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# Judgements of the Inter-American Court of Human Rights concerning indigenous and tribal land rights in Suriname: new approaches to stimulating full compliance

Jeanice L. Koorndijk

## ABSTRACT

Many indigenous communities in Suriname have been displaced from their traditional lands because the State does not recognise their collective property rights. Despite this, Suriname has not complied with multiple judgements of the Inter-American Court of Human Rights that attempt to remedy the situation. The aim of this paper is to identify how the Inter-American System of Human Rights can stimulate full compliance with judgements of the Inter-American Court of Human Rights concerning indigenous land rights in Suriname. The paper draws on a variety of sources in order to assess the current compliance efforts of the system. Based on this assessment, the paper suggests how to improve conventional mechanisms of compliance in order to stimulate full implementation of the judgements. The paper finds that the monitoring process of the Court, thematic reports, and country visits can be used more effectively in order to stimulate compliance. Drawing from transnational legal theory, the paper also suggest that the system should interact with international organisations and actors beyond the executive organs of the State in order to stimulate full compliance with the judgements of the Court. These findings can be used to increase the effective protection of indigenous land rights in Suriname.

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Compliance; Inter-American Court of Human Rights; indigenous land rights; collective property rights; transnational legal theory; Suriname

## List of abbreviations

CJPA	Committee on Juridical and Political Affairs
CLCA	Comprehensive Land Claims Agreement
EHRS	European Human Rights System
EU	European Union
IACHR	Inter-American Commission on Human Rights
IAC/HR	Inter-American Court of Human Rights
IASHR	Inter-American System of Human Rights
OAS GA	General Assembly of the Organization of American States
PC OAS	Permanent Council of the Organization of American States

## 1. Introduction

Surinamese rainforests, savannahs, and coastal forests are filled with oils, gas, minerals, and other natural resources. Indigenous and tribal communities have traditionally

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inhabited these forests.<sup>1</sup> The communities largely depend on the local environment for their food and other basic necessities.<sup>2</sup> The lands are also of cultural and spiritual importance. For example, deceased community members are buried according to specific rituals connected to the land.<sup>3</sup> At the same time, the State allows non-indigenous third parties such as international and local companies and organisations to use these lands for commercial resource extraction, nature preservation programmes, and other development projects. These projects often lead to the forced displacement of indigenous peoples and to other human rights violations.<sup>4</sup> Despite these violations, several domestic stakeholders argue that indigenous rights should be subordinated to the need for economic development.<sup>5</sup> This prioritisation of commercial interests over indigenous interests threatens indigenous land rights throughout the Americas and the rest of the world.<sup>6</sup>

The Inter-American Court of Human Rights (IACtHR) has issued judgments in order to remedy the violations.<sup>7</sup> However, most of these judgements have not fully been complied with.<sup>8</sup> As a consequence, the communities do not in practice enjoy all of their human rights protections, including their right to an effective remedy. As of today, the Court has dealt with three cases involving indigenous communities in Suriname since 2005.<sup>9</sup> None of these judgements have been fully complied with. Non-compliance is illustrated by the fact that subsequent judgements concerning indigenous land rights in Suriname have ordered the State to take the same measures that the Court had ordered in previous decisions.

The Inter-American Court of Human Rights, the Inter-American Commission on Human Rights (IACHR), the Permanent Council of the Organisation of American States (PC OAS), and the General Assembly of the Organisation of American States (OAS GA) are all involved in the process of stimulating compliance with the judgements of the Court. These organs are referred to in this paper as the Inter-American System of Human Rights (IASHR).<sup>10</sup> After the Court determines the existence of violations of human rights, the political organs assist in monitoring and enforcing the implementation of the decisions of the Court.<sup>11</sup> However, high rates of non-compliance with decisions of the Court indicate that the judicial and political mechanisms are not currently effective enough,<sup>12</sup> prompting what has been referred to as the implementation crisis of the Inter-American Court of Human Rights.<sup>13</sup> Closing this compliance gap increases the effective protection of human rights. The goal of this paper is to investigate how to enhance the quantity and the quality of the level of compliance with the decisions of the Inter-American Court of Human Rights regarding the land rights of indigenous peoples in Suriname. Thus, the research question can be phrased as follows: how can the Inter-American System of Human Rights stimulate full state compliance with the judgments of the Inter-American Court of Human Rights concerning indigenous and tribal land rights in Suriname? The paper finds that conventional compliance mechanisms can be improved in various ways in order to address the particular obstacles to compliance in Suriname. Based on transnational legal theory, the paper also suggest that the system should interact with international organisations and actors beyond the executive organs of the State in order to stimulate full implementation of the decisions of the Court.<sup>14</sup> In this way, the paper contributes specifically to the literature on transnational legal theory by suggesting ways in which the IASHR can use the transnational legal process in order to stimulate compliance with judgements of the Court in relation to indigenous rights in Suriname.

The existing literature on compliance with the judgments of the Inter-American Court of Human Rights is largely theoretical and draws on the transnational legal process theory

of international law.<sup>15</sup> These studies have not distinguished the question of compliance in accordance with the types of rights involved nor conducted country-specific analyses. However, the question of compliance could vary depending on these factors. Suriname provides the nexus for the study of indigenous rights and country specific analysis because of the multiple rulings issued by the Court in relation to indigenous rights in Suriname and the lack of compliance with those judgements. This paper considers the particular challenges to implementing judgements of the Inter-American Court concerning indigenous rights in Suriname. By adopting this approach, the paper also contributes to the literature by testing the validity and the relevance of the general theories on compliance to the contexts of judgements of the IACtHR and indigenous land rights in Suriname. Moreover, the focus on Suriname is necessary because the State has not been given a significant amount of international scholarly attention concerning the topic of this paper. However, two out of the three Surinamese cases, namely the *Moiwana* and the *Saramaka* judgements, remain landmark rulings which significantly contributed to the judicial protection of indigenous rights under international human rights law.<sup>16</sup> The contribution of the *Saramaka* case is especially noteworthy because it has formed the basis for later judgements of the Inter-American Court, as well as decisions of the African Commission on Human and Peoples' Rights.<sup>17</sup>

The object of this paper is to determine how the IASHR can stimulate improved quantitative and qualitative compliance with the judgements of the Court. As such, the research question assumes that the Inter-American System of Human Rights can, in fact, stimulate compliance with judgements of the Inter-American Court of Human Rights. Academics have found that the Inter-American System can indeed influence state compliance with judgements of the Court.<sup>18</sup> This paper determines how the system can achieve compliance in Suriname. Another methodological decision underpinning the research question concerns the scope of the research. This paper chose not to include the recommendations of the Commission in the scope of its analysis. The non-binding character of the recommendations of the Commission set them aside from the decisions of the Court which are clearly binding under article 68 of the American Convention on Human Rights. This factor is relevant in analysing compliance with human rights in the IASHR.<sup>19</sup> In addition, a section of the paper relies on an interview with the Presidential Commissioner of the Bureau of Land Rights which has been conducted by researchers from Tilburg University in 2016.<sup>20</sup> The paper uses the interview in order to identify a number of domestic obstacles to compliance. The methodology of this interview can be found in the original research article.<sup>21</sup> The final methodological point relates to the fact that several media outlets in Suriname suffer from limited self-censorship in response to pressure from the Surinamese government and its affiliated entities.<sup>22</sup> For this reason, this paper reviews reports from trustworthy NGOs and international organisations in order to analyse the conditions of human rights in the country. These organisations seem insusceptible to pressure from the State due to their capacity to operate independently from the government. Besides these documents, the research also takes into account a variety of sources including academic literature and statements of government officials.

This paper is divided along two main chapters. Chapter 1 reviews the compliance of Suriname with decisions of the Inter-American Court. This includes a thematic discussion of the relevant decisions of the Court and a discussion of the implementation process.

Chapter 2 assesses previous IASHR compliance efforts in Suriname and provides suggestions on how the IASHR can increase compliance through the use of conventional and non-conventional tools.

## **2. Suriname and compliance with the decisions of the Inter-American Court**

This chapter focusses on Suriname. It analyses the problems that are currently preventing full implementation of the relevant judgements of the Inter-American Court of Human Rights. This analysis will form the basis of the solutions provided for in chapter 2. Section 1 of this chapter provides an overview of the decisions of the Inter-American Court concerning indigenous rights in Suriname. Section 2 outlines the compliance of Suriname with the decisions of the Court.

### ***2.1. The land rights of indigenous and tribal peoples in Suriname***

This section considers the decisions of the Court concerning indigenous land rights in Suriname. The consideration provides the political and legal context of human rights violations against indigenous communities in Suriname. This functions as a basis for understanding the cases and the level of non-compliance of Suriname with the decisions of the Court. First, it identifies the legal basis of indigenous and tribal land rights in the IASHR (A). Afterwards, it gives a thematic discussion of the judgements concerning indigenous land rights in Suriname (B).

#### ***2.1.1. At the origins of indigenous peoples' land rights in the Inter-American System of Human Rights***

There are no universally accepted definitions of the terms 'indigenous' and 'tribal' peoples. A strict definition would risk being over- or under-inclusive.<sup>23</sup> This paper uses the terms indigenous and tribal peoples as defined by the Inter-American Court of Human Rights. The Court describes tribal peoples as those groups who are:

not indigenous to the region, but [who] share similar characteristics with indigenous peoples, such as having social, cultural and economic traditions different from other sections of the national community, identifying themselves with their ancestral territories, and regulating themselves, at least partially, by their own norms, customs, and traditions.<sup>24</sup>

Indigenous peoples are distinguished from tribal peoples by the fact that their communities have been established before the European conquest or colonisation of the relevant territories.<sup>25</sup> It can be assumed that tribal peoples have identical rights to indigenous peoples, unless otherwise stated.<sup>26</sup>

Indigenous land rights are protected on the basis of general articles of the Inter-American Declaration of the Rights and Duties of Man, and the Inter-American Convention on Human Rights.<sup>27</sup> The consecration of indigenous land rights is mostly based on the jurisprudence of the Court. In its jurisprudence, the Court has used the right to property as the general umbrella under which land rights are protected.<sup>28</sup> In this respect, the *Awás Tingni* case has set an important precedent by establishing that the right to property includes 'the rights of members of the indigenous communities within the framework of

communal property ...'.<sup>29</sup> The Court held that the concept of indigenous communal property rights must be:

understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.<sup>30</sup>

Consequently, the scope of indigenous land rights and collective indigenous property rights are broad and linked to the cultural, social, economic, and spiritual survival of the communities.<sup>31</sup>

### **2.1.2. On the substance of the relevant decisions of the Inter-American Court of Human Rights**

The following section first provides a description of the violations of indigenous land rights. Afterwards, the section discusses the measures of reparations ordered by the Court.

**2.1.2.1. Violations of indigenous land rights in Suriname: findings of the court.** The judgements of the Inter-American Court that concern indigenous land rights in Suriname are the *Moiwana* case, the *Saramaka* case, and the *Kaliña and Lokono* case. The land rights issues can be divided along three main lines. The first issue concerns the displacement of the communities from their traditional lands (a). The second revolves around the collective legal personality of the communities under the domestic legal system (b). The final issue concerns extractive industries and other commercial projects (c). These themes will briefly be discussed in turn.

