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INTERNATIONAL LAW AND PRACTICE

Indigenous Land Rights and Caribbean Reparations Discourse

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Abstract
In March 2014, a meeting of CARICOM states approved a ten-point plan of the Caribbean Reparations Commission to achieve reparatory justice for the victims of slavery, genocide and racial apartheid in the Caribbean. With assistance from the London-based law firm Leigh Day, the aim is to reach a negotiated settlement with the governments of Britain, France and the Netherlands. What makes this case different from previous discussions on Caribbean reparations is that the claim includes an indigenous component, with 'native genocide' included in the title and an 'indigenous peoples' development program' included within the ten-point plan for reparations. Yet reparations are problematic in the Caribbean context due to the ongoing violation of indigenous rights internally. This article analyzes the various dimensions of the Caribbean reparations discourse with regard to contemporary indigenous communities in the region. It highlights the problems at regional level with regard to state responsibility and indigenous rights, particularly in relation to land, and argues that this presents a problematic element in the claim due to the fact that violations are being perpetrated against indigenous peoples by the same states who are representing them in the Caribbean Reparations Commission. Finally, it discusses the onus on European governments to acknowledge past wrongs and the potential of 'cultural reparations' to contribute to the Caribbean reparatory justice programme more generally.

Keywords
Caribbean reparations; cultural heritage; indigenous peoples; land rights; state responsibility

1. Introduction

In March 2014, a meeting of the Caribbean Community (CARICOM) states approved the ten-point plan of the Reparations Commission to achieve reparatory justice for the victims of slavery, genocide and racial apartheid in the Caribbean.[1] With assistance from the London-based law firm Leigh Day, the initial aim is to reach a

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1 The Caribbean Commonwealth was established in 1973 to promote economic integration and co-operation among its members, and now includes 15 Caribbean nations and dependencies. See www.caricom.org.

negotiated settlement with the governments of Britain, France and the Netherlands,[2] the former colonial powers in the jurisdictions in question. There can be no doubt that the depths of depravity wrought during the colonial period merit reparation, and while the legal aspects of the case are indeed problematic, this does not mean that the case lacks value in bringing attention to the legitimacy or moral dimensions of the claims in question. As former Justice Guha Roy of Calcutta remarked:

> [t]hat a wrong done to an individual must be redressed by the offender himself or by someone else against whom the sanction of the community may be directed is one of those timeless axioms of justice without which social life is unthinkable.[3]

Indeed, many lawsuits have been precursors to negotiated settlement. David Scott observes a 'contemporary regional and global conjuncture in which reparations appears increasingly to be a compelling language of political criticism and mobilization'.[4] Reparations discourse therefore represents more than a legal avenue for remedying past wrongs; it also provides a vocabulary for addressing issues of transitional justice more broadly. However, this article does not deal with the Caribbean reparations case in its entirety, nor does it offer an investigation into the feasibility of CARICOM's claims. Given the already existing body of literature on the legal, moral and political dimensions to reparations for the transatlantic slave trade,[5] the focus of this article instead is on the current situation of Caribbean indigenous peoples in the context of the recent call for reparations. Not only does this case represent the first effort by Caribbean states to claim reparations collectively; it also represents the first time that reference to contemporary indigenous communities has been included within Caribbean reparations discourse more generally. On the surface, this inclusion appears to acknowledge the relatively neglected chapter of indigenous history of the region.[6] On closer inspection, however, the debate has almost exclusively focused on slavery and overlooked the indigenous peoples component of the case.[7] Indeed, it can be surmised that CARICOM governments have included

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[2] The ten-point plan approved by CARICOM in March 2014 refers only to Britain, France and the Netherlands, although other former colonial powers have been mentioned in previous briefs, namely: Spain, Portugal, Norway, Sweden and Denmark. See CARICOM Reparations Commission Press Statement, 10 December 2013, available at www.archive.caricom.org/jsp/pressreleases/press_releases_2013/pres285_13.jsp.

[3] S.N. Roy, 'Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law?', (1961) 55 *American Journal of International Law* 863, at 863.

