the law and to judicial protection

In addition, by virtue of article 29 of the American Convention, an additional enumeration of violations of rights under other human rights treaties has been indicated, more in particular:

1. The right to own property individually and collectively and the right to effective participation – articles 5c en 5d v of the Convention on the Elimination of All forms of Racial Discrimination
2. The right to self-determination and the right of minorities to enjoy cultures-article 1 and 27 of the International Covenant on Civil and Political Rights
3. International and Inter-American Customary law

2.3 Proposal for Land Ownership

In both the cases of Moiwana and the Saramaka lo's, the State was sentenced and judicially obliged to adopt the judicial and administrative measures to ensure the property rights of the members of the Moiwana community and Saramaka lo's. As such, the Government installed a Land Rights Committee in 2007 to address the issue of land titling and ownership.

The Land Rights Committee presented a report that includes a national solution for the land rights issue in general. The judicial, administrative and other measures to safeguard the land rights of the Moiwana community, to which the State was sentenced, will be incorporated in the national land rights policy (ACT, 2006). The international sentences of the State will not be conducive to the image of Suriname towards the international community. The only option for the State is to legally recognize the rights of the Indigenous people and the Maroons.

In their final report, Land Rights Committee proposed to **define traditional authorities as legal titleholders to their territory, based on a new titling named collective property right**. This implies that the tribe's right will be geographically limited to the territories of the traditional communities. The commission proposes one of two models:

- 1) The traditional authority will be the representative of the land rights, vested in the tribe.
- 2) A management authority with legal status for the different communities, in which the traditional leadership participates (whether through representation or not) represent the tribe.

In either way, the traditional authorities are expected to play **a significant role in the land-related development in the interior**. The descent of the rights granted by the traditional leadership and other rights related to this right will occur in accordance with the traditional inheritance customs, which also should be codified (Land Rights Committee, 2007).

3. Future role of Traditional Authorities

There are a number of options that should be considered in addressing the future position and role of traditional authorities in Suriname within the legal framework. These options must take into consideration the historical context of relationships between the central government and Indigenous and Maroon populations. The remainder of this report will focus on these options.

3.1 Clarification of the Traditional Authority Structure

Traditional authorities have had to adjust to significant changes in recent history. Up until the last 30-40 years there had been relatively little significant incursions by outsiders into the interior with the exception of an earlier gold rush at the Lawa River around 1900, bringing thousands of outsiders to this River. About 50 years ago Baptist missionaries began activities in the indigenous peoples' areas, leading to consolidation of settlements and, following adoption of missionary teachings, significant modifications to traditional value structures.

This situation in the interior has changed dramatically in the last 20 years and continues at an accelerated pace. Initially this has been related to large scale mining (bauxite and more recently gold) and timber harvesting. While there is ever increasing interest in these areas, there are additional interests in smaller scale operations and tourism development. Such agricultural enterprises will not impact interior societies, but may affect coastal groups. In this last 40 years, Catholic and Protestant (EBG) missionaries were creating churches, schools, and health posts throughout the interior. In these years, the late 1960's and 1970's, the colonial Dutch government increased its presence in the interior. New air strips were cut open (operation grasshopper) and the Geology and Mining Department (GMD) and the Bureau for Hydraulic Works (BWKW) were conducting research throughout the interior.

Negotiations with these outsiders have had a checkered past and there is a need to clarify the process. Many complaints were heard of negotiations taking place with tribal leaders with little information flowing to individual tribal members until the conclusion of negotiations. While traditional leaders hold office theoretically at the consent of the entire tribe, the likelihood of a 'rebellion' of tribal members is remote, as action against a Granman is action against the society as a whole, given his spiritual and administrative roles. The roles of the traditional authorities for the future need to be negotiated with the tribes, given the differences in historical context, culture, and geographic location.

3.2 Customary Law and Practice

In many countries there have been attempts to codify customary law. Where this has taken place such formalization often hampers the ability of the traditional society to adjust to changing circumstances and reach different consensus in different cases. In diverse societies, there may be many 'customary' laws to try to codify and a lack agreement on which would have priority.

An alternative approach is to **recognize the existence of legal pluralism** within the country and then develop the mechanisms to allow both systems to function. Such a strategy would include dealing with the existing conflicts between mining, logging and other economic activities in the interior that are planned or executed. Because land disputes are one of the most common court cases in most developing countries and inevitably take up much of the formal judiciary's time.

Alternative dispute resolution mechanisms, relying on traditional dispute settlement processes can alleviate much of this pressure on the formal court system. These are usually executed successfully by tribal courts. The customary rules should ensure social peace in the tribes. These rules should focus on non-legal ruling and maintain the social order. In any other case, the tribes should bring the matter to the enforcement agencies such as military and police. Thus there is a need to develop a clear separation of responsibilities between the traditional judiciary functions and those of the more formal justice system.

Modern role

The lack of respect by youngsters and the increasing economic activities in tribal lands, contribute to a changing role of traditional authorities. In previous times, leaders should be good speakers, possess meeting and conflict resolution techniques, and practice the tribe's ethical codes. Nowadays, the tasks are broader and involve incorporation of western ideas, and initiatives.

In this modern role we distinguish that traditional authorities take two specific parts into account, including:

- Works side by side hierarchical tasks from the central Government.
- Governing the territory under their jurisdiction with customary laws.
- Maintain the wellbeing of the tribe in terms of social, financial and natural assets.