**2.1.2.1.1. Forced displacement.** The *Moiwana Community v. Suriname* case concerns the Moiwana massacre of the War of the Interior (1986–1992). During the massacre, the Surinamese military went into a Maroon settlement and killed at least thirty-nine non-combatant community members, including children.<sup>32</sup> The military burned and destroyed village property and it forced the survivors to flee to neighbouring French Guiana.<sup>33</sup> Successive Surinamese governments failed to properly investigate the Moiwana massacre. For this reason, the village has been abandoned since the attack as members of the community fear similar attacks or other acts of violence upon return.<sup>34</sup>

The war also caused the forced displacement of the indigenous Kaliña and Lokono peoples.<sup>35</sup> Upon their return, immediately after the conflict in 1992, the communities found that the State had granted titles of ownership over their traditional lands to non-indigenous persons.<sup>36</sup> As a result, the communities lost access to their traditional lands. The Court held that the displacement threatened the survival of the Communities due to their cultural, spiritual, and material connection to the land.<sup>37</sup> Consequently, the Court found violations of the collective right to property of the communities under the Convention.<sup>38</sup>

**2.1.2.1.2. Collective legal personality.** The reason why the Kaliña and Lokono communities remain displaced is because they cannot establish formal ownership over their traditional lands. The Saramaka community faced a similar issue. In the *Saramaka* case, the State granted logging and mining concessions to foreign companies for resource extraction in and around the territory of the Saramaka tribes.<sup>39</sup> The companies restricted the access of the Saramakas to the traditional territory of the communities.<sup>40</sup> The communities

were not protected under domestic law because Surinamese legislation did not recognise the concept of collective land rights.<sup>41</sup> Instead, the State grants indigenous and tribal communities 'the privilege or permission to use and occupy the lands at the discretion of the State'.<sup>42</sup> The Government has the authority to withdraw this privilege whenever it considers that general interest so demands. In practice, indigenous communities can easily lose all access to, and control over, their lands.<sup>43</sup>

The Court recognised this issue in the *Moiwana* case and established that despite a lack of a title to the property, 'mere possession of the land should suffice to obtain official recognition of their communal ownership'.<sup>44</sup> Yet, in the *Saramaka* and the *Kaliña and Lokono* cases, this protection proved ineffective because the communities did not have collective legal personality under domestic law.<sup>45</sup>

In addition to violations of collective property rights, the Inter-American Court found that the State had violated the rights of the communities to juridical personality and judicial protection under articles 3 and 25 of the Convention.<sup>46</sup> Indeed, by failing to recognise the legal personality of the groups, the domestic legal order denied them access to effective judicial remedies.<sup>47</sup>

**2.1.2.1.3. Resource extraction and other commercial projects.** The vulnerability of indigenous and tribal communities becomes especially apparent in the context of resource extraction. In the *Saramaka* case, the tribal communities were neither informed nor consulted about the concessions until the companies commenced logging operations.<sup>48</sup> The projects caused serious water pollution and damaged biodiversity in the region.<sup>49</sup> Similar to developments in the *Saramaka* case, the State authorised the creation of three nature reserves on the traditional lands of the *Kaliña* and *Lokono* communities.<sup>50</sup> The State also granted logging and mining concessions to third parties without consulting the communities.<sup>51</sup> In the *Saramaka* case, the Court consecrated the right of indigenous and tribal communities to free, prior, and informed consent in relation to development or investment projects in their territory.<sup>52</sup> This means that:

the State must ensure the effective participation of the members of the [communities], in conformity with their customs and traditions, regarding any development, investment, exploration, or extraction plan within [their] territory.<sup>53</sup>

This norm could ameliorate the problems of indigenous communities which are mainly imputable to their exclusion from the decision-making process. The dictum proved to be highly influential. The IACtHR and the African Commission on Human and Peoples' Rights relied upon the principle of free, prior, and informed consent in subsequent judgements.<sup>54</sup>

**2.1.2.2. Orders for reparations.** Given these violations, the Court made several orders for reparations and non-repetition. Types of measures include structural legislative and judicial measures (a), guarantees of non-repetition (b), and compensation measures (c). These are discussed consecutively.

**2.1.2.2.1. Structural legislative and judicial measures.** The main remedy against the displacement of the communities is linked to communal ownership under domestic law. According to the Court, the domestic legislation must ensure that the communities regain and/or retain access to their traditional lands.<sup>55</sup> In order to do so effectively, the State has to provide collective title to the traditional lands of the communities.<sup>56</sup> To



this end, the State must grant the communities collective juridical personality.<sup>57</sup> Suriname also needs to remove or amend current legal provisions that impede collective property rights.<sup>58</sup>

**2.1.2.2.2. *Guarantees of non-repetition.*** The State has to investigate, prosecute, and punish those responsible for the violations of the Moiwana massacre.<sup>59</sup> In relation to projects that impact indigenous territory, Suriname was also requested to ensure effective consultations and to respect the right of the communities to free, prior, and informed consent.<sup>60</sup> Moreover, the communities must reasonably share the financial benefits of relevant commercial and development projects.<sup>61</sup> Additionally, the State has to conduct environmental and social impact assessments in order to consider proportionality issues.<sup>62</sup>

**2.1.2.2.3. *Compensation measures.*** Regarding pecuniary damages, Suriname has to set up development funds for all communities involved.<sup>63</sup> The State also has to provide thousands of material and moral damages to many individual community members party to the cases.<sup>64</sup>

Overall, the remedies that the Court ordered are varied. Yet, the State has not complied with most of the orders of the Court. The section below provides an overview of the compliance of Suriname with the decisions of the Court.

## **2.2. The compliance of Suriname with the decisions of the Court**

After outlining the measures that Suriname has taken to comply with the decisions of the Court (A), this section examines the obstacles that Suriname faced in this context (B).

### **2.2.1. Overview of the level of compliance**

The following paragraphs discuss the extent to which Suriname has implemented the *Moiwana*, *Saramaka*, and *Kaliña and Lokono* judgements.

As of May 2018, the *Moiwana* massacre has not adequately been investigated and prosecutions have not commenced.<sup>65</sup> Additionally, the Community has not received collective title to their traditional territories.<sup>66</sup> Contrastingly, the State has fulfilled its obligation to establish a community development fund by creating '*Stichting Fonds Ontwikkeling Moiwana*'.<sup>67</sup>

In relation to the *Saramaka* case, the State also established a community development fund and it fully paid the monetary damages to the Saramakas.<sup>68</sup> However, the State did not recognise the rights of the community to free, prior, and informed consent. In fact, concessions continued to be granted in Saramaka territory without the involvement of the communities.<sup>69</sup> Additionally, the State failed to set up a legislative framework that ensures that the communities share the financial benefits of relevant commercial and development projects.<sup>70</sup> The State also repeatedly failed to review the social and environmental impact of concessions.<sup>71</sup>

The government is in the process of establishing the community fund for the Kaliña and Lokono communities.<sup>72</sup> As of May 2018, however, eleven years after the landmark *Saramaka* case, Suriname has not taken steps to guarantee the rights of indigenous and tribal communities in a manner consistent with the jurisprudence of the Court. Recently, the National Assembly has passed a law which aims to protect indigenous communities from being subjected to eviction from their traditional lands.<sup>73</sup> However, the law fails to provide adequate delimitation, demarcation, and collective titling.<sup>74</sup> It also does not



provide indigenous communities with juridical personality.<sup>75</sup> The law only prevents the government from giving legal titles to non-indigenous parties within a 5-kilometre radius from the centre of indigenous territory.<sup>76</sup> This does not adequately protect indigenous territory, which often extends beyond 5 kilometres.<sup>77</sup> More importantly, the concerns of indigenous and tribal communities also relate to the quality of the environment outside of their living quarters.<sup>78</sup> As apparent, the new law does not meet the standards of the Inter-American Court of Human Rights.

In conclusion, Suriname failed to implement important aspects of the *Moiwana*, *Saramaka*, and the *Kaliña and Lokono* judgements. The State has consistently been providing monetary reparations but it has systematically failed to properly amend its legislation and policies. This behaviour is in line with findings of the literature which suggest that orders for monetary compensation have relatively high compliance rates, whereas states tend not to provide non-pecuniary reparations.<sup>79</sup> The following section investigates why Suriname failed to comply with the non-pecuniary aspects of these judgements.

### 2.2.2. Domestic obstacles to compliance

There are several domestic obstacles to compliance which are particular to the situation of indigenous human rights in Suriname. In this respect, there are important state and non-state actors. This section discusses the behaviour of the indigenous groups of *Moiwana*, *Saramaka*, and *Kaliña and Lokono*. Other indigenous and tribal groups in the country are left out of the scope of this paper unless stated otherwise. There are multiple institutions which are involved in regulating land rights within the Surinamese state. The executive branch represents the State in front of the Court and is mostly responsible for interaction between the State and indigenous communities.<sup>80</sup> The relevant executive institutions are the Ministry of Regional Development and the Bureau of Land Rights. The Ministry ultimately regulates land rights in Suriname by creating policy and proposing laws concerning land rights.<sup>81</sup> The Bureau has an advisory role and facilitates discussion between the State and actors concerned with indigenous human rights such as different indigenous groups and commercial multinationals.<sup>82</sup> In an interview conducted with researchers from Tilburg University in 2016, the Presidential Commissioner of the Bureau of Land Rights indicated that full compliance is hindered by the economic interest of the State, political marginalisation of indigenous communities, issues concerning self-determination, and disagreement amongst indigenous and tribal communities.<sup>83</sup> Independent from this research, non-state representatives identified the lack of clear territorial boundaries as an additional obstacle to compliance.<sup>84</sup> Other obstacles relate to the prevailing culture of impunity in Suriname and the disengagement of the IASHR with Caribbean states. This section considers the above-mentioned issues successively in order to highlight what challenges the IASHR needs to address.

**2.2.2.1. The tension between economic interests and indigenous rights.** Primarily, Suriname is hesitant to grant the communities legally enforceable rights because of national economic interests. The domestic legal system enables the State to set aside indigenous rights on the basis of vague and broad criteria.<sup>85</sup> The decree 'Principles of Land Policy' stipulates that the rights of indigenous and tribal communities shall be respected in so far as the general interest allows.<sup>86</sup> The status quo is beneficial for the government because this system ensures that national interests like resource extraction and nature

preservation can easily be pursued without respecting the rights of indigenous communities.<sup>87</sup> However, in order to comply with the judgements of the Court, the State must give the communities legally enforceable collective rights. This has two implications for the work of the IASHR. Firstly, the system needs to stimulate legislative change in the domestic legal system. Secondly, the economic interest of the State must become more aligned with indigenous rights in order to increase the incentive of the State to change its domestic legislation and policy.