[4] D. Scott, 'Preface: Debt, Redress.', (2014) 18 *Small Axe* vii–x.

[5] See, for example, M. du Plessis, 'Historical Injustice and International Law: An Exploratory Discussion of Reparation for Slavery', (2003) 25 *Human Rights Quarterly* 624–59; B. Fernne (ed.), *Colonialism, slavery, reparations and trade: remedying the past?* (2012); R. Robinson, *The Debt: What America Owes to Blacks* (2000); B. Bittker, *The Case for Black Reparations* (1973, 2003). See also S. Kushnar (ed.) 'Reparations for Slavery and Justice', (2002–2003) 33 *University of Memphis Law Review*, 277 special issue. In relation specifically to the Caribbean, see H. Beckles, *Britain's Black Debt: Reparations for Caribbean Slavery and Native Genocide* (2013), which built on the earlier work of E. Williams, *Colonialism and Slavery* (1944).

[6] Much has been written on the extinction narrative and indigenous exile in the Caribbean. See, for example, M. Newton, 'Returns to a Native Land: Indigeneity and Decolonization in the Anglophone Caribbean', (2013) 17 *Small Axe* 108–22; T. Castanha, *The Myth of Indigneous Caribbean Extinction: Continuity and Reclamation in Boriken* (2011); M. Forte, *Ruins of Absence, Presence of Caribs: (post)colonial representations of aboriginality in Trinidad and Tobago* (2005).

[7] This observation is made from an analysis of newspaper articles from the six CARICOM states with self-identifying indigenous communities: Dominica, St. Vincent, Trinidad of the islands and Belize, Guyana and Suriname on the mainland. It is also due to the increasing number of conferences and events dealing with

indigenous peoples within the call for reparations without sufficiently thinking it through.

This article is structured as follows: Section 2 outlines the background and content of the Caribbean call for reparations encapsulated in the ten-point action plan put forward by CARICOM. Section 3 briefly charts the various ways in which indigenous reparations are provided for in international law and relates it to the Caribbean context. The fourth and main part of the article then highlights the problems at regional level with regard to state responsibility and indigenous rights, which complicate the current debate and raise a question mark over the indigenous dimension to the claim. Here, a country-by-country analysis of the situation of indigenous rights in the Caribbean is provided. It is shown how indigenous rights violations are taking place in those same CARICOM member states seeking reparations for native genocide and land appropriation, and argues that the issue of international legal responsibility is one that centers on the contemporary state first and foremost. It would be remiss, however, to exclude any reference to the moral obligation of European governments to acknowledge their role in past wrongs committed against the indigenous peoples of the region. The last section, therefore, discusses this onus and the potential of cultural heritage programmes in contributing to reparatory justice for the Caribbean more broadly.

Before beginning, it must be acknowledged that the use of the term indigenous in the Caribbean is not straightforward. In a region with a complex and violent colonial history and a multicultural, multiethnic, postcolonial present, where the distinctions between indigenous and non-indigenous are not so apparent, drawing a distinction between the two requires clarification. The departure point for 'indigenous' in this analysis is taken from a number of sources: (i) the language of United Nations human rights bodies dealing with, inter alia, indigenous rights, racial discrimination, cultural rights and land rights, which includes indigenous and Afro-indigenous communities who self-identify as such; (ii) the language of the Caribbean Reparations Commission itself, which draws a distinction by specifically mentioning native genocide, indigenous peoples' development and land appropriation together;[8] and (iii) the language of Caribbean national population census statistics. It must also be stated that many communities not identifying as indigenous share similar situations of land insecurity and may feel excluded by indigenous rights discourse. As noted by Melanie Newton, the term indigenous itself in the Caribbean is widely contested.[9] This is duly recognized, although a more in-depth exploration of the problem lies beyond the scope of this analysis. 'Indigenous' in this analysis therefore refers mainly to those communities self-identifying as descendants of the peoples inhabiting the Caribbean prior to the arrival of Europeans.[10]

Caribbean reparations which focus almost exclusively on the transatlantic slave trade and the legacies of slavery. See for example the themes for 'Repairing the Past, Imagining the Future: Reparations and Beyond' international conference, University of Edinburgh in collaboration with Wheelock College, Boston, 5–7 November 2015.