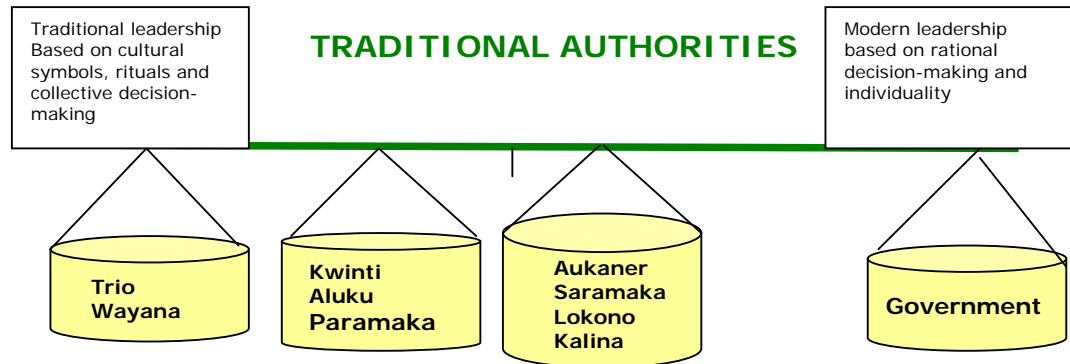
Traditional authorities have adjusted to this new role from as follows: 1) stimulate tribal members to obtain western education 2) create advisors that are **western educated, assertive** and **trusted** by the authorities in maintaining contact with outside sources. One good example is the Maroon Aukaner granman who appointed Jopie Matodya as his secretary. Jopie has gained trust from the granman to assertively gather information from outsiders on issues that have a potential impact on the tribe.

Traditional authorities have also adjusted to new development in terms of natural resource extraction. In many cases, concessions to outsiders are exploited with a compensation for the tribe. For instance, in the Maroon Paramaka, the tribal members security in trade for monetary benefits. In the indigenous groups some other developments have occurred. Under the leadership of the VIDS, indigenous groups have stressed the need for Prior Informed Consent procedures when initiating economic activities in lands inhabited by them.

However, traditional authorities can be placed along a **continuum of their integration into this modern role** based on their leadership capacity and involvement in development (Fig. 2). The participation of traditional authorities in development is dependent on their own capacity to understand the more rational processes practiced in western society. As

traditional authorities have had more contact with the outside world, or dealt with threats they are often more aware of their position within development. On the other hand, collectivity and cultural cohesion are important factors to keep the traditional authorities into their traditional leadership role.

Fig 2 depicts the current position of Development of traditional authorities within the dichotomy of traditional vs. western leadership.



Decision-making

Decision-making in **maroon** communities occurs in meetings on different levels. These meetings are characterized by a respectful negotiation process and democratic decision making. The highest level of decision making occurs in the *Gran Krutu*, a meeting of members of all lo's of the tribe. A second level of decision-making occurs at the krutu of the lo. In this meeting decisions are taken that are applicable to the Lo, after formal approving by the *granman*. A third level of decision making is at the village level. The *bee's* (families) living in the village discuss with the captain or other village leader make decisions in a village krutu. The decisions are only valid after the *granman's* approval. The fourth level of decision making occurs in the individual maroon family. Family heads and elders are important figures to take decisions regarding order, ethics and other matters. Decisions within the family are valid after permission from the village leader and subsequently, the *granman* (Misiedjan, 2004).

In the **Southern indigenous tribes**, decision making occurs autonomously at the village level by each head. The village leaders does not have to grant permission from the *Granman*. The only obligation is to inform the *granman* about the decisions taken. The central leadership of indigenous groups relies on the organizational capacity of the Baptist church that operates in Southwest Suriname. In the annual Baptist church meetings, indigenous groups from Suriname, Brazil, Guyana and French Guyana meet and take decisions on their ethics, rules and practices, as well as land and resource use.

In general, decision-making of traditional authorities is **based on a cultural system of knowledge beliefs and practices**. The traditional paradigm of decision-making (Fig. 3) is based on negotiation and facework between different elements in the usually collective society. This process is usually not understood by westerners because they generally see indirect actions as weak, while traditional cultures see direct decisions as a lack of politeness and good taste. The systems are complementary when one understands and respects how the other system works.

However, the official ruling system is the western, rationalized system of the Government. Therefore, traditional authorities need to obtain skills to understand and participate in this western decision-making.

Fig 3. Traditional system vs. Western system of decision-making

	Traditional decision-making	Western decision-making
Identity	Self	Group
Concern	Self-face	Group-face
Need	Autonomy, dissociation	Inclusion, association
Mode	Direct communication	Indirect communication
Style	Control and confrontational	Obliged or avoidance
	Solution oriented	Affective oriented
	Individualistic	Role-oriented
	Direct emotional expression	Indirect emotional expression

3.3 Formalization of the Relationship between the Maroon/Indigenous Society and the Central Government

It would appear from discussions and observation that the relationship between central government and traditional societies has functioned to a certain degree on an ad hoc basis, in a sense one of benign neglect. This is a direct result of the colonial history of that relationship, which is only recently evolving into a more formal relationship. At present this relationship has taken on a confrontational aspect over disputes of access to and control over natural resources (mining, forestry, and other resources). **The resolution of this relationship will be greatly assisted by the resolution of the impasse over resource rights.**

Once this is clarified, then the institutional structures can be put in place to effect that decision. There are a number of options on how this relationship could evolve and what the role of the traditional authority structure would look like. The option of doing nothing and leaving the situation as it is, as this is not acceptable to either party.

In 2008, the Government Commission on Land Rights proposed to draft a framework law on the rights of Indigenous peoples and maroons, and this law needs to be based on international standards and jurisprudence. The following recommendations of relevance

need to be considered when defining the relationship between Central Government and traditional authorities:

- The parties involved must indicate whether they will waive the rights arising from the Peace Treaty and the Buskondre Protocol.
- Introduce a new title to land, namely collective property right. This is a special new right that is in line with the nature and/or character of the tribe's traditional rights. This right will be geographically limited to the territories of the traditional communities.
- The starting premise that must be used is that the right is in line with the experiences and customs of the traditional communities. This right is vested in the tribe as a collective. In order to make this right valid, it is necessary for the Indigenous and Marron tribes to have a legal status.
- For the extent of the collective property right, it is important to distinguish the actual residential territory of the tribe and the hunting territory. The collective property right must be more complete and fuller if it involves residential territory than if it involves hunting territory. In this, the Commission Land Rights assumes that the residential territory of a tribe should be defined as the area on which the tribe's survival depends.
- It will not be possible within the system of collective property rights for the State to grant individual titles to persons who are members of the tribe. However, those individual titles that have already been obtained by persons of the tribe will be recognized. It will be possible, however, for persons to obtain individual titles, but these ought to be granted by either the traditional leadership and/or the management authority. The traditional leadership and/or the management authority will be able to grant all rights - with the exception of the commercial security rights - that are inherent in property in line with legislation previously approved.
- The descent of the rights granted by the traditional leadership and other rights related to this right will occur in accordance with the traditional inheritance customs, which also should be codified.
- The State ought to recognize the traditional right of the tribe with regard to all that is located on the land in the residential territory. This means that the control with regard to the management and exploitation of natural resources is due to the tribe. This of course with due regard for the national laws, such as those on taxation and environmental protection. If the State needs to curtail the traditional rights owing to the national interest, this may only be done after consultation and consent of the communities in question, in which an agreement must have been reached with regard to, among other things, adequate compensation and possible relocation.
- The issuing of concessions in the hunting territory of the tribe will only be possible after consulting with the traditional communities. Compensation will also be awarded to the collective and/or individual for the damage suffered.
- The mining rights are the State's exclusively, but not the revenues thereof in their entirety: part of the revenues must be paid as compensation to the communities. The State will also not be able to enforce the mining rights but after consultation and obtained consent from the traditional communities.

- Without consultation of the traditional community, no concession will be issued in the hunting territory.
- The Granman who is the head of the traditional leadership is institutionally involved in this procedure.
- The government ought to recognize the rights of the traditional communities unconditionally, but cannot curtail the rights of third parties. In such cases, compensation should be awarded to the traditional communities (Land Rights Committee, 2007).

Management of rights to land

The law for defining the rights of indigenous peoples and maroons need to lay out the management of tribal lands. One extreme option would be to create an autonomous or semi-autonomous entity to represent the local Maroon or Indigenous group. In a sense this would effectively create a state within a state. The State (Suriname) would then negotiate with the local group (Trio, for example) for the use of and access to resources. Such arrangements exist in the United States (Box 2). The Government of Suriname has declared that this option is not desirable.

Box 2: The Menominee Indian Tribe of Wisconsin is a self-governing, sovereign nation, recognized by the government of the United States. Through the *Constitution and Bylaws of the Menominee Indian Tribe of Wisconsin* (adopted in 1976 and approved by the Tribal Council, tribal members, and the Secretary of the Interior) the Tribe has the power to set its own laws and the methods to enforce them.... Anyone who enters the Reservation, tribal member or not, is subject to tribal jurisdiction and must abide by tribal law....As a result of regaining tribal status, title to the Menominee's land is again held in trust by the federal government. The 1975 Trust and Management Agreement, however, gave the Menominee far-reaching rights to manage their land and resources."¹

Another option would be to develop some type of joint legislative governing relationship between the central government and the Maroon and Indigenous communities. This would require the formal recognition of Maroon and Indigenous communities as legal entities. Bringing these communities into the legislative process ensures their participation in the formal governing of their respective areas, as well involvement in administration and management. There are a number of African country experiences that may have some relevance to the Suriname situation (Box 3).

Box 3: In the African context, Ghana has a House of Chiefs that deals with tribal affairs somewhat independently of the formal parliamentary structure. Botswana's upper house of Parliament, the House of Chiefs, is similar to the House of Lords in the UK. The Tinkundla in Swaziland is a formalized representative structure of tribal chiefs.

A third option would be less dramatic, but reflect current government policy with respect to decentralization efforts. As indicated earlier, the relationship of the DC

and tribal leadership is likely to change in the near future with the decentralization efforts. Will there be an effort to bring traditional leadership structures into the evolving district administration? Will there be a clarification of who is responsible for what? It is critical that these roles and responsibilities be clarified, if not formalized.

One example is the recognition in our neighboring country French Guyana. The relationship between the central government and the traditional authorities is not defined yet, notwithstanding the continuous efforts to do so. Both *kapiteins* and do not have a specific job description, while the *maire* has a profound description of duties. The central Government has defined the role of traditional authorities as a *status apartus* similar to the model used in New Caledonia. Traditional authorities do not agree with the *status apartus* and forces the Government to be officially recognized under the constitution. Also, the Government believes that there are too much *kapiteins* (31), which can be explained by the appointment procedure: political, traditional or as a replacement of the current (weak) *kapitein*.

Within the context of the demarcation of Indigenous and Maroon territories and the allocation of land rights, it is important to reconsider the roles, responsibilities, and competences of the traditional authorities. The relation between the traditional authorities and the central government within the modern Republic of Suriname should be central to this discussion. A nearby example is provided in French Guiana, where the customary system functions parallel with a superimposed French administrative system. In this large decentralized political system, the democratically elected maire (mayor) and prefecture (village board) enjoy considerable autonomy from the capital city of Paris in matters of financial and practical governance of their commune (resort). In important matters, these government authorities tend to consult the traditional authorities and on their turn, traditional authorities often invite the central government to its *krutus*.

4. Recommendations and Conclusion

The recommendations are the results of the research and the discussions with tribal leaders experts and Government in 2009 and 2010. A final discussion bringing together all the tribes was held in a workshop in November 2009 (annex 2).