**2.2.2.2. *The issue of political marginalisation.*** The Commissioner of the Bureau of Land Rights also mentioned that the judgement has not yet been implemented because it requires significant legislative changes to recognise collective indigenous rights.<sup>88</sup> These changes may require amendments to the Constitution, which takes time and demands great democratic support.<sup>89</sup> The issue of democratic support is important because indigenous and tribal communities in Suriname are politically marginalised.<sup>90</sup> As a matter of fact, groups that appeal to regional human rights bodies do so because they cannot influence domestic institutions on their own. For this reason, it is important to consider how the IASHR can stimulate compliance with judgements of the Court despite the marginalisation of the communities.

**2.2.2.3. *Indigenous land rights Framed as the right to self-determination.*** The Commissioner also discussed the claims of self-determination that indigenous communities often make when discussing their land rights.<sup>91</sup> Although no mention of self-determination appears in the three judgements concerning Suriname, claims to indigenous lands rights are often linked to self-determination. In a joint statement of indigenous and maroon communities – known as the *Gran Krutu* (Great Gathering) of 1996, Surinamese indigenous communities proclaimed that they seek self-determination within the framework of the Republic of Suriname.<sup>92</sup> The claims of the indigenous communities included ‘the exclusive disposition, control and administration of [their territory] and natural resources’.<sup>93</sup> This claim, which could be interpreted as a claim to a greater autonomy within Suriname, has been interpreted by the State as a claim to independence through secession.<sup>94</sup> Successive Surinamese governments have been concerned that these demands threaten the unity and national integrity of the State.<sup>95</sup> Recently, the President of Suriname, Desí Bouterse, stated that the recognition of indigenous land rights should not lead to the division of the Country.<sup>96</sup>

In order to allow for delimitation and collective property rights, the State and the indigenous and tribal communities need to come to a common understanding of the real significance of self-determination in the context of indigenous peoples. As the International Court of Justice recalled in the Kosovo advisory opinion:

During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation.<sup>97</sup>

Under international law, only ‘the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation’ have a right to independence through secession.<sup>98</sup> Thus, despite characterising indigenous communities as peoples

and recognising their collective rights, Article 46 of the UN Declaration on the Rights of Indigenous Peoples clarified that:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.<sup>99</sup>

As such, the perceived threat against the unity of the State is non-existent. The association of the communities with self-determination has diverted attention from their legitimate claims concerning increased autonomy and it has made negotiations more difficult.

Indigenous communities already have distinct public administrative bodies, including their own regional political leaders and district councils.<sup>100</sup> This system needs to be adapted in order to give effect to the rights of the communities such as involvement in the decision-making process concerning resource extraction.<sup>101</sup> To this end, the IASHR needs to facilitate agreement between the State and the communities concerning the scope of increased autonomy.

**2.2.2.4. *Communications between indigenous and tribal communities.*** The Commissioner of the Bureau of Land Rights also argued that disagreement amongst indigenous and tribal communities prevents adequate delimitation, demarcation, and titling of the lands of indigenous communities.<sup>102</sup> For example, during the *Gran Krutu* of 2011, another collective statement of indigenous and tribal communities called for the exclusive control and administration of their territory, including the natural resources.<sup>103</sup> This statement was highly controversial among the communities.<sup>104</sup> Days after all Captains (leaders of indigenous and tribal communities) signed the *Gran Krutu*, some of the Captains stated that this part of the document did not reflect their opinions.<sup>105</sup> Instead, they argued that they were not aware of the full contents of the statement before they signed it.<sup>106</sup> It is difficult for States to rely on the free, prior, and informed consent of communities, if the opinions of the communities are inconsistent and unclear.<sup>107</sup> Thus, indigenous and tribal leaders must clearly communicate amongst each other and clarify their points of view in order to communicate unambiguously to the government. Despite this, there are many different indigenous and tribal communities in Suriname with as many customs and interests.<sup>108</sup> The government has to take the variety of interests and customs of the different communities into account so as to respect the rights of all groups. In the end, the IASHR needs to help the actors in overcoming communication issues.

**2.2.2.5. *Animosity between indigenous and tribal communities.*** Independent from the findings of the Commissioner mentioned above, indigenous communities have noted that competing claims to indigenous and tribal territory by different communities also prevent adequate demarcation and delimitation of the lands.<sup>109</sup> The delimitation of Moiwana is an especially sensitive topic because the victims of the Moiwana Massacre, a Maroon community, are resentful towards indigenous communities for their support of the military during the war.<sup>110</sup> Animosity between indigenous and Maroon communities makes negotiations concerning delimitation and demarcation difficult.<sup>111</sup>

Ultimately, the communities need to overcome their resentment in order to come to agreements.

**2.2.2.6. *The culture of impunity in Suriname.*** The main remedy against the displacement of the Moiwana Community is that of adequate investigations. However, a culture of impunity prevents investigations of and prosecutions for the massacre. The culture is illustrated by the fact that the democratically elected President of the Republic, Desi (Desiré) Bouterse, is the former dictator of Suriname who was also head of the army during the Moiwana massacre.<sup>112</sup> His party has passed an amnesty law and all attempts to prosecute individuals for human rights violations committed under the military regime have been prevented by the President and his entourage.<sup>113</sup> Moreover, the chief investigator of the Moiwana massacre was murdered under suspicious circumstances, presumably by members of the military.<sup>114</sup> Notably, trials have started against the President and other prominent military figures for the extra-judicial executions of their political opponents.<sup>115</sup> Still, there is a culture of impunity which renders prosecutions of perpetrators of human rights violations during the war extremely difficult.<sup>116</sup> The IASHR needs to break through the culture of impunity in order to achieve full implementation of the judgement.

**2.2.2.7. *Caribbean disengagement with the IASHR.*** The final obstacle to compliance is the general disengagement of the IASHR with Caribbean states. The system generally devotes more attention to Latin American states than Caribbean ones. For example, it deals with proportionately less cases concerning Caribbean states and many important documents like decisions of the Court are published only in Spanish even though most of the official languages of Caribbean countries are English, French, or Dutch.<sup>117</sup> The lack of consideration for Caribbean states disengages domestic actors like state officials, academia, and civil society organisations.<sup>118</sup> As a result, these actors are less likely to take into account decisions of the Court because they are not familiar with the Inter-American System or do not consider it to be important.<sup>119</sup> In this way, the lack of engagement decreases the influence of the Court. The decreased influence is illustrated by the recent creation of the Caribbean Court of Justice (2002) which functions as an alternative human rights body for Barbados, Belize, and Guyana but not for Suriname.<sup>120</sup> The creation of the CCJ signals that Caribbean states desire a human rights system that is more inclusive of Caribbean states and cognisant of the Caribbean context.<sup>121</sup> In order to successfully encourage state compliance with judgements of the Court in Suriname, the IASHR needs to engage the actors responsible for the implementation of the judgements.

From this overview, it appears that the government has economic and political incentives not to respect indigenous land rights. As such, the IASHR has to provide the State with a significant interest to comply. Additionally, there are challenges which hinder full compliance regardless of the interests of the State. These relate to communication and boundary issues. The compliance efforts of the IASHR also have to assist the State in overcoming these practical obstacles to full implementation of the judgements. Chapter 2 provides an assessment of how compliance efforts of the IASHR have managed to assist the State in overcoming these obstacles up until now. More importantly, it provides conventional and unconventional proposals to increase compliance.

### 3. The compliance efforts of the IASHR: problems and solutions

In case of non-compliance of a State with the decisions of the Court, the IASHR triggers a battery of measures to induce the reluctant state to comply. Section 1 of this chapter analyses the legal framework of the IASHR and the extent to which the compliance measures have been successful. Section II is forward looking and discusses mechanisms through which the IASHR could increase compliance.

#### 3.1. What has been done: an assessment of IASHR compliance efforts

The upcoming paragraphs assess the framework of compliance of the IASHR. It first outlines the functioning of the institutions of the Inter-American System (A). Afterwards, the section considers to what extent the system has stimulated compliance with the decisions of the Court in Suriname (B).

##### 3.1.1. Compliance monitoring in the Inter-American System

The Inter-American System of Human Rights operates within the framework of the Organisation of American States (OAS).<sup>122</sup> The most important human rights instruments of the Organisation are the Charter of the Organization of American States (1948); the American Declaration of the Rights and Duties of Man (1948); and the American Convention on Human Rights (1969). Suriname has ratified the Charter and the Convention.<sup>123</sup> It is also bound by the Declaration.<sup>124</sup>

The respect for these instruments is monitored by the Commission, the Court, the Permanent Council of the OAS, and the General Assembly of the OAS. The main function of the Commission is to promote the observance and protection of human rights in the Americas,<sup>125</sup> especially by deciding on individual or state petitions.<sup>126</sup> Subject to certain conditions, this petition procedure is open to 'any person or group of persons or nongovernmental entity' that alleges violations of the Declaration, the Convention, or other Inter-American human rights treaties.<sup>127</sup> The Commission can attempt to facilitate a friendly settlement or it can transmit an unpublished report on the merits to the State.<sup>128</sup> If the State does not comply with the recommendations of the Commission within three months, the Commission will publish the case or refer the case to the Court.<sup>129</sup> This decision depends on whether the Court has jurisdiction and on what procedure the Commission deems the most appropriate.<sup>130</sup>

The Inter-American Court has contentious jurisdiction only over states that have explicitly accepted its jurisdiction under the Convention.<sup>131</sup> The Court is competent to monitor compliance with its judgements on the basis of its inherent jurisdictional function.<sup>132</sup> To this end, the Court has created ad hoc judicial mechanisms for monitoring compliance with its judgements.<sup>133</sup> Additionally, the Court comments on cases of non-compliance in its annual reports, which it presents to the Committee on Juridical and Political Affairs (CJPA).<sup>134</sup> States and the Committee send their comments, observations, and recommendations concerning the annual report to the Permanent Council of the OAS.<sup>135</sup> Afterwards, the Permanent Council, composed of ambassadors of Member States,<sup>136</sup> sends comments on the reports to the General Assembly.<sup>137</sup> Ultimately, the IASHR relies on the system of collective guarantee in which the collective of Member States, acting as the General Assembly or the Permanent Council, stimulates individual states

to comply with judgements of the Court.<sup>138</sup> However, for reasons discussed in section B below, the GA and the Permanent Council have only sporadically pressured states into compliance with judgements of the Court.<sup>139</sup>

Overall, the system has diplomatic and judicial compliance mechanisms. The section below assesses the way these mechanisms have been used to stimulate compliance with the relevant judgements in Suriname.

### ***3.1.2. An assessment of compliance measures previously used***

States hardly ever fully comply with judgements of the Inter-American Court.<sup>140</sup> This fact indicates that the system is only partially effective and that there is significant room for improvement. This section assesses the effectiveness of compliance mechanisms used by the IASHR concerning the relevant judgements of the Court. The measures reviewed concern those adopted by the Commission (i), the Court (ii), and the General Assembly and Permanent Council (iii).