8 See note 16 *infra*.

9 Newton, *supra* note 6.

10 In addition to Afro-indigenous (such as the Garifuna) and Maroon communities (such as the N'djuka).

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2. The Caribbean reparations commission

The Caribbean reparations initiative began in earnest at the thirty-forth meeting of CARICOM in July 2013, when heads of governments agreed to establish national reparations committees with a view to establishing the moral, legal and ethical case for the payment of reparations for native genocide, the transatlantic slave trade and a racialized system of chattel slavery.[11] The heads of government also agreed to establish the CARICOM Reparations Commission (CRC), comprising the chairs of the national committees and a representative from the University of the West Indies. The Commission stated its intention to open a dialogue with European states with a view to seeking their support for the eradication of the legacies affecting development efforts in the Caribbean region.[12] While the reparations debate is not new, the catalyst for the current initiative can be traced to the United Nations World Conference against Racism, Discrimination, Xenophobia and Related Intolerance, which took place in Durban in 2001.[13] The question of reparations emerged as one of the most divisive issues of the conference, and although it was 'bracketed' and no formal claims were made, the issue grew in momentum from Durban onwards, with various claims being made by individual Caribbean states to former European colonial powers since then.[14]

In March 2014, less than a year after its first agreement, CARICOM states approved a ten-point action plan for reparations, which calls for a number of measures to achieve reparatory justice for victims of slavery and native genocide. These include: a full formal apology from former colonial governments; repatriation; an indigenous peoples' development programme; cultural institutions; programmes to support public health; illiteracy eradication; an African knowledge programme; psychological rehabilitation; technology transfer; and debt cancellation.[15] The 'indigenous development' outlined in point 3 is linked to the historical misappropriation of lands, current landlessness, and the marginalization of indigenous peoples. It reads: 'genocide and land appropriation went hand in hand. A Community of over 3,000,000 in 1700 has been reduced to less than 30,000 in 2000. Survivors remain traumatized, landless, and are the most marginalized social group within the region.'[16] Land security is certainly one of the most pressing issues facing contemporary indigenous

[11] CARICOM Reparations Commission Press Statement, delivered by Professor Sir Hilary Beckles, 10 December 2013, available at www.archive.caricom.org/jsp/pressreleases/press_releases_2013/pres285_13.jsp.

[12] Ibid.

[13] Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban 31 August – 8 September 2001, UN GAOR, at 5–27, UN Doc. A/CONF.189/12 (2002). For a critical view of the Conference, see C.N. Camponovo, 'Disaster in Durban: The United Nations World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance', (2003) 34 *Geo. Wash. Int'l L. Rev.* 659.

[14] For example, in 2003, President Aristide of Haiti claimed the equivalent of FF90 million in damages from France. See 'Compensating the past: debating reparations for slavery in contemporary France', (2015) 19(4) *Contemporary French and Francophone Studies* 420–9.

[15] The ten-point plan for reparations approved by CARICOM is available at www.leighday.co.uk/News/2014/March-2014/CARICOM-nations-unanimously-approve-10-point-plan-.

[16] Ibid. This premise rests to a large extent on the work of Hilary Beckles, who notes that, 'between 1492 and 1730, the native population of the Lesser Antilles fell by as much as 90 per cent'. See *supra* note 5, at 24. Beckles draws on Craton for this assumption, M. Craton, *Testing the Chains, Resistance to Slavery in the British West Indies* (1982).

communities in the region, without which any meaningful development is hard to envisage. Yet land is problematic in the context of reparation, since it falls within the jurisdiction and responsibility of the newly independent and successor states, in this case those CARICOM member states with self-identifying indigenous communities: Belize, Guyana and Suriname on the mainland, and Dominica, St. Vincent and Trinidad in the islands.[17] What this section of the reparations plan calls for then, is an indigenous peoples development programme based on the premise that said indigenous peoples were dispossessed of their lands and continue to lack land security in the present day. While the role of European powers in the original dispossession of lands is not in question, and while indigenous peoples' development is about more than just land, the simple fact is that dispossession is continuing, irrespective of the reparations discourse. This raises issues of international legal responsibility on the part of modern CARICOM states, both as successor states and as newly independent states with international legal obligations of their own.