1. The rights of indigenous peoples and maroons should be defined in a **framework law**. This law will define and recognize the institution of traditional authorities. Therefore, the **institution of traditional authorities must be maintained and strengthened**. It is important that the various ethnic groups survive with an own identity and culture, and strong traditional leaders are indispensable to this process. The best model is to establish a management authority with legal status for the different communities, in which the traditional leadership and national Government participates (whether through representation or not).
2. The **position, functions, and authorities of traditional leaders and members must be defined by law**. In the case of pluralism both functions – customary and development oriented - should be covered in laws and regulations. The **customary function** could occur through the proposed law on indigenous peoples. Within this law, the *beschikking* for appointment of traditional authorities can be further expanded with the specific rights, duties and responsibilities. The **development function** can be implemented through a subsidiary law on the management authority can be best structured within the decentralization framework that the government is developing (development function). This implies practicality for two reasons: 1) it establishes the link between planning of Government with traditional authorities and 2) it makes use of the momentum in which changes are already happening. Yet the decentralization framework should consider the intentions of the Government under the 1992 Peace accord and Buskondre Protocol (if they are not waived by the tribes). It is important that, in defining these various issues, there is room for the cultural diversity between groups. That is, the legal definition of traditional authorities and their roles should not be overly specific.
3. The **relationship between customary law and the formal law system should be clarified**. In looking at different models for integration of traditional authority structures in the national government, the model of Ghana was felt to fit best within the development perspectives and aspirations of Suriname. Two characteristics of the **Ghana model** were particularly felt to be applicable to Suriname:
 - a. The tribal leaders are organized in a National House of Chiefs (NHCs). This political organ has a **formal legal representation in the national government**, in contrast to the more informal role of the *Raad voor Ontwikkeling Binnenland*. Despite a constitutional prohibition on the active partisan politics, decisions concerning the interior are typically discussed with the NHCs. In collaboration with the Ministry of Regional Development, the NHCs have a say in policy and financial planning for the area on the district level. Also, there is more transparency when handling issues in a formal structure.

- b. The tribal leaders have a **budget** to be used in agreement with their traditional authority structures or community governing structure (*dorpsbestuur*) under the Decentralization framework. This includes also monetary payments for management services provided by the authorities. It has been suggested that also local government has a say in budgetary decisions. Therefore, traditional authority budget can be linked to the district budget. It is only with access to defined financial resources that traditional leaders (particularly *granman* and *kapiteins*) can fulfill their development function in their communities. The budget is in part composed of revenues (% fee) from industrial activities (mining, logging) on tribal lands. In part it is just a share of the local district budget allocated by the national government.
 - c. There should be a direct **link made between traditional authorities and their stewardship function over land**. This should be included in the legal entitlement of the Collective Rights title and in the NHC. This provision would function as the input for the specific laws such as the Forest Management Law, the Mining decree and the Nature Protection Law. In this legal document several aspects should be specifically mentioned:
 - The definition of tribal land use and assessment thereof. This can be included in the proposed collective rights law (Government land rights commission) and the prohibition to transfer tribal land
 - a.
4. The traditional authorities should establish a **western-modelled secretariat** for administrative function. It has been suggested that the each granman can rely on the services of a ‘secretariat’; this is an institution with a phone/radio, computer and an educated secretary. The secretary should be a person who is **educated (western and traditional) trusted, assertive** and well **integrated** both the urban and traditional tribal culture and can speak and is **literate** in Dutch and traditional language. Training is an important factor to bridge the gap between traditional and western authorities⁷. We recommend that authorities who are further along in adapting to their modern role take the lead in the process of understanding and respecting the majority administrative rule in Suriname (Ndyuka, Saramaka, Kaliña and Lokono – Fig. 2).

It has been emphasized that tribal leaders should not receive money in hand, but be able to access or apply to funds for certain projects through a third (controlling) party. The amount of money available should be revealed to the traditional leaders, and the entire budget handling must be transparent. For the Suriname case, the model of lamGold, where communities can apply with a specific project, was named of an example of ‘indirect budget’. Such a structure closes the gap between traditional leaders and the younger generation: all entities can equally apply for projects in the villages. Yet the authorities should be trained in administration and bookkeeping, which are underway in the effort of the Ministry of Regional Development’s institutional strengthening program.

⁷ Training needs for traditional authorities are further discussed in the 101 component on sustainable development of the Sustainable Development of the Interior project.

5. The traditional authorities should adapt to their new and **modern leadership** role in society. The decreasing respect for traditional authorities, especially among youngsters, is perceived as a serious problem in community government everywhere. The national government should support measures to strengthen local authorities through capacity building and resources. It has been observed that traditional authorities are increasingly confronted with deviant behaviour and criminal acts that they cannot resolve without external force. The community leaders should be able to rely on a (mobile) police force that can be present in the community within a reasonable time. The police force should not act in the communities on its own account but always in agreement with the local authorities. The power to arrest and jail community members and others, and the authority to trial outsiders should not rest with the local authorities. They are not -and do not want to be- armed. The consultant recommends that local people from the various regions are trained as assistants to police agents and posted in the communities. The traditional authorities are well aware of traditional methods of conflict resolution; however, in many cases these may not work. Therefore, the traditional authorities should be trained in western models of **conflict analysis, resolution and management** to deal with pending problems of natural resource conflict.

In conclusion, Suriname's history has been one of a dual development model—the colonial north and the relatively untouched interior. This has resulted in the evolution of two separate societies, with their own authority and social structures. Suriname is now at a crossroads of how to address this issue. At the same time both societies are on a convergence path, the north is moving south to exploit the natural resources of the interior, while the southern populations are moving north for education and employment opportunities. Both of these factors are having an effect on the traditional authority structures of Maroon and Indigenous communities and their relationship to the central government. The decision on the rights and obligations of traditional authorities should be made in a collaborative setting between Government, traditional authorities and key-persons in the communities (elders, youngsters, woman).