***3.1.2.1. Compliance measures taken by the Inter-American Commission.*** The Commission stimulates compliance with judgements of the Court through thematic and country hearings and reports, working visits, consultations, and more.<sup>141</sup> In order to stimulate compliance with the judgements concerning indigenous land rights in Suriname, the Commission has issued thematic reports and it has conducted country visits. These are evaluated in turn.

The Commission has published thematic reports that are relevant to the cases concerning indigenous land rights in Suriname.<sup>142</sup> These reports clarify the obligations of states concerning particular human rights issues. It is unclear to what extent these reports influence the practices of the State and other actors. Research suggests that IASHR reports are more influential when they refer directly to domestic issues.<sup>143</sup> As such, thematic reports are likely to be less influential than other reports because they deal with general topics.<sup>144</sup> In relation to Suriname, there are not many instances in which the thematic reports were mentioned in government publications, news outlets, or NGO reports.<sup>145</sup> In contrast, the judgements of the Court and country reports seem to be mentioned more frequently<sup>146</sup> because these refer to the Surinamese State in particular whereas thematic reports do not.<sup>147</sup> The lack of attention to thematic reports suggests that they may have had relatively less influence in relation to policies concerning indigenous rights in Suriname.

The most recent working visit of the Commission to Suriname was held in 2013.<sup>148</sup> During the visit, the Commission monitored compliance with the judgements of the Court by discussing the implementation process with government officials of Suriname.<sup>149</sup> The Commission also offered workshops to government officials and academics in order to inform them about the judgments and the Inter-American System of Human Rights.<sup>150</sup> The visit was an opportunity for the Commission to increase the familiarity of domestic actors with the system and to highlight the significance of the IASHR. As discussed in chapter 1, increased familiarity with the system is necessary to prevent Caribbean disengagement. However, five years after the working visit, the efforts of the Commission have not stimulated the full implementation of the judgements.



**3.1.2.2. Compliance measures taken by the Inter-American Court.** The Inter-American Court can influence compliance with its judgements through the clarity of its judgements and its monitoring efforts. The following paragraphs assess these features successively.

The clarity of judgements can influence whether or not a state complies. In order to respect the principle of subsidiarity, judicial decisions are often formulated in a vague and broad manner so as to give the State discretion in implementing the decision of the Court.<sup>151</sup> This flexibility relies on the rationale that state institutions have more information than courts and are better placed to make optimal policy decisions.<sup>152</sup> However, vagueness and wide discretionary margins make it easier for states to claim that they have met their obligations, even though they have not truly complied with the decision of the Court.<sup>153</sup> A misrepresentation on compliance could be made on purpose or may result from a genuine misinterpretation of the judgement.<sup>154</sup>

In order to prevent clarity issues, the Court allows requests for interpretation. In the *Moiwana* case, Suriname used the request for interpretation mostly to appeal aspects of the judgement.<sup>155</sup> This indicates the extent to which the State disagreed with the judgement, which might explain the large degree of non-compliance. The State did seek clarification of the judgement of the *Saramaka* case.<sup>156</sup> In this case, the Court sometimes repeated the exact wording of the final decision.<sup>157</sup> It is unlikely that a repetition of the judgements clarifies any ambiguity. However, Suriname also ignored clarified aspects of the judgements.<sup>158</sup> This suggests that clarity is not the main factor influencing compliance in these cases.

As mentioned, the Court issues monitoring reports in order to stimulate compliance with its judgements.<sup>159</sup> Hawkins and Jacoby suggest that states implement more parts of the judgements each time the Court monitors compliance.<sup>160</sup> The effectiveness of the judicial monitoring system comes from the ability of the Court to suggest alternative solutions and provide a neutral space for parties to discuss the implementation process.<sup>161</sup> During the monitoring process, the State has to report on the implementation process, after which the Commission and victims provide their observations on the process.<sup>162</sup> After private or public hearings, the Court finally issues a monitoring report in which it rules on the state of compliance and it provides the State with orders on how to implement the decisions of the Court in cases of non-compliance.<sup>163</sup>

In 2010 and in 2013, the Court issued monitoring reports pertaining to the *Moiwana* and the *Saramaka* cases respectively.<sup>164</sup> As of May 2018, there is no monitoring report concerning the *Kaliña and Lokono* case. The Court has used the monitoring reports to clarify the obligations of the State when the State wrongfully considered that it had fulfilled its obligations.<sup>165</sup> The Court also reacted to new human rights issues. For example, the Court applied the jurisprudence of the *Saramaka* case concerning free, prior, and informed consent to the context of the older *Moiwana* judgement in order to clarify the rights of the Community.<sup>166</sup> In this way, the Court specified its jurisprudence in relation to new challenges which can be vital for the correct implementation of the decisions of the Court. Of course, the Court also re-affirmed the duty to comply with the judgement.<sup>167</sup>

The monitoring reports have not ensured the full compliance of Suriname.<sup>168</sup> The lack of effectiveness can be attributed to the fact that the monitoring reports have not been published frequently. The last monitoring report regarding any of the three relevant cases concerning Suriname was published in 2013.<sup>169</sup> Unlike the European regional human rights



model, the Inter-American system did not establish an independent body which monitors compliance of the States with judgements of the Court.<sup>170</sup> The Court has to do this itself. This judicial monitoring mechanism consumes a significant amount of time of the judges and resources of the Court.<sup>171</sup> As a result, the cases are not monitored continuously and the benefits of the monitoring process are not enjoyed regularly. Notably, the decision of the Court in the *Kaliña and Lokono* case is similar to older judgements like the *Saramaka* case, which indirectly obliges the State to comply with older cases. However, these newer cases have, so far, also not stimulated full compliance with older cases.

Another reason why the monitoring process of the Court has not stimulated full implementation of the judgements is because the reports are not actual enforcement mechanisms.<sup>172</sup> They do not increase the cost of non-compliance in the way that, for example, economic sanctions do. Contrastingly, the political organs of the OAS can use actual political and economic enforcement mechanisms.

**3.1.2.3. Collective enforcement mechanisms: the OAS GA and the PC OAS.** The GA has, exceptionally, used collective enforcement in the case of *Gangaram Panday v. Suriname*, which dealt with illegal detention and torture but not with indigenous peoples' rights.<sup>173</sup> After the GA called upon Suriname to comply with the judgement of the Court, Suriname fully complied within three years.<sup>174</sup> Currently, Suriname has significant economic and political incentives not to comply with the judgements of the Court concerning indigenous land rights. The efforts of the Permanent Council and the General Assembly of the OAS can stimulate compliance by ensuring that the costs of non-compliance outweigh the benefits of non-compliance. Through its reports, the Council can exert soft pressure on states to comply with the judgements of the Court. The GA can use collective enforcement mechanisms like suspending membership rights or adopting economic sanctions.<sup>175</sup> However, the GA and the Permanent Council rarely use collective enforcement mechanisms because of various reasons.

Firstly, Member States do not want to criticise or punish each other due to the highly political character of such an act, as well as the risk of retaliation in the form of returned criticism and punishments.<sup>176</sup> Consequently, the Permanent Council and the GA usually only take note of the annual reports of the Court, and do not call on individual states to comply with the judgements.<sup>177</sup>

Secondly, the GA often fails to decide upon which sanctions to apply because the measures may worsen matters.<sup>178</sup> The economic sanctions of the OAS against Haiti, for example, have contributed to humanitarian crises in the State during the 1990s.<sup>179</sup> Recently, the GA has failed to agree on whether and how to use collective enforcement measures against Venezuela in order to protect its democratic order.<sup>180</sup> The stalemate illustrates how indecision can render the collective enforcement mechanisms ineffective.

Thirdly, collective enforcement is often considered to infringe on the sovereignty of the Member States.<sup>181</sup> For this reason, some Member States have prevented collective enforcement measures against Venezuela.<sup>182</sup>

Finally, the collective enforcement of judgements concerning indigenous rights is unlikely because of the principle of non-intervention. This principle holds that Member States shall not intervene in the internal or external affairs of any other Member State.<sup>183</sup> The concept of non-intervention goes beyond armed force and also includes indirect intervention by political, economic, and cultural means.<sup>184</sup> Moreover, the Charter does not

authorise collective enforcement of human rights unless the violations threaten the peace of the hemisphere.<sup>185</sup> The lack of consideration to enforce indigenous land rights illustrates that such violations are not considered to threaten the peace. The principle has steadily been declining in importance, but it still prevents most collective enforcement measures in relation to human rights.<sup>186</sup> For all of the reasons above, it is unlikely that the political organs of the IASHR will use collective enforcement mechanisms in the cases concerning indigenous land rights in Suriname.

In conclusion, the compliance efforts of the IASHR have proven to be ineffective in stimulating full compliance with the judgements of the Court concerning indigenous rights in Suriname. Some compliance mechanisms, like the monitoring process of the Court, can be used more effectively. Other mechanisms, like collective enforcement mechanisms, are unlikely to be used at all. In response, the following section suggests improvements and alternatives to these currently ineffective compliance mechanisms.

### ***3.2. The way forward: achieving full compliance with judgments of the Court***

This section examines how the Inter-American System of Human Rights can stimulate full compliance with judgments of the Inter-American Court concerning indigenous land rights in Suriname. On the one hand, the section suggests how the IASHR can use conventional compliance mechanisms like country visits, monitoring reports, and more (A). On the other hand, the section proposes the use of unconventional compliance tools to stimulate full implementation of the judgements (B). These tools involve cooperation with international organisations and actors beyond the executive branch of the State.

#### ***3.2.1. Conventional compliance mechanisms***

Section 1 has highlighted the ineffectiveness of the compliance efforts of the IASHR. This sub-section clarifies how the compliance mechanisms can be used more effectively in order to overcome domestic obstacles to compliance. Solutions to the culture of impunity, political marginalisation and Caribbean disengagement, claims to self-determination, and communication issues between the parties will be discussed consecutively.

***3.2.1.1. Addressing the culture of impunity.*** The culture of impunity prevents prosecutions for the Moiwana massacre.<sup>187</sup> In the past, the IASHR has overturned amnesty laws and stimulated the prosecution of perpetrators of human rights violations through country visits, country reports, and judgements of the Court.<sup>188</sup> In Suriname, a country visit focused on the culture of impunity would allow for the Commission to use diplomatic and constructive tools in order to stimulate accountability. Country reports and country visits can generate international pressure that is unlikely to combat impunity on its own.<sup>189</sup> However, this international pressure may support civil society demand and judicial leadership necessary to overcome barriers to justice.<sup>190</sup>

In order to increase accountability, several domestic actors have called for a truth and reconciliation process in Suriname.<sup>191</sup> The process can enable victims of human rights violations to re-gain confidence in the State apparatus after state-sponsored crimes.<sup>192</sup> Reconciliation could ease the fears of the Moiwana community so that they would be willing to return to their traditional lands. The process could also decrease animosity between

indigenous and tribal communities caused by the War of the Interior. Friendly relations would facilitate the conclusion of agreements concerning competing indigenous and tribal claims to the territories.<sup>193</sup> The Inter-American Commission and other organs of the OAS have provided technical support to multiple truth and reconciliation committees in the Americas.<sup>194</sup> The system can use this expertise to assist Suriname in relation to issues like the mandate of the committee.<sup>195</sup>

**3.2.1.2. Addressing marginalisation.** Another obstacle to compliance is the political marginalisation of indigenous and tribal communities in Suriname. Literature stressed that NGOs can garner support for their cause through (international) pressure, diplomacy, and the mobilisation of information.<sup>196</sup> These organisations can increase the domestic political relevance and the legitimacy of indigenous human rights norms.<sup>197</sup> Additionally, engagement between the IASHR and NGOs and civil society encourages domestic actors to refer to reports of the Commission and judgements of the Court in public and academic discourse. This can increase the domestic relevance of the IASHR norms concerning indigenous rights<sup>198</sup> which, ultimately, ameliorates the political marginalisation of the communities.