3. Indigenous reparations, international law and the Caribbean context

Traditionally, reparations for indigenous peoples may be obtained through one of two legal means: the first is a human rights claim brought by victims directly against the responsible state. Indeed, most cases involving reparations for indigenous peoples have taken this form, and interestingly, the most significant jurisprudence on indigenous reparations has been developed by the Inter-American Court of Human Rights (IACtHR), many of whose judgements concern Caribbean states and reparations for various violations committed in the present day (to be discussed in further detail below). Almost all of the main international human rights treaties provide for the right to an effective remedy or recourse.[18] The second avenue for seeking reparations for indigenous peoples is an inter-state claim (such as that of

[17] It must be noted that there are communities in other CARICOM states – such as Jamaica – who self-identify as indigenous, although there does not appear to be a consensus between the communities themselves on this. The term 'indigenous' in this article is based on the premise of self-identification as such.

[18] See Art. 25, 1969 American Convention on Human Rights, 1144 UNTS 123; Art. 2(3), 1966 International Covenant on Civil and Political Rights, 999 UNTS 171; 1966 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85; Art. 13, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 222; 1981 African Charter on Human and Peoples' Rights, 1520 UNTS 217. The International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ILC Articles) provide more elaborate guidance on the content of repair. ILC Arts. 30 (cessation and non-repetition) and 31 (reparation) provide that the state responsible for an internationally wrongful act is under an obligation to i) cease the act, if it is continuing; ii) offer appropriate assurances and guarantees of non-repetition; and iii) make full reparation for the material and moral injuries caused by the act. Art. 34 of the ILC Articles further states that full 'reparation for the injury caused by the intentionally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination'. The elements of reparation contained in the ILC Articles are also contained in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles). The UN General Assembly adopted the Basic Principles in 2005 and they have since been incorporated into other treaty systems, including and most notably, the American Convention on Human Rights.

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CARICOM) based on the principles of state responsibility and diplomatic protection. This stems from Vattel's early maxim that:

> whoever uses citizens ill, indirectly offends the state which is bound to protect this citizen; and the sovereign of the latter should avenge his wrongs, punish the aggressor, and, if possible oblige him to make full reparations; since otherwise this citizen would not obtain the great end of the civil association ....[19]

In this case, CARICOM states are claiming reparations on behalf of their citizens towards other states for historical wrongs, the economic, social and cultural legacies of which are still visible today.[20]

Federico Lenzerini argues that in relation to indigenous peoples, there exists a third, albeit rather exceptional, scenario for reparations which envisages a type of relationship similar to that arising between states and is based on the premise that indigenous peoples never lost sovereignty over their ancestral lands.[21] Treaties concluded between native peoples and colonizers are often considered probative of such sovereignty. If we apply this third scenario to the Caribbean, there is not an extensive wealth of treaty rights to rely on as in the US, for example, although there are a few exceptions: The 1660 Treaty initiated by the French Administrator of St. Christopher, Du Poincy, and signed by 15 of the 'most renown Caribs of St. Vincent and Dominica and those who have been driven to the east of Martinique', guaranteed possession of Dominica and St. Vincent to the indigenous people on the condition that they abandoned their claims to other islands.[22] The terms of the treaty were also accepted by the British but were later violated by both European parties.[23] In subsequent treaties, clauses determined what could be left to the native populations, implying, as Honychurch notes, that the rest was legitimately possessed.[24] The 1748 Treaty of Aix-la-Chapelle paved the way for British and French claims of ownership over the islands and ignored indigenous claims enshrined in earlier treaties. Of course, one of the ironies of referencing early law to bolster indigenous claims is the structural bias inherent in colonial law itself. The issue with the aforementioned treaties is that while the 1660 treaty was indeed signed by both European and indigenous parties, the following treaties reaffirming its stipulations were not. On the Caribbean mainland, various treaties that were entered into between the Dutch or British and indigenous populations are still referenced in legal fora today. For example, the 1762 Treaty between the Dutch and the Saramaka was alluded to in the 1993 *Aloeboetoe* case before the IACtHR, which concerned reparations for the killing