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Annex 1: Workshop Traditional Authority Structure

WORKSHOP TRADITIONAL AUTHORITIES

Overbridge, Suriname

November 19-20, 2009

PROGRAM

Thursday November 19

7:30	Assemble at ACT office, Nickeriestraat 4, Zorg en Hoop
8:00	Departure from Paramaribo by bus
10:00	Arrival at Overbridge
10:30	Welcome, introductions and logistical announcements
10:45	Workshop goals and agenda
11:00	Governing and administrative tasks: Relations with local and national government and executive task
13:00	Lunch
14:00	Legal authority: Jurisdiction and administration of justice
17:00	Close of day 1
17:15	Check of bungalows, time for refreshing bath in river
18:30	Dinner

Friday November 20

7:30	Breakfast
8:00	Start meeting; review day 1 and agenda day 2
8:15	Role of traditional authorities and land management: Traditional rights, traditional land use and control over activities of outsiders.
10:00	Break
10:15	Resumption of item Traditional authorities and land management
12:00	Lunch
13:00	Social and cultural role.
15:00	Wrap-up
16:00	Departure from Overbridge
18:00	Arrival in Paramaribo

Role, functions and powers of traditional authorities

Four different roles or functions of traditional authorities were discussed during four different sessions of the workshop:

- A. Governing and administrative
- B. Legal; jurisdiction and administration of justice
- C. Management of land and natural resources
- D. Social and cultural role

Governing and administrative

The governing and administrative role of the traditional authorities involves:

- Daily governance in the villages
- Long-term planning/development planning
- Relations with the central government
- Relations with local governments
- Administration and communication - within the tribe and with the outside world.

Several models were presented: French Guyana, Ghana and the USA.

French Guyana

In French Guyana, the government administration consists of an Assembly, which is responsible for policy development and policy means (e.g. drafting of new laws) and an Executive Council. The Assembly is advised by a Council for Economic, Social, Cultural, and Environmental Affairs and a Council of Traditional Authorities. However, the position and function of this Council is vague and in practice, it has barely any influence on policy.

As is the case in Suriname, traditional leaders are elected within the tribe in accordance with a traditional system of succession via the matrilineal kinship system. Afterwards, they are installed by the national government and receive an "allowance" (no salary). The French legal and policy system does not recognize the (administrative) tasks of traditional authorities and customary laws. The policy and legal powers are fully in the hands of local governments, although in practice, traditional leaders are often consulted. Traditional authorities have no budget of their own.

With regard to Suriname, it was pointed out that:

In Suriname as well, the government must not decide how leaders should be elected; each group should do that itself. The majority does not want traditional leaders to be chosen through free elections, but supports the traditional rules for succession.

The French system is not suitable for Suriname because there are too few powers vested in the traditional authorities. The government has taken over most tasks.

Ghana

Positive points:

Clear role and powers of the traditional authorities via the *House of Chiefs*. Suriname's system does not have this. Depending on history and merit, some captains and basja's (tribal and village leaders ... trans.) have more powers than others. The *House of Chiefs* has an advisory role. This advice is not binding, but cannot be ignored either. The granmans (paramount tribal chiefs ... trans.) or their representatives should be members of this *House of Chiefs*. It would be a good idea if the granmans of all tribes would meet at least once, but preferably twice or three times a year as a body to discuss the development of the tribal territories and to solve problems at the tribal level (e.g. succession issues).

At the tribal level, a *House of Los* (lo: family clan within a tribe ... trans.) could be established such as the "Association of the 12 lo" of the Aukaners. In Suriname, this group has no status or powers within the national government.

Availability of and clarity about financial resources that could be utilized for the development of the village; a fixed percentage ($\pm 35\%$) of the revenues from economic activities to be managed by the traditional authorities. A list of priorities is drafted at meetings of leaders. The captain should not decide alone, but a larger group, e.g. a village board. It has been proposed that the area's administrative supervisor (BO) be part of the village board. Another option is management of the funds by third parties (Koffiekamp model). Yet another model is to put the funds in the treasury of the district government (decentralization) and let the traditional authorities (together with the district government) decide on how it should be spent. No financial funds to the villages, but to the district, as other villages also need help. The District Commissioner (DC) must indicate clearly how the financial funds should be spent.

The central government retains a certain measure of control.

There are sanctions in case of abuse of powers.

USA

Some 3000 Menominee Native Americans live in a wooded reservation of ± 917 km² in northern Wisconsin, USA. The tribe is for the most part sovereign, which means that it has the exclusive right to exercise public legal authority, and the Federal Government has little influence over this. Tribe members who are on the reservation are subject to their own tribal legal system, which functions on the basis of the tribal constitution and civil laws. The tribe also has its own tribal police force, which cooperates closely with the State and Federal police. The Menominee tribal court rules in general civil and criminal cases, and has options for appeal.

The Menominee school district has four public schools and a tribal elementary school, which all meet national quality standards. Economic activities within the reservation include the exploitation of a casino, bingo hall and hotel; a sawmill and timber production; and tourism and hunting. State and tribal funds are used to finance daycare centers, social benefits, children's allowances and other social services.

With regard to Suriname, it was pointed out that:

The model is not applicable to Suriname; it is too expensive, schooling of a higher level is needed, and sovereignty of tribal peoples does not fit well within Suriname's structure.

Positive points:

Own police force, own court system, traditional laws have been written down.

The system of the traditional authorities must be preserved and recorded, e.g. in an addendum attached to the Constitution, and expanded in another part of the law. Sufficient room must remain for the different cultures, so the description must not be too specific. In order to obtain a budget, there must be planning, e.g. the system of Brokopondo in which villages must submit an official request. This could be done through the government, but it must be transparent about revenues from the area. The problem with IAM Gold is that the village board does not know exactly how much money is in the coffers. Besides that, they do not help all the villages. If the right expertise cannot be found in the area, outside experts could be recruited.

Clear and transparent books of revenues and expenditures must be kept. A secretary should be hired for support in this. Another far-reaching idea is establishing a policy center for the granman with an office and administrative staff.

Communications between the government and traditional authorities must be good.

General:

Strengthening the capacity of traditional leaders through suitable schooling and the appointment of an educated secretary.

Recommendations:

Function defined in Constitution or national laws?
Voice in budget? / Own budget?
Administrative resources (office, secretary); government or tribe?
Separate Ministry, Directorate of Council (House)?