However, as mentioned in chapter 1, the IASHR has relatively weak links to civil society in the Caribbean.<sup>199</sup> The system can engage with civil society in Suriname by publishing important documents like decisions of the Court, and recommendations and reports of the Commission in the languages that are prominent in Suriname like English and Dutch. Whereas the institutions and institutes like the Inter-American Institute of Human Rights<sup>200</sup> mostly focus on human rights issues in Latin America, they can also enhance cooperation with Caribbean scholars and policy makers in order to devote attention to the particular human rights challenges in the Caribbean.

**3.2.1.3. Addressing the characterisation of land rights as claims to self-determination.** Another obstacle to the full implementation of the judgements of the Court relates to the characterisation of indigenous land rights as claims to self-determination, which has prevented successful negotiations.<sup>201</sup> The parties need to come to an agreement concerning the scope of increased autonomy. In the past, indigenous and tribal communities in Suriname have concluded treaties with states in order to codify the rights and obligations of all parties.<sup>202</sup> Similarly, the current government and indigenous communities could conclude agreements in order to clarify the scope of increased autonomy of the communities. In accordance with the judgements of the Inter-American Court, these agreements should provide the communities with legally enforceable rights in the domestic legal system. The agreements would be similar to comprehensive land claim agreements (CLSs) that are concluded between indigenous communities and the State of Canada.<sup>203</sup> The CLSs concern issues including land use planning and control over natural resources.<sup>204</sup> The issue remains that in order to achieve any agreements, the parties need to communicate clearly.

**3.2.1.4. Streamlining the communication between the parties.** Miscommunication between indigenous groups and the State, as was the case with the *Gran Krutu* of 2011, caused significant delays or even complete halts of negotiations.<sup>205</sup> In the past, monitoring reports of the Court have facilitated dialogue and agreement between government officials

and victims.<sup>206</sup> The monitoring process of the Court allowed the parties to express their views in a neutral environment that is usually unavailable in domestic situations.<sup>207</sup> The lack of neutrality is illustrated by attempts of the government to pressure the Saramaka communities into disadvantageous settlements by threatening to cut the salaries of leaders of the communities.<sup>208</sup> The Court has dealt with dispute settlement between indigenous groups themselves and between the State and indigenous groups in the *Awás Tingni* case concerning indigenous land rights.<sup>209</sup> The Inter-American Rapporteur for Indigenous Peoples has also monitored indigenous rights in the Americas over multiple decades.<sup>210</sup> This illustrates that different actors within the IASHR could provide assistance to Suriname by facilitating dialogue, sharing best practices, and by making recommendations.

In conclusion, the IASHR can assist the State in overcoming several obstacles to compliance. However, the analysis above does not provide a solution for the economic and political incentives that stimulate non-compliance with judgements concerning indigenous rights. These incentives render the State reluctant to work with the IASHR and overcome obstacles to compliance. In order to tackle these issues, the following section considers compliance mechanisms outside of the conventional framework of the IASHR.

### **3.2.2. Thinking outside the box: unconventional compliance mechanisms**

The transnational legal process is the process by which public and private actors interact in a variety of ways to, amongst other things, internalise international law.<sup>211</sup> Transnational legal theory suggests that public and private actors can stimulate state compliance with judgements of the Inter-American Court.<sup>212</sup> Yet, the Inter-American System of Human Rights normally does not interact with these public and private actors. This section considers how the system can best interact with unconventional actors in order to ensure full implementation of the relevant judgements of the Court. The first proposal is that international organisations like the World Bank should be stimulated to internalise IASHR norms and used as indirect enforcement mechanisms (i). The second proposal is that the Court should tackle the relatively high rates of non-compliance with non-pecuniary orders for reparations by working with organs of the State beyond the executive (ii).

**3.2.2.1. Indirect enforcement through international organisations.** In accordance with transnational legal theory, international organisations can influence state compliance with norms of the IASHR.<sup>213</sup> In 2003, for instance, the World Bank stimulated the enactment of the Land Demarcation law in Nicaragua by making development aid conditional upon the establishment of a communal property regime for indigenous communities.<sup>214</sup> In Guyana, the financial incentives of the UN REDD+ programme stimulated the adoption of the 'Amerindian Act'.<sup>215</sup> This act recognises the collective rights of indigenous communities.<sup>216</sup> International organisations can also stimulate compliance with decisions of the Inter-American Court concerning indigenous land rights in Suriname. The UN REDD+ programme, for instance, provides the Surinamese State with 15.3 million USD in order to limit deforestation.<sup>217</sup> The programme has internalised a number of IASHR norms. For example, it obliges consultations with indigenous and tribal communities.<sup>218</sup>

In this way, the REDD+ programme addresses two compliance issues. Firstly, the programme aligns national economic interests with the interest of indigenous communities. Indigenous rights become part of the national economic interest when international

organisations make their funding conditional on respecting those rights. Secondly, REDD + increases the political capital of indigenous communities because the programme demands the inclusion of the communities into the decision-making processes. As of 2017, Suriname has been including various indigenous community leaders in the decision-making process of REDD+ projects.<sup>219</sup> This illustrates the increased political capital of the communities.

The IASHR can stimulate the internalisation of indigenous land rights in various ways. Firstly, the OAS can cooperate with international organisations like the World Bank, the EU, the UN, and the Inter-American Development Bank in order to stimulate the implementation of indigenous rights. The OAS already cooperates with a number of these organisations in order to stimulate compliance with conventions that do not concern human rights.<sup>220</sup>

The conventional collective enforcement mechanism of the OAS GA remain unused because of sovereignty issues and the principle of non-intervention.<sup>221</sup> The benefit of the proposed indirect enforcement mechanism is that it does not require controversial measures like economic sanctions. At the same time, the mechanism enables Member States, through the OAS GA, to fulfil their obligation to collectively guarantee compliance with judgements of the Court.

Member States may not facilitate cooperation between the OAS and other international organisations because states themselves could miss out on funding for failing to comply with judgements of the Court.<sup>222</sup> Circumventing the OAS, the Inter-American Commission can inform international organisations on state compliance with judgements of the Court.<sup>223</sup> Additionally, the Commission could outline how investments of organisations like the World Bank are influencing indigenous land rights and suggest how the organisations can internalise IASHR norms.

The organisations have an incentive to internalise indigenous rights norms because the respect for these indigenous rights can contribute to their own goals.<sup>224</sup> For example, the World Bank stimulated the communal property regime for indigenous communities in Nicaragua in order to increase legal certainty and protect investments.<sup>225</sup> However, international organisations have not internalised the full range of indigenous land rights and they have often ignored IASHR norms.<sup>226</sup> Similar to country reports, the Commission could publish reports on international organisations in order to provide soft pressure for these organisations to internalise indigenous land rights. On several occasions, organisations like the World Bank have faced external pressure to respect human rights. The UN Secretary General, for instance, has pressured the World Bank to honour human rights.<sup>227</sup> Consequently, these organisations may want to implement the recommendations of the Commission in order to prevent their association with human rights violations.

It is unclear to what extent, if at all, the Commission can influence these organisations. This paper does not allow for extensive research on specific ways in which international organisations can be prompted to internalise IASHR norms but it is an issue that demands further academic attention.

In conclusion, the internalisation of IASHR norms by international organisations forms an indirect enforcement mechanism. However, the OAS is hesitant to use both direct and indirect enforcement mechanisms.<sup>228</sup> In practice, the IASHR tends to rely on the monitoring process of the Court in order to encourage voluntary compliance. Consequently, the

section below suggests how the system can improve the monitoring process of the Court by interacting with actors beyond the executive.

**3.2.2.2. Stimulating compliance by interacting with actors beyond the executive.** The monitoring system of the IASHR has failed to stimulate full compliance with judgements of the Court concerning indigenous land rights in Suriname. Courtney Hillebrecht suggest that compliance depends on the ability of the executive branches of the state to build ‘pro-compliance coalitions’ with the legislative and judicial branches.<sup>229</sup> In this framework, compliance depends on the ability and willingness of the executive branches to stimulate other branches to comply with judgements of the Court. This dependence can become problematic in relation to states like Suriname with executive branches that have an interest in non-compliance.<sup>230</sup> In fact, this framework does not utilise the ability of the system to interact with different branches of the state instead of relying on the executive branch. Contrastingly, Alexandra Huneus suggests that the monitoring system of the Inter-American Court should interact directly with actors beyond the executive in order to increase compliance with its judgements.<sup>231</sup> This final section proposes that the IASHR should interact with the domestic legislature and judiciary in order to stimulate them to internalise IASHR norms concerning indigenous land rights.

During the monitoring process of the Inter-American Court, the State is usually represented only by the Ministry of Foreign Affairs.<sup>232</sup> This is problematic when the executive cannot influence other state organs. In the *Molina Theissen v. Guatemala* case, for example, the legislative and judicial branches defied requests from the executive branch to implement the decision of the Inter-American Court.<sup>233</sup> In response, the Court worked with representatives of the Guatemalan legislature and the office of prosecution in order to create a compliance plan.<sup>234</sup> The efforts of the Court seemed to have been successful because the case has been investigated and the perpetrators are facing trial.<sup>235</sup>

Increased dialogue between the Court and the implementing institutions can be necessary in order to discover the exact challenges to implementation. The Court can facilitate dialogue, clarify the obligations of the State under international human rights law, and share best practices specifically catered to these particular institutions.<sup>236</sup> In Suriname, the Court can also cooperate with representatives of the legislature and the judiciary in order to address the specific challenges concerning indigenous land rights.

As mentioned in chapter 1, the compliance process consumes a significant amount of time of the judges and resources of the Court. Consequently, it may not be feasible for the Court to set up such an intensive monitoring process. Instead, the recently created Unit for Monitoring Compliance with Judgments of the Inter-American Court could conduct the monitoring process.<sup>237</sup>

Direct engagement can be especially beneficial in relation to the national judiciary. Currently, the Commission refers cases to the Court and there is little judicial dialogue between the regional and national judicial systems.<sup>238</sup> This hierarchical order is, at times, resented by the national courts and increases calls for non-compliance by these courts and national academia.<sup>239</sup> The IASHR can draw from the European System of Human Rights (EHRS) in order to stimulate horizontal dynamics. National courts of the European System can ask for advisory opinions concerning the interpretation of European human rights norms.<sup>240</sup> This judicial dialogue stimulates horizontal dynamics between the regional and the national courts.<sup>241</sup> The enhanced cooperation between the



systems increases the legitimacy of the European Court, which increases compliance.<sup>242</sup> In the Inter-American System, such increased judicial dialogue may help to limit national resentment by stressing the subsidiary role of the IASHR instead of its superior role.