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19 Cited in D. Shelton, 'The Present Value of Past Wrongs', in F. Lenzerini (ed.), *Reparations for Indigenous Peoples* (2008), 47–72, at 58.

20 Charting the historical data on the legacies of British slavery is the subject of a UCL project *Legacies of British Slave-ownership*, available at www.ucl.ac.uk/lbs/. The role of the state, the role of the family and the role of the enslaved are examined in this project.

21 F. Lenzerini, 'Reparations for Indigenous Peoples in International and Comparative Law', in Lenzerini *supra* note 19, 3–26, at 11.

22 J.B. Du Tertre, *Histoire generale des Antilles habitées par les françois: tome II, contenant l'histoire naturelle* (1667), 573–8.

23 L. Honychurch, *Carib to Creole: A History of Contact and Culture Exchange*, DPhil Thesis (1997) 102 [accessed at the Public Library, Roseau, Dominica].

24 Ibid.

of seven Saramaka maroons by the Suriname National Army in 1989.[25] In this case, the Inter-American Commission argued that the Saramaka had acquired their rights on the basis of said treaty with the Netherlands, which recognized the Saramaka's local authority over their territory, and that consequently the obligations under the treaty were still applicable by state succession.[26] However, the Court stated that if it were an international treaty, it would be invalid today because it would be contrary to the rules of *jus cogens superveniens* since it provides for the purchase of slaves, and therefore cannot be invoked before an international court of human rights.[27] It must be pointed out, however, that peremptory norms of international law are not so fundamental that they will render a whole treaty void because of one conflicting provision or rule of customary international law. [28] The Inter-American Court did not elaborate further on the treaty in this instance, but in many situations where treaties were entered into with the indigenous populations, responsibility for those treaties has been found to fall to the newly independent or successor states. This principle emerged from cases in former British colonial territories, which held that treaties entered into by the Crown did not remain the obligations of Her Majesty's Government in England but devolved to the newly independent state. For example, in the much cited *New Zealand Maori Council* v. *A-G of New Zealand*,[29] it was decided by the Judicial Committee of the Privy Council that the Crown's Treaty obligations as set out in the Treaty of Waitangi Act were obligations of the government of New Zealand and not the government of England. Similar judgments have been reached in other jurisdictions.[30] Nevertheless the situation of the Caribbean differs considerably due to the simple fact that unlike other former colonies, particularly settler societies such as the US, Canada, Australia or New Zealand, the majority of the region's population are not descendants of the former colonial settlers but of predominantly African descent – a community also severely mistreated by the colonial administration. This means that assessing the implications of treaty rights in present populations is problematic and also morally questionable, as there is no continuity between the administrations that would have passed legislation relating to indigenous matters in the colonial period and those of newly independent states. Indeed, this fact was recognized by the British High Court in the recent case concerning the torture of Kenyans by British forces during the Mau Mau uprising in the 1950s.[31] The Britsh government attempted to argue in court that the liabilities that had arisen had been transferred to the Kenyan Republic upon independence and that therefore there was no claim. The High Court disagreed and held that there was clearly an arguable case to

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25 *Case of Aloeboetoe et al. v. Suriname*, Inter-Am Ct HR, Judgment of 10 September 1993. Series C, No. 15.
26 Ibid., para. 56.
27 Ibid., para. 57.
28 E. Kambel and F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname* (1999) International Work Group for Indigenous Affairs Document No. 96, at 63.
29 [1994] 1 ALL ER 633, at 629. See also M. Palmer, 'The Treaty of Waitangi in Legislation', [2001] *New Zealand Law Journal* 207.
30 For example, *R v. Secretary of State for Foreign Affairs and Commonwealth Affairs ex parte Indian Association of Alberga* [1982] 2 ALL ER 118.
31 *Mutua and others v. Foreign and Commonwealth Office* ['Mau Mau case'], [2012] EWHC 2678 (QB).The Mau Mau uprising, also known as the Kenya Emergency, took place between 1952 and 1960, when insurgents were fighting for independence from Britain.