Legal role

Definition of problem: Many examples show that the administration of justice within the tribe does not always function satisfactorily. Firstly, there is much arbitrariness as the administration of justice is influenced by personal relations between the suspect and the authority administering justice (captain). Secondly, the traditional leadership has no formal powers to arrest and punish through incarceration, corporal punishment (e.g. lashings), labor (e.g. clearing land) or fines (money or liquor).

What should the legal role of traditional authorities be in the future?:

In the coming years as well, the Central Government cannot be present throughout the interior in such a way that it can keep order in the tribal communities. Therefore, the tribal authorities should keep certain legal powers. One cannot take away these powers and replace them with nothing.

In addition, there are some aspects of traditional jurisdiction people would like to keep. Punishment depends on the offense, e.g., offenses against morality are treated differently than in the city. The gaanti cares for the whole community and thus for the offender as well. At the jaarkrutu (annual meeting ... trans.) the captains and basja's evaluate the past year and the rules are determined. This is already being done in Nieuw Koffiekamp. This strategy can be transferred to other villages where it has not been applied yet.

Due to, among other things, outside influences there is less respect for traditional authorities now. Outsiders such as Brazilians do not heed the traditional leaders (e.g., they walk around in villages with weapons), but young people who earn much money also behave as if they are above the law. Because of these trends, traditional leaders are losing their grip on the community. Traditional leaders must show more authority, must be more present. This could be achieved by, for example, determining the tribal laws and rules anew each year.

Traditional authorities do not have the right schooling and function to deal with heavy criminals and modern forms of anti-social or deviant behavior. In many places, the traditional leaders must now cooperate with the police for this reason. In order to make this cooperation more efficient, the police must be present on more locations. The city police should not operate in the tribal areas on its own, however, but always in consultation with the traditional authorities. The city police is often also less efficient because they do not know the local culture; for example, people could be hiding relatives. The city police are not needed in case of small offenses.

In order to leave room for the different cultures of the Indigenous and Maroon communities in Suriname, laws and punishments should not be standardized. This could be done for each tribe if the tribe in question wishes this.

Traditional authorities should be consulted separately on these matters.

Managers of land and natural resources

In recent years, there have been several conflicts that can be traced back to the role of the traditional authorities and that of the central government in the granting of mining and timber concessions (e.g., Mama Ndyuka kriki; Concessie Lafantie; Koffiekamp; Gran Kreek). Which powers should the traditional authorities have with regard to land issues? Should they be able to grant concessions, or give permission for the construction and operation of a tourist resort, or stop people who want to visit the tribal area?

At the moment, the literal (geographical) and figurative (powers) limits of the power of traditional leaders are unclear. In practice, communities are not consulted sufficiently in the granting of concessions due to:

- a) Ignorance within the villages; sometimes leaders sign documents they cannot read themselves
- b) Deception; people are swayed by gifts such as an outboard motor
- c) Impotence of the DC, DS, DS, ADS, and BO (if the Minister wants to have his way).
- d) Ontbreken van controle mechanismen

This process can be improved through several measures:

- Government hires independent specialists to inform people at the krutu
- Consultation on the basis of FPIC
- Revenues must (partly) flow back to the area
- Pass new mining law

Feedback group 1

- When granting concessions, the government must consult with the TA first before giving permission for concessions
- Grant collective land rights to the Indigenous and Maroon and activate the 1760 treaty
- Recognition of the TA as partners in decision-making
- General interest of TA above personal interest
- Power of authority lies with the community (cultural heritage)
- Ló must have a voice in granting of concessions
- TA must keep up with current developments, with support of the government
- New arrangements must be made between TA and the government regarding the recognition of land rights and the recognition of traditional village leaders as partners
- Fair sharing of revenues from economic activities with TA
- Appoint, strengthen and take care of administrative staff for TA

Feedback group 2

- Permission for activities by outsiders must be asked first to the TA, and the DC must be informed
- Apply for concession to the government and for daily management to the TA
- Natural resources above and in the soil to be managed by the TA
- Legislation on land rights discriminates against inhabitants of the interior. For example, after a lease of 30 years, government land becomes property of the tenant. This rule is applied in the city, but not yet in the interior. According to this legislation, the land is already the interior's inhabitants', but this is yet to be recorded by the government.

- Treaties since 1760 have not been recognized by the government and were not included in the Constitution after 1975. They were later made invalid by the mining and agriculture laws.
- International recognition of land rights for Indigenous and Maroons, but not by Suriname's government; that is why the Indigenous and Maroon communities have brought this issue before the OAS and the international court in order to force Suriname's government to do this.
- Strengthening the TA through administrative staff in order to guarantee land rights.

Feedback group 3

- Traditional land rights versus government domain. Traditional authorities versus the government's administrative departments. There should be more clarity on these issues in order to determine where the powers of traditional leaders end and those of the central government begin.
- Definition of limits and powers of the is unclear. The limits are clear to the interior's inhabitants, but these have not been defined by law.
- Granting of licenses and concessions.
- Currently, a 'statement of no objection' is signed during a krutu by the basja's, captains and other village leaders. This serves as proof for the government that the grant can be made.
- The question is whether the community's interests are served well at the signing of the 'statement of no objection'.
 - This question arises because:
 - There is still much ignorance in the community about the consequences of granting concessions, e.g., mercury pollution, dumping of diesel and lubricating oil in the river after use.
 - Deception through the village leaders' serving their own interests
 - The lack of a control mechanism
- Solution:
 - The government provides specialists to inform the communities during the krutu about, for example, the social impact studies in their area.
 - Better organization of consultations of the village communities.
 - Pass and publish new mining law
 - Utilize part of revenues for local communities
 - Appoint the government as supervisor during the advising of interior's inhabitants

Social and cultural role

Introduction: There is an interplay between culture and the traditional leadership. What is the role of the traditional authorities in protecting culture, and what is the role of culture and cultural expressions in the strengthening of traditional authority?