Judicial dialogue is also useful when national courts are hesitant to comply with the decisions of the Court because of conflicting domestic norms.<sup>243</sup> For instance, Suriname has a monist system, inherited from Dutch colonisation, which allows judges to set aside national laws in favour of IASHR norms.<sup>244</sup> However, judges have not been doing so in relation to indigenous land rights because to them, the longstanding interpretation of the decree 'Principles of Land Policy', outweighs other interpretations due to legal certainty.<sup>245</sup> The decree stipulates that indigenous rights shall be respected in so far as the general interest allows.<sup>246</sup> The judiciary could provide the communities with effective judicial protection by interpreting the decree in a manner consistent with regional jurisprudence. They would have to narrow the scope of the concept of the general interest and broaden the scope of indigenous land rights to include collective rights recognised by the Inter-American Court. This would be similar to the EU concept of medium and strong indirect effect which is used to reconcile international norms and domestic laws.<sup>247</sup> In order to entrench the regional system into the domestic system, the Inter-American Court could cite national jurisprudence and make suggestions on how to interpret IASHR norms and domestic norms consistently.<sup>248</sup> The dialogue could promote horizontal relations between the national and regional organs which would make the national courts more susceptible to implementing the decisions of the Inter-American Court.<sup>249</sup>

Even if judicial and legislative branches are willing to comply with the judgements of the Court, the executive branch can prevent compliance. During the 1990s for example, police investigations into the events at Moiwana were prevented by the military.<sup>250</sup> During this same period, the army committed a successful military coup with minimum effort.<sup>251</sup> In recent years, however, the judiciary has become increasingly independent from the executive branch. For instance, President Bouterse is currently being prosecuted for the extra-judicial executions of his political opponents.<sup>252</sup> Several years ago, prosecutions against him were impossible because of his political power.<sup>253</sup> In contemporary Suriname, the executive branch, namely the president, has significant incentives not to comply with, for example, the obligation to investigate the Moiwana massacre. The IASHR can benefit from the increased independence of the judiciary from the executive branch by interacting with judicial actors directly.

In sum, the Court can overcome the implementation gap by directly engaging with the State actors responsible for implementation. Furthermore, cooperation with international organisations can function as an indirect enforcement mechanism that aligns national economic interests with the interest of indigenous communities. It can also increase the political capital of indigenous communities which combats their current marginalisation. These mechanisms provide an untapped potential to increase compliance with judgements concerning indigenous land rights in Suriname.

#### 4. Conclusion

The Inter-American System of Human Rights has been attempting to protect indigenous land rights in Suriname since the Moiwana judgement of 2006. However, the relevant



judgements of the Inter-American Court have not been fully implemented. The assessment of previous IASHR compliance efforts has indicated that the system can influence compliance but that it has not optimally used available compliance tools. The effectiveness of the conventional compliance mechanisms can be improved in various ways in order to stimulate full compliance with judgements of the Court concerning indigenous land rights in Suriname. The changes require small efforts like the translation of important documents into Dutch or English and increased engagement with civil society. There are also more demanding efforts like providing assistance to domestic stakeholders by facilitating dialogue and by making recommendations. Besides the traditional compliance tools, the Inter-American System is also not optimally using all tools available in the international and domestic realms in order to stimulate compliance. The system can work with the legislative and judicial branches of the State in order to stimulate compliance with relevant judgements. In addition, international organisations can provide indirect enforcement mechanisms in order to stimulate compliance. These findings imply that compliance efforts should not be limited to the traditional framework of the IASHR. They should also include interaction with unconventional actors like international organisations.

In relation to the case study on Suriname, the measures above could improve the quantity and the quality of the level of compliance with the decisions of the Inter-American Court of Human Rights concerning indigenous land rights. At the quantitative level, the efforts could stimulate compliance with non-pecuniary decisions of the Court like the obligation to investigate human rights violations. At the qualitative level, the efforts could stimulate the improvement of current legislation and policy to adequately protect indigenous and tribal land rights in Suriname. Overall, these suggestions are aimed at achieving full compliance with the relevant judgements. Full implementation of the judgements ensures that the communities enjoy all of their human rights protections, including their right to an effective remedy.

This paper has not been able to discuss a number of important issues that merit further research. As mentioned, it is important to investigate more ways in which influential international organisations can be prompted to internalise IASHR norms. In addition, the scope of the research question is limited to judgements of the Inter-American Court. Yet, future studies may want to link non-traditional compliance efforts to recommendations of the Inter-American Commission. It is also important to consider whether non-traditional compliance mechanisms, like indirect enforcement from international organisations, can be used in relation to other human rights issues or countries other than Suriname.

There is little international academic research focused on Suriname in relation to human rights. Future studies may want to study the particular context of Suriname and other Caribbean states. Important questions are: what is the cause of the disengagement of the IASHR with Caribbean states and how can the IASHR overcome this cause in practice? Studying countries like Suriname that have been given little attention enables scholars to fill gaps in the current literature and identify problems and solutions which are often overlooked. On the subjects of solutions, this paper has provided suggestions on how to increase compliance. Future research can have a more in-depth look at the practical feasibility and effectiveness of these suggestions.

## Notes

1. Fergus MacKay, 'Indigenous and Tribal Rights in Suriname: A Human Rights Perspective', in *Indigenous Resurgence in the Contemporary Caribbean: Amerindian Survival and Revival*, ed. Maximilian C. Forte, 1st ed. (Peter Lang 2006), 156.
2. Tania van Velthuisen, *The Land Rights of Indigenous Peoples and Descendants of the Maroons in Suriname: International Instruments Concerning the Rights of Indigenous Peoples as a Context* (Office World Paramaribo 2008), 12.
3. *ibid.*
4. Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* (OAS, 2015) OEA/Ser.L/V/II Doc 47/15 paras 7, 17; Department of State, '2016 Country Reports on Human Rights Practices: Suriname' (U.S. Department of State: Diplomacy in Action, March 2017) <http://www.state.gov/j/drl/rls/hrrpt/2016/wha/265616.htm> (accessed February 1, 2018); MacKay (n 1) 159.
5. Inter-American Commission on Human Rights, (n 4) para 24.
6. Ward Anseeuw and others, *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project* (The International Land Coalition, 2012), 3.
7. For example: *Saramaka People v. Suriname* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 185 (12 August 2008) operative paras 5–15; *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 79 (31 August 2001) paras 162–168; *Moiwana Community v. Suriname* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 145 (8 February 2006) paras 201–218.
8. Darren Hawkins and Wade Jacoby, 'Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights Engagement and Escape: International Legal Institutions and Public Political Contestation', *Journal of International Law and International Relations* 6 (2010) 35, 10; Sabrina Vannuccini, '“Member States” Compliance with the Inter-American Court of Human Rights' Judgments and Orders Requiring Non-Pecuniary Reparations', *Inter-American and European Human Rights Journal* 7 (2014): 225, 240.
9. Inter-American Court of Human Rights, 'Jurisprudence Finder', CORTEIDH- *Jurisprudence Finder*, [http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda\\_casos\\_contenciosos.cfm?lang=en](http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=en) (accessed May 4, 2018).
10. Sandoval limits the scope of the institutional framework of the IASHR to the Commission and the Court. This paper includes the OAS GA and the PC OAS in the framework of the IASHR because they can stimulate compliance with judgements of the Court. Clara Sandoval, 'The Inter-American System of Human Rights and Approach', in *Routledge Handbook of International Human Rights Law*, eds. S. Sheeran and N. Rodley (Taylor & Francis Group, 2013), 429.
11. The Commission has both political and judicial functions. The OAS GA has the authority to supervise and enforce the implementation of judgements of the Court see: American Convention on Human Rights (Pact of San Jose) (entered into force 18 July 1978) OAS Treaty Series No 36 (1969) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System of 2012, OEA/Ser.L.V/II.82 doc.6 rev.1 at 29 (1992) art 41 and 65.
12. Hawkins (n 8) 10.
13. David Baluarte and Christian De Vos, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (Open Society Justice Initiative, 2010), 88; Alexandra Huneus, 'Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights', *Cornell International Law Journal* 44 (2011): 493, 237; Morse Tan, 'Member State Compliance with the Judgments of the Inter-American Court of Human Rights', *International Journal of Legal Information* 33 (2005): 319, 344; Vannuccini (n 8) 240.

14. The transnational legal process is the process by which public and private actors interact in a variety of ways to, amongst other things, internalise international law see: Harold Honju Koh, 'Transnational Legal Process', *Nebraska Law Review* 75 (1996): 181, 183.
15. *ibid*; Tan (n 13) 340.
16. Vasiliki Saranti, 'International Justice and Protection of Indigenous Peoples: The Case-Law of the Inter-American Court of Human Rights', *US-China Law Review* 9 (2012): 427, 441–442; Bas Rombouts, Anna Meijknecht, and J. Asarfi, *The Implementation of IACtHR Judgments Concerning Land Rights in Suriname – Saramaka People v. Suriname and Subsequent Cases* (International Law Association, 2016), 2.
17. For example: *Centre for Minority Rights Development (Kenya) and Minority Rights Group. International on behalf of Endorois Welfare Council v Kenya* (Merits, Provisional. Measures), Communication. No 276/2003, African Commission on Human and Peoples' Rights (25 November 2009) para 159; *Kaliña and Lokono Peoples v. Suriname* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 309 (25 November 2015) para 204.
18. Huneeus (n 13) 520; Jeffrey Staton and Alexia Romero, 'Clarity and Compliance in the Inter-American Human Rights System', (2011) International Political Science Association Permanent Online Paper Room Conference Paper, [http://paperroom.ipsa.org/papers/paper\\_26179.pdf](http://paperroom.ipsa.org/papers/paper_26179.pdf) (accessed May 14, 2018).
19. Francisco Cox, 'Analyzing the Inter-American Commission on Human Rights under Three Theories of Compliance', *Inter-American Institute of Human Rights* 28 (1998): 11, 11.
20. Rombouts (n 16) 2.
21. *ibid*.
22. Department of State (n 4).
23. Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Right over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* (Organisation of American States, 2009) OEA/Ser.L/V/II Doc 56/09, 9.
24. *Saramaka People v. Suriname* (n 7) para 79.
25. International Labour Organisation, *Indigenous and Tribal Peoples' Rights in Practice: A Guide to the ILO Convention No. 169* (International Labour Standards Department, 2009) para 11.
26. *Saramaka People v. Suriname* (n 7) para 86.
27. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System of 2012, OEA/Ser.L.V/II.82 doc.6 rev.1 at 19 (1992) art 3, 21, and 25.
28. *Saramaka People v. Suriname* (n 7) para 86; Dinah Shelton, 'The Inter-American Human Rights Law of Indigenous Peoples', *University of Hawaii Law Review* 35 (2013): 937, 968.
29. *Awas Tingni Community v. Nicaragua* (n 7) para 148.
30. *ibid* 149.
31. *Saramaka People v. Suriname* (n 7) para 91; *Awas Tingni Community v. Nicaragua* (n 7) para 124, 149; *Yakye Axa, Sawhoyamaya and Xákmok Kásek Indigenous communities v. Paraguay* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No. 125 (1 September 2016) 154.
32. *Moiwana Community v. Suriname* (n 7) para 30.
33. *ibid* 181.
34. *ibid* 128.
35. *Kaliña and Lokono Peoples v. Suriname* (n 17) para 62.
36. *ibid* 62.
37. American Convention (n 11) art 21; *Moiwana Community v. Suriname* (n 7) para 134; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 130.
38. *Moiwana Community v. Suriname* (n 7) para 233; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 329.
39. *Saramaka People v. Suriname* (n 7) para 12.