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be answered, ultimately finding in favour of the claimants.[32] The difference between the Mau Mau case and the current one, though, is that the acts committed during the Kenyan uprising were well documented incidents with survivors and immediate family, whereas the case for reparations against former colonial governments for native genocide is much more problematic, mainly due to the fact that it took place so long ago (inter-temporal principle) and over a long period of time.

The discussion on the erroneous application of doctrines of discovery must also be mentioned here. The invalidity of titles of acquisition used by various colonial administrations for claiming sovereignty over indigenous lands has been recognized by international and national courts since the *Western Sahara* case.[33] In the landmark *Mabo* v. *Queensland* ruling, the Australian High Court held that when the Imperial Crown acquired sovereignty over Murray Island in 1879, the land rights of the Meriam peoples had not been extinguished.[34] Likewise, the Canadian Supreme Court affirmed in *Delgamuukw* v. *British Colombia* that native title is a legal interest in the land itself and can compete with other types of proprietary interest.[35] More recently, the Inter-American Court has treated the issue of *terra nullius*. In *Mayagna (Sumo) Community of Awas Tingni* v. *Nicaragua*, the Court referred to a passage of the Inter-American Commission of Human Rights asserting 'an international customary international law norm which affirms the rights of indigenous peoples to their traditional lands'.[36] However, the problem is that land claims are often met with the test that the people in question retain their traditional lands in order to recover them. As Shelton points out, this has the paradoxical consequence that the more successful a state has been in dispossessing an indigenous population, the less likely it is that they will be able to recover those same lands.[37] Thus the recognition of the unlawfulness of titles of conquest does not help the stringent and often essentialist mechanisms of law to prove continuity with native lands, and this represents one of the many leftovers of colonialism in the legal order.

Despite these limitations, the role played by international law in Caribbean indigenous affairs today differs substantially from the way in which it did in the past. While early international law was used as an 'instrument of empire', it now represents what Bulkan refers to as a potential 'vehicle for change' for the very people it had previously been utilized to subvert.[38] Indeed, Niezen notes that the language of international norms is increasingly relied upon by communities and groups in an

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32 *Ndiki Mutua and others v. Foreign and Commonwealth Office* ['Mau Mau case'], Judgment of 5 October 2012, [2012] EWHC 2678 (QB), para. 95.

33 In 1975 the International Court of Justice declared that the Western Sahara was not a *terra nullius* at the time of Spanish colonization since it 'was inhabited by peoples which, if nomadic, were socially and politically organized tribes and under chiefs competent to represent them'. Western Sahara, Advisory Opinion of 16 October 1975 [1975] ICJ Reports 12, para. 81.

34 *Mabo v. Queensland* (No 2) [1992] HCA 23; (1992) 175 CLR 1 (3 June 1992).

35 *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010, 1997 Carswell BC 2358.

36 *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* [2001] Inter-Am Ct HR (ser C) No. 79, at 71.

37 Shelton, *supra* note 19, at 69.

38 L. Benton and B. Strauman, 'Acquiring Empire by Law: Roman Doctrine to Early Modern European Practice', (2010) 28 *Law and History Review* 1. See also A. Bulkan, 'From instrument of Empire to vehicle for change: the potential of emerging international standards for indigenous peoples of the Commonwealth Caribbean', (2011) 37 *Commonwealth Law Bulletin* 463–89. The latter deals with the mainland Caribbean (Suriname, Belize and Guyana) and not the islands.

attempt to control the abuse of power by the state.[39] As already alluded to, it has been international courts and national courts upholding international standards which have proved most progressive in asserting indigenous rights in the Caribbean. More to the point, these cases involve perpetrations of wrongs against indigenous peoples by the current state, i.e., by those same states claiming reparations on behalf of indigenous peoples.