Themes that were discussed:

1. Culture is expressed through habits and customs. These actions cannot be considered apart from the higher meaning, however.
2. There is agreement on the fact that the own Maroon or Indigenous culture must be preserved and is important for the tribe's survival. There have been many changes in the culture in recent years, such as through the arrival of the church in several communities. One should find a way to adopt the changes without ignoring one's own culture. Traditions are of our ancestors, we cannot cast them aside, in spite of the fact that we are Christianized.
3. There is no consensus about the importance of traditional religion and rituals in providing value and authority to the traditional leadership. Along the Tapanahoni River, where the church has been intentionally kept out of the traditional villages, the traditional religion is inextricably linked to the traditional authorities. It was pointed out that it is the ancestors who designate the next leader and aid this person; a Christianized person would not fit within the system of the traditional authorities. In other areas, such as among the Saramaka and Matawai, it is possible to become captain or basja without adhering to the traditional religion and without participating in libations and other rituals. Their view is that the religion has changed, but that this does not mean that the leadership has weakened or that the culture will be lost. In the Upper Suriname River area, for example, a *towee wataa* (libation ... trans.) is no longer held at a wedding or birth. Another example is the fact that while it was impossible for women to become captains in the past, while there is female captains nowadays.
4. The traditional authorities have a role in protecting the culture, but this responsibility is not theirs alone. Each individual must make his own choices, and religion is important in this. It has been proposed that an individual can neglect or (partly) abandon his culture, but the tribe does not lose its culture (Maroons). Among the Trio, however, an individual can adhere to traditional beliefs and customs, but the tribe as a whole has abandoned a number of traditions related to the piaï, such as contact with the spirit world.
5. New churches do not want people to follow the old religion anymore.

Further recommendations

The traditional leadership - captains, basja's, fiscalis, granman - must be consulted too. A broader base is needed to make decisions about the powers.

Annex 2: Consulted stakeholders

	<ul style="list-style-type: none"> ▪ Hoofdkapitein Jacobi of Cottica on the Lawa, Aluku ▪ B.O. Asaiti, Paramaka ▪ B.O. Waneti, Aluku ▪ Karel Samuel ▪ Adjunct Districts Commissaris Matawai ▪ Boi Kerry Basja Drietabiki en Radio Pakati ▪ Ramon Landbrug Districts Commissaris ▪ Edgar Clemens Secretaris Kwinti gebied ▪ Wensley Misiedjan SSDI, collectieve rechten (jurist) ▪ Edgar Eersteling SSDI, communicatie medewerker ▪ Leeroy Jack SSDI, manager ▪ Ludwich Wijnerman Kapitein, Nieuw Koffiekamp ▪ Richard Libreto Basja Nieuw Koffiekamp ▪ Albert Jeroe Districts commissariaat ▪ Ashoko Thomas Bestuursopzichter Tepü ▪ Mark Penenapin Kapitein Wayana ▪ Simon Asaiti ▪ Hoofdkapitein Pikomi of Tepu (Trio) ▪ Granman Nowahé and captains of Apetina (Wayana) ▪ Granman Adoichini and captains of Maripasoela (Aluku) ▪ Kapiteins and village notables of Papaïchton (Aluku) ▪ Johan, informant Aluku village Maripasoela ▪ District Secretary Zamuels , Matawai ▪ R. Paansa, Sub-director Department of the Interior, ministry of Regional Development ▪ Granman Asongo (Trio) ▪ Anwar, informant Saramaka village Njun Lombe

Annex 3: Team of Consultants

Gwendolyn Emanuels-Smith MSc.	Team Leader
Marieke Heemskerk Phd.	Cultural Anthropologist
Mark Marquardt Phd.	Land Right, Use and Tenure Specialist
Katia Delvoye MSc.	Land Use specialist

Annex 4: Methodology to the study

This report presents the results of the a support study to provide a legal framework for traditional authorities based on the outcomes from the Land Rights, Tenure and Use study, the results of the community mapping and ongoing initiatives in Suriname. The study broadly characterizes the historic, current and future roles the traditional authorities are fulfilling and proposes a framework for legal representation within the GOS to fulfill these roles.

The main reason for the study is to assist policy makers in building a framework for traditional authorities. Therefore, the consultants interviewed tribal leaders and proposed a list of discussion question for the GOS to get their opinion on the role traditional authorities should play. This study should be a support to the direction the GOS is willing to take on the issue. Below are the questions directed to the GOS Ministry of Regional Development. Unfortunately, these questions were not answered during the course of this consultancy.

Also, the team requested the 101 project component on Sustainable Development to ask the questions below about the traditional authorities in the interviewed communities. However, these results were never obtained. Therefore, the consultants conducted a workshop with tribal representatives to discuss the future roles of traditional authorities within the legal framework proposed (see Annex 3).

Traditional authorities: questions for government team

August 20, 2009, Paramaribo, Suriname

In drafting our recommendations, we assume that the different parties involved prefer to have both the traditional authorities and the national government play a role in the administration and day-to-day management processes in the communities of the interior. This is to say that on the one hand, the role of the traditional authorities must involve more than a pure symbolic and ceremonial function. On the other hand, the powers of these traditional leaders should be limited by the role and powers of the central government in the interior.

Our question to you as a representative of the government of Suriname is: which powers would you like to see in the hands of the traditional authorities, and in which areas should the traditional leaders and customs be subordinate to national laws and national authorities? In order to make this question more concrete, we have drafted a number of sub-questions. Those questions regard the issue of succession of traditional leaders, their political and administrative function, social and cultural position, legal tasks and role as land managers within the communities.

Firstly, the issue of **succession**: we have often seen conflicts about the succession of a granman or captain. There has been a lot of controversy surrounding the succession of Saramaka granman Songo Aboikoni, and there have also been disputes about the succession of Matawai Granman Lafanti. The Aluku currently have two granmans.