40. *ibid.*
41. MacKay (n 1) 161.
42. Decree Principles of Land Policy (SB 1982 No 10) (Dutch title: Decreet Beginselen Grondbeleid 1982) art 4.
43. The primary legislation concerning land rights in Suriname are L-Degrees which concern 'Domeinland'. The Domain principle holds that all land over which there is no private ownership, is owned by the State see: Decree Principles of Land Policy (n 42) art 4; MacKay (n 1) 161.
44. *Moiwana Community v. Suriname* (n 7) para 131.
45. *Kaliña and Lokono Peoples v. Suriname* (n 17) para 112; *Saramaka People v. Suriname* (n 7) para 105.
46. *Kaliña and Lokono Peoples v. Suriname* (n 17) para 268; *Saramaka People v. Suriname* (n 7) para 214.
47. *Kaliña and Lokono Peoples v. Suriname* (n 17) para 243.
48. *Saramaka People v. Suriname* (n 7) para 199.
49. *ibid* para 135.
50. *Kaliña and Lokono Peoples v. Suriname* (n 17) para 274.
51. *ibid.*
52. *Saramaka People v. Suriname* (n 7) para 133.
53. *ibid* para 129.
54. For example: *Kaliña and Lokono Peoples v. Suriname* (n 17) para 204; *Endorois Welfare Council v Kenya* (n 17) para 159.
55. *Moiwana Community v. Suriname* (n 7) para 209; *Saramaka People v. Suriname* (n 7) 194 a; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 286.
56. *Moiwana Community v. Suriname* (n 7) para 209; *Saramaka People v. Suriname* (n 7) 194 a ; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 279.
57. *Saramaka People v. Suriname* (n 7) 194 b; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 279.
58. *Saramaka People v. Suriname* (n 7) 194 c; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 305.
59. *Moiwana Community v. Suriname* (n 7) para 207.
60. *Moiwana Community v. Suriname* (n 7) para 210; *Saramaka People v. Suriname* (n 7) 192; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 305.
61. *Saramaka People v. Suriname* (n 7) para 194 d; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 305.
62. *Saramaka People v. Suriname* (n 7) 194 e; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 305.
63. *Moiwana Community v. Suriname* (n 7) 187; *Saramaka People v. Suriname* (n 7) 199; *Kaliña and Lokono Peoples v. Suriname* (n 17) para 298.
64. *Moiwana Community v. Suriname* (n 7) para 203; *Saramaka People v. Suriname* (n 7) para 201.
65. Raoul Abisoina, 'Regering stort USD 1 miljoen voor Kaliña- en Lokono-volkeren', *Suriname Herald*, December 2017, <https://www.srherald.com/suriname/2017/12/18/regering-stort-usd-1-miljoen-voor-kalina-en-lokono-volkeren/> (accessed March 2018).
66. *ibid.*
67. Abigail de Rijp, 'Guilty of Human Rights Violations: What Is the Next Phase?' (LLB thesis, Anton De Kom University of Suriname, 2013), 32.
68. Rombouts (n 16) 20.
69. *ibid* 15.
70. *ibid* 20.
71. *ibid* 14.
72. Abisoina, (n 65).
73. The law has not been published as of May 2018. See National Assembly of the Republic of Suriname, 'Parlement keurt wet Beschermde Dorpsgebieden goed', *DNA*, December 2017,

- <http://www.dna.sr/nieuws/archief/overig/parlement-keurt-wet-beschermde-dorpsgebieden-goed/> (accessed May 2018); VIDS, 'VIDS Heeft Fundamentele Bezwaren Tegen Wet', *Starnieuws*, January 2018, <http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/45140> (accessed March 2018).
74. *ibid.*
  75. *ibid.*
  76. *ibid.*
  77. *ibid.* *Saramaka People v. Suriname* (n 7) para 114.
  78. Velthuisen (n 2) 12.
  79. Hawkins (n 8) 26–27.
  80. Decree Establishing the Third Division of the Budget of Expenditure or Revenue for the year of 2015 Concerning the Ministry of Regional Development (SB 2015 Bo 115) (Dutch Title: Wet van 8 Juli 2015, tot Vaststelling van de 3-de Afdeling van de Begroting van Uitgaven en Ontvangsten Voor Het Dienstjaar 2015 Betreffende het Ministerie van Regionale Ontwikkeling) 8.
  81. *Ibid.*
  82. *Ibid.*; See also: Ministerie van Regionale Ontwikkeling, 'Bureau Grondenrechten Houdt Presentatie voor Minister Dikan', *Republiek Suriname*, November 12, 2015, <http://www.gov.sr/ministerie-van-ro/actueel/bureau-grondenrechten-houdt-presentatie-voor-minister-dikan.aspx> (accessed April 25, 2019); and Rombouts (n 16) 3.
  83. Rombouts (n 16) 22.
  84. Shelton (n 28) 972; Sandew Hira, *De Getuigenis van President Desi Bouterse* (Amrit Publishers, 2017), 83; De Ware Tijd, 'Inheemsen en marrons begraven strijdbijl', *BearingPoint*, December 1, 2016, <https://www.bearingpointcaribbean.com/inheemsen-en-marrons-begraven-strijdbijl/> (accessed May 10, 2018).
  85. Forest Management Act 1992 (SB 1992 No 80) art 41(2); *Saramaka People v. Suriname* (n 7) para 113.
  86. Decree Principles of Land Policy (n 42) art 4.1.
  87. *ibid.*; *Saramaka People v. Suriname* (n 7) para 116.
  88. Rombouts (n 16) 20–21.
  89. *ibid.*
  90. Victoria Tauli-Corpuz, 'Conservation and Indigenous Peoples' Rights: Report of the Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples.' (OAS 2016) A/71/229; Department of State (n 4).
  91. Rombouts (n 16) 20–21; MacKay (n 1) 157.
  92. *Gran Krutu* 1996, Res 2 in MacKay (n 1) 157.
  93. MacKay (n 1) 157.
  94. *ibid.* 164.
  95. *ibid.*
  96. Republiek Suriname – Overheid, 'President Bouterse Stelt Kader van Grondenrechten Conferentie Scherp', *The Government of Suriname*, 2011, <http://www.gov.sr/actueel/archief/2011/president-bouterse-stelt-kader-van-grondenrechten-conferentie-scherp.aspx> (accessed March 15, 2018).
  97. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory opinion) General List No 141 [2010] ICJ Rep 403 para 79.
  98. *ibid.*
  99. United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007 UNGA Res A/RES/61/295) U.N. Doc. A/RES/61/295 (UNDRIP) art 46.
  100. Ellen-Rose Kambel and Fergus MacKay, *De rechten van inheemse volken en marrons in Suriname* (KITLV Uitgeverij, 2003), 121.
  101. *Saramaka People v. Suriname* (n 7) para 133.
  102. Rombouts (n 16) 20.
  103. Leandra Woei, 'Het Historisch Recht van Surinaamse Inheemsen Op Grond: De Strijd van Inheemsen Tegen Onrecht' (2014) 5 His/Her Tori 68 82.

104. *ibid.*
105. *ibid.*
106. Starnieuws, 'Inheemsen zeggen sorry tegen president', *Starnieuws*, October 2011, <http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/7779> (accessed May 2018).
107. Woei (n 103) 82.
108. *ibid* 83.
109. Shelton (n 28) 972; Hira (n 84) 83; De Ware Tijd, (n 84).
110. Hira (n 84) 86.
111. Shelton (n 28) 972; *ibid* 83; De Ware Tijd (n 84).
112. Waterkant, 'Bouterse per één november weer president van Suriname', *Waterkant*, November 1, 2017, <https://www.waterkant.net/suriname/2017/11/01/bouterse-per-november-weer-president-suriname/> (accessed March 4, 2018).
113. The Amnesty law excludes the events of the Moiwana Massacre, but it contributes to the culture of impunity around human rights abuses see: Amnesty Law 2012 (SB 2012 No 49) (Dutch title: Amnestiewet 2012); NOS, 'Bouterse laconiek over kritiek op wet', NOS, April 2012, <https://nos.nl/artikel/364645-bouterse-laconiek-over-kritiek-op-wet.html> (accessed March 4, 2018).
114. Frank Grootemaat, 'De Surinaamse overheid en het onderzoek naar mensenrechtenschendingen', *Groniek historisch tijdschrift* 157 (2002): 509, 512.
115. Starnieuws, 'Stand van zaken in het 8 december strafproces', *Starnieuws*, November 2017, <http://www.starnieuws.com/index.php/welcome/index/nieuwsitem/44008> (accessed May 2018).
116. Grootemaat (n 114) 519; Amnesty Law 2012 (n 113); NOS (n 113).
117. Lea Shaver, 'The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection', *Washington University Global Studies Law Review* 9 (2012): 639, 675.
118. *ibid.*
119. *ibid*; Laurence Helfer, 'Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes', *Columbia Law Review* 102 (2002): 1832, 1891.
120. International Justice Resource Center, *Caribbean Court of Justice* (International Justice Resource Center), <http://www.ijrcenter.org/regional-communities/caribbean-court-of-justice/#gsc.tab=0> (accessed May 10, 2018).
121. Helfer (n 119) 1888.
122. The Inter-American Commission on Human Rights has been established by the Charter. See Charter of The Organisation of American States (entered into force 13 December 1951) OAS Treaty Series no. 1-C and 61 (1948) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System of 2012, OEA/Ser.L.V/II.82 doc.6 at 245 (2003) Chapter XV; The Inter-American Court of Human Rights has been established by the Convention. See: American Convention (n 11) chapter VIII and art 33. The convention also amends the powers of the Commission. See: American Convention (n 11) chapter VII.
123. Department of International Law, 'Multilateral Treaties', OAS, 2015, [http://www.oas.org/dil/treaties\\_signatories\\_ratifications\\_member\\_states\\_suriname.htm](http://www.oas.org/dil/treaties_signatories_ratifications_member_states_suriname.htm) (accessed May 16, 2018).
124. *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10.89, Inter-American Court Series A No 10 (14 July 1989) para 43.
125. OAS Charter (n 122) art 106.
126. Statute of the Inter-American Commission on Human Rights, (Approved by the Commission at its 109<sup>th</sup> special session held from December 4 to 8, 2000 and amended at its 116<sup>th</sup> regular period of sessions, held from October 7 to 25, 2002) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System of 2012, OEA/Ser.P/IX.0.2/80 at 133 (2003) art 19.
127. Rules of Procedure of the Inter-American Commission on Human Rights, (Approved by the Commission at its 109<sup>th</sup> special session held from December 4 to 8, 2000 and amended at its 118<sup>th</sup> regular period of sessions, held from October 7 to 24, 2003) reprinted in Basic



Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/II.4 rev.9 at 147 (2003) art 23.