1. Do you believe the central government should intervene - either actively or passively - in case such a situation arises, or should it be left up to the tribe? How do you view this issue when one of parties involves asks for government intervention? Should the government choose sides by inaugurating one of the candidates before the tribe has reached a consensus?
2. Will the government accept it if a sub-group of a tribe, e.g. the Ndyuka of the Sarakreek and Brokopondo area, would wish to secede from the tribe and form its own group with its own granman?
3. Does the government set a maximum *number* of granmans, captains and basjas that may be appointed, and can this remain so? From a historic perspective, the Wayana or Kwinti have never had a granman installed by the government; would you change this in the future? If not, why not? Does each newly founded village have a 'right' to its own captain and basja?
4. Should the government be able to set requirements for the *qualities* of a new granman, captain or basja (e.g. no criminal record, no involvement in any illegal activities)? Should the government be able to refuse to inaugurate a traditional leader chosen by the tribe?
5. Should the government have the power to fire a granman, captain or basja if, for example, he has violated the law or he is considered by his people to be an unfit leader?

Secondly, regarding the **political and administrative function** of traditional leaders it could be noted that neither this function, nor the relationship between the traditional leaders and the central government have been legally defined. The traditional authorities swear an oath and receive payment, and are thus accountable to the State due to this. It is unclear, however, which administrative powers and obligations the traditional leaders have. Due to the lack of an operational budget and supporting resources (e.g. office space, transportation), these leaders are limited in their administrative functioning. What form should the administrative relations between the central government and the traditional leadership acquire according to your view?

President Venetiaan promised in 1992 that the government structures in the interior, including the position of the granman, would be set in the Constitution. This has not happened so far. Do you consider it desirable for this function to be defined in the Constitution, or do you prefer national laws or other legal instruments for this, or do you believe the current system in which actions are based on customs and verbal arrangement is sufficient?

Should traditional leaders have insight into and a say in the spending of the budget for their respective tribal areas? Is it desirable for traditional leaders to also decide on the spending of government funds in their territory?

Is it desirable for traditional leaders to have their own budgets that they can spend at their discretion in their territory? Which control mechanisms should be put in place to guarantee that these funds will be spent for the benefit of the entire tribe and not just part of it?

There are also leaders who (ab)use their function to earn money from the exploitation from natural resources in the tribal areas (e.g. gold mining). Do you believe the central government should be able to compel these leaders to make these revenues available to the community, or should such matters be settled within the communities themselves?

Should traditional leaders, as government officials, be able to obtain administrative resources such as office space, and means of communication and transportation? Do you believe it is the government's task to provide this, or is that the responsibility of the tribe or community itself?

Officials of the national government must abide by certain laws and rules in order to prevent corruption. For example, they may not accept any money, goods or services in exchange for

political favors. Should the law also contain a provision that would make corruption by traditional leaders punishable under the national legal system, or could the tribe settle such matters?

Many countries have a separate Ministry or department for tribal or indigenous affairs. Is the establishment of such a government body desirable for Suriname?

Thirdly, traditional leaders have a **social-cultural and ceremonial** position. In some groups, the administrative leaders are also religious leaders. Even when this is not the case, traditional leaders often play an important role in feasts and funerals and the ceremonies related to those.

Should the role of the traditional authorities be limited to one in social and cultural affairs, such as settling disputes between families, care for the weak in the communities, performing ceremonial tasks, guarding the cultural heritage, and the symbolic representation to the outside world?

Is the central government or the traditional leadership responsible for the care of the weak (e.g. people with physical or mental disabilities, widows, etc.) in the tribal communities?

The traditional leadership also performs **judicial** tasks, such as punishing members of the tribe who have violated social (e.g. theft) or cultural (e.g. desecration of a holy place) laws. However, local jurisdiction is not always wholly impartial, but can be dependent upon personal ties between the suspect, plaintiff, and judicial authorities. Should traditional leaders have (limited) judicial powers within contemporary society?

Are there certain offenses that could be settled at the local level? Or should offenses such as theft be handled by the national police or courts? Which offenses can, and cannot be settled at the local level?

Traditional leaders are limited in their powers to punish offenses in their tribal territory, but the national police can often be at the site only after hours or days, with offenses going unpunished as a result. Can the government guarantee law and order within the communities? Should law enforcement (police, military) be present in the different villages?

Everyone has the right to a fair and impartial trial and ruling in the case of an offense. The villagers in tribal communities also have the right to adequate protection against offenses. In what ways can both the suspects/perpetrators and victims of crime be protected against arbitrariness in the rulings by traditional leaders? Should local jurisdiction keep to uniform rules? Should these rules with regard to local jurisdiction (per tribe) be recorded in writing?

In case the traditional leaders are allowed to hold court, how can the members of tribal communities be protected against offenses committed by these very same leaders (e.g. the recent case of assault by a captain).

At the moment, tribal leaders have no formal powers to arrest or detain people (e.g. while awaiting the arrival of police). Due to this, the options for law enforcement within the communities are limited. Should traditional leaders be assisted by a (armed) police force so suspected members of the tribe or outsiders can be detained? Or, as an alternative, should local leaders or other members of the community be given (limited) police powers (e.g. such as a neighborhood watch)?

Finally, the traditional authorities can also play a role as **stewards and managers of land**. Currently, the tribal communities have practically no legally recognized rights to the lands they live on and use. The remarkable knowledge of the interior's inhabitants with regard to the use and value of the surrounding rainforests means that the traditional leaders could play a positive role within the land use/management system.

The importance of "food security" is increasing on the national agenda's worldwide. The communities in Suriname's interior can make a considerable contribution towards guaranteeing food security as they are preserving a great variety of crops. If the traditional authorities obtain a role in national agricultural policy, which tasks would the government like them to have (e.g. in the area of food security in the future)? And how can these tasks then be written into the national system?

Data about the contribution of timber to the national economy can be found at different government bodies (e.g. the Forestry Department). The value of other forest products such as the NTFPs is more difficult to find, however. Do you believe the traditional authorities can play a role in determining the value of the resources found in their environment?

According to the government, what role should the traditional authorities play in the preservation of Suriname's valuable biodiversity and fragile ecosystems?