128. American Convention (n 11) art 49 and 50.
129. *ibid* art 51.
130. *ibid*.
131. American Convention (n 11) art 62.3.
132. *Baena-Ricardo et al. v. Panama* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 104 (28 November 2003) 72.
133. *ibid* 72.
134. Rules of Procedure of the Permanent Council of the OAS (Adopted by the Permanent Council of the Organization at its regular meeting on October 1, 1980) in CP/doc.1112/80 rev. 4 corr. 1, OEA/Ser.G (2003) art 18.
135. *ibid*.
136. *ibid*.
137. *ibid*.
138. American Convention (n 11) art 65.
139. Magnus Jesko Langer and Elise Hansbury, 'Monitoring Compliance with the Decisions of Human Rights Courts: The Inter-American Particularism', in *Diplomatic and Judicial Means of Dispute Settlement*, eds. Laurence Boisson de Chazournes and others (Martinus Nijhoff Publishers, 2013), 234; Consider collective enforcement mechanisms used in the case of *Gangnam Panday v. Suriname* see: Inter-American Commission on Human Rights, *Annual Report of the Inter-American Court of Human Rights* (OAS, 1995) OEA/Ser.L/V/II.91, 15; Inter-American Commission on Human Rights, *Annual Report of the Inter-American Court of Human Rights*, (OAS, 1998) OEA/Ser.L/V/II.102, 30; Jan Schneider, 'Reparation and Enforcement of Judgments: A Comparative Analysis of the European and Inter-American Human Rights Systems' (PhD thesis, University of Mainz, 2015), 248.
140. Hawkins (n 8) 26–27; Vannuccini (n 8) 240; Par Engstrom and others, *Strengthening the Impact of the Inter-American Human Rights System through Scholarly Research* (Inter-American Human Rights Network, 2016), 2.
141. Inter-American Commission on Human Rights, *Strategic Plan 2017–2021* (OAS, 2017) OEA/Ser.L/V/II.161 Doc 27/17, 10.
142. For example: Inter-American Commission on Human Rights (n 23); Inter-American Commission on Human Rights (n 4).
143. Diego Gill, Rolando Garcia and Lawrence Friedman, 'Media Representations of the Inter-American System of Human Rights', in *Law and Policy in Latin America: Transforming Courts, Institutions, and Rights*, eds. Fortes P and others (Palgrave MacMillan, 2017), 59.
144. *ibid*.
145. For example, the reports are not mentioned in government publications of Suriname, U.S. country reports on human rights practices in Suriname, or in influential news outlets like Starnieuws and the Suriname Herald.
146. These cases are frequently referred to in government publications, U.S. country reports on human rights practices in Suriname, and also in influential news outlets like Starnieuws and the Suriname Herald.
147. Gill (n 143) 59.
148. The Commission also conducted working visits to Suriname in 1987 and in 1982. See: OAS, 'Country Visits', OAS, <http://www.oas.org/en/iachr/activities/countries.asp> (accessed May 11, 2018).
149. Inter-American Commission on Human Rights, 'Press Release: IACHR Concludes Its Working Visit to Suriname', OAS, August 1, 2009 [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/009.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/009.asp) (accessed March 15, 2018).
150. *ibid*.
151. Staton (n 18) 2.
152. *ibid*.
153. *ibid* 2–3.



154. *ibid* 3.
155. *Moiwana Community v Suriname*, 2006 (request for interpretation) Inter-American Court of Human Rights para 5.
156. *Saramaka People v Suriname*, 2008 (request for interpretation) Inter-American Court of Human Rights 1.
157. *ibid* 23–27.
158. For example, in the judgement and in the clarification of the judgement, the Court clearly stated that the State is obliged to obtain the consent of the Saramaka People before handing out concessions to third parties. In the monitoring report, it became clear that Suriname violated this obligation and failed to consult and obtain the consent of the Saramaka People before handing out concessions to the company 'IAMGOLD'. See *Saramaka People v Suriname*, 2013 (Monitoring Report) Inter-American Court of Human Rights 13; *Saramaka People v Suriname*, 2008 (request for interpretation) Inter-American Court of Human Rights 11.
159. *Baena-Ricardo et al. v. Panama* (n 132) 72; Michael Camilleri and Viviana Krsticevic, 'Making International Law Stick: Reflections on Compliance with Judgements in the Inter-American Human Rights System', in *Protección Internacional de Derechos Humanos y Estado De Derecho*, ed. González Ibanez Joaquín (Grupo Editorial Ibáñez, 2009), 240; International Justice Resource Center, 'Inter-American Human Rights System | International Justice Resource Center', *International Justice Resource Center*, [http://www.ijrcenter.org/regional/inter-american-system/#The\\_Special\\_Mechanisms\\_of\\_the\\_Inter-AmericanCommission\\_on\\_Human\\_Rights](http://www.ijrcenter.org/regional/inter-american-system/#The_Special_Mechanisms_of_the_Inter-AmericanCommission_on_Human_Rights) (accessed February 1, 2018).
160. Hawkins (n 8) 28.
161. Inter-American Court of Human Rights, *Annual Report of the Inter-American Court of Human Rights* (OAS, 2010) OEA/Ser.L/V/II Doc 5, 10.
162. Rules of Procedure of The Inter-American Court of Human Rights (Approved by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009) reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System of 2012, OEA/Ser.L/V/I.4 rev.9 at 196 (2003) art 69.
163. *ibid*.
164. *Moiwana Community v Suriname*, 2010 (Monitoring Report) Inter-American Court of Human Rights; *Saramaka People v Suriname*, 2011 (Monitoring Report) Inter-American Court of Human Rights.
165. For example, in the *Moiwana* case, the State argued that it had fulfilled its obligation to provide the community with remains of the victims by simply locating the remains. Contrastingly, the community argued that these remains should be identified. The Court clarified that the State should indeed take scientific measures to identify the remains see *ibid* para 3.
166. *ibid* 25.
167. *ibid* 4.
168. Hawkins (n 8) 25–26.
169. Inter-American Court of Human Rights, (n 9).
170. *ibid*.
171. *ibid*.
172. Shaver (n 117) 664; Vannuccini (n 8) 243.
173. *Gangaram Panday v. Suriname* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 16 (21 January 1994) para 42.
174. See Inter-American Commission on Human Rights (n 139) 15; Inter-American Commission on Human Rights (n 139) 30.
175. Langer (n 139) 235; Collective enforcement has been authorised against Haiti on the basis of articles 33, 52, 53, 54, 103 and 106 of the OAS Charter see: Inter-American Juridical Committee, 'Democracy in the Inter-American System' (OAS 1995) CJI/RES.I-3/95 4.
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191. Amnesty Law 2012 (n 113); Hira (n 85) 7.
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193. De Ware Tijd (n 84).
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221. As discussed in Chapter 2 Section 1.B.iii of this paper.
222. This dynamic is similar to what currently prevents collective enforcement at the OAS GA. See chapter 2 Section 1.B.iii of this paper.
223. OAS Charter (n 122) art 106: 'There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights'; More specifically, the commission has the authority to: 'Organize and hold visits, lectures, seminars and meetings with government representatives, academic institutions, nongovernmental organizations and others for the purpose of communicating

- information and promoting a broad understanding of the work of the inter-American human rights system'. From OAS, 'Mandate and Functions of the Commission', OAS, August 1, 2009, <http://www.oas.org/en/iachr/mandate/functions.asp> (accessed April 10, 2018).
224. On the link between poverty and indigenous land rights: Department of State (n 4); one of the core values of the EU is human rights see: Consolidated Version of the Treaty on European Union [2008] OJ C115/13 preamble, art 2, and 3; The EU has specifically committed to assisting the OAS in the promotion of human rights: Papademetriou (n 220).
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  229. Courtney Hillebrecht, 'The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter-American Human Rights System', *Human Rights Quarterly* 34 (2012): 959, 959.
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  231. Huneeus (n 13) 496.
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  239. *ibid.*
  240. Convention for the Protection of Human Rights and Fundamental Freedoms Protocol No. 16 (European Convention on Human Rights, as amended) Council of Europe Treaty Series No. 214; For a discussion of the advisory mechanism, not to be confused with the preliminary reference procedure of the European Court of Justice (ECJ), see: Thomas Voland and Britta Schiebel, 'Advisory Opinions of the European Court of Human Rights: Unbalancing the System of Human Rights Protection in Europe?', *Human Rights Law Review* 17 (2017): 73, 80.
  241. *ibid* 74; On further benefits of the judicial dialogue see: Johanna Rinceanu, 'Judicial Dialogue between the European Court of Human Rights and National Supreme Courts', in *Europe in Crisis: Crime, Criminal Justice, and the Way Forward*, eds. Spinellis CD and others (Essays in honour of Nestor Courakis; Vol. II: Essays in English, French, German and Italian, Ant. N. Sakkoulas Publishers LP, 2017). Discussing how Protocol No. 16 stimulates the judicial dialogue between the ECHR and Supreme Courts which eases tensions between the Courts.
  242. Voland (n 240) 74.
  243. Viviana Krsticevic, 'Reflexiones Sobre La Ejecucion de Sentencias de Las Decisiones Del Sistema Interamericano de Protección de Derechos Humanos', in *Implementación de las decisiones del Sistema Interamericano de Derechos Humanos: Jurisprudencia, normativa y experiencias nacionales*, eds. Liliana Tojo and Viviana Krsticevic (CEJIL, 2007), 46. Discussing the *La Tablada* Case in front of the Supreme Court of Argentina.

244. Grondwet van de Republiek Suriname (S.B. 1992 No 38) art 105.
245. Kambel (n 100) 75.
246. Decree Principles of Land Policy (n 42) art 4.1.
247. Michael Bobek, 'The Effects of EU Law in the National Legal Systems', in *European Union Law*, eds. Catherine Barnard and Steve Peers (Oxford University Press, 2014), 154–5.
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249. Huneeus (n 13) 521.
250. Grootemaat (n 114) 512.
251. The head of the army, Bouterse, committed a military coup by simply calling the democratically elected president of that time, to inform him that the army would be taking over the government see: *ibid* 513.
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253. Consider the Amnesty Law 2012 (n 113).

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## Notes on contributor

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