4. State responsibility and ongoing violations of indigenous rights in the Caribbean

The issue of state responsibility raises an important point in the current claim for reparations. While former colonial powers bear the moral responsibility for original dispossession and land appropriation, the reality is that ongoing dispossession and land rights violations are being perpetuated in the contemporary post-colonial context, and post-colonial governments have an international legal responsibility to address this issue. The evidence to support this supposition can be found in the case law of the IACtHR, reports of UN bodies, particularly the Committee overseeing the Convention on the Elimination of Racial Discrimination (CERD Committee), and more recently, the Caribbean Court of Justice, all of which place a firm obligation on current Caribbean governments to recognize the land rights of indigenous peoples, cease the ongoing violations and repair the violations that have occurred. Particularly in the Caribbean mainland – that is, Belize, Guyana and Suriname – where resource extraction and mining activities are prevalent in areas traditionally occupied by indigenous and Afro-indigenous communities, the situation remains precarious due to lack of title, diminished decision-making powers and failure to implement binding judgments. What follows is an outline of the current situation of indigenous peoples in each of these states, combined with an overview of the international obligations pertaining to them.

The situation of Suriname's indigenous peoples is perhaps the most precarious of all CARICOM member states. This is due to an entire absence of legal provisions recognizing and protecting indigenous peoples' rights to access and own traditional territories and resources, despite Suriname's international commitments under, inter alia, the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Convention on the Elimination of Racial Discrimination, all of which recognize the right of indigenous peoples to their lands and resources.[40] In 2004, the CERD Committee found that routine violations of

[39] R. Niezen, *Public Justice and the Anthropology of Law* (2010), 3. See also C. Gearty, 'Do Human Rights Help or Hinder Environmental Protection?', (2010) 1 *Journal of Human Rights and the Environment* 7.

[40] See in particular Human Rights Committee, General Comment No. 23 concerning Article 27 (Fiftieth session, 1994), UN Doc. HRI/GEN/1/Rev.1 at 38 (1994), para. 7; Committee on the Elimination of Racial Discrimination, 'General Recommendation No 23: Indigenous Peoples', 18 August 1997, UN Doc. HRI\GEN\1\Rev.6 (2003), at 212. Article 21 of the American Convention on Human Rights protects the land rights of indigenous peoples and has been interpreted broadly by the Inter-American Commission and Court to include indigenous customary tenure and collective title over ancestral lands. The Court has reiterated that, 'the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival' [I/A Court H.R., *Case of the Mayagna*

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indigenous land rights were taking place in Suriname,[41] and despite two judgments handed down by the IACtHR in relation to the Moiwana and Saramaka communities in 2005 and 2007 respectively,[42] Suriname has failed to implement the necessary legislation. The Moiwana judgment concerned the massacre in 1986 by armed forces of Suriname of over 40 men, women and children of the N'djuka Maroon village of Moiwana. Those who escaped the attack fled into the surrounding forest and then into exile or internal displacement. Suriname was found in violation of the right to humane treatment, the right to property, the right to freedom of movement and residence, and the right to judicial protection.[43] Although the massacre took place before Suriname's ratification of the American Convention on Human Rights and its recognition of the Court's jurisdiction, the alleged denial of justice and displacement of the Moiwana community occurred subsequent to its ratification of the treaty and were thus applicable. Suriname was ordered to make reparations to the community, including recovery of human remains, guaranteeing the property rights of the community in relation to their traditional territories, and compensation.[44] More recently, in 2015, the Inter-American Court issued its judgment in the case of the *Kaliña and Lokono Peoples* v. *Suriname*.[45] The case involved a series of violations of the rights of eight Kaliña and Lokono communities in the Lower Marowijne River, namely: lack of recognition of indigenous land rights; lack of recognition of indigenous peoples' juridical personality, which prevents them from protecting their collective property; and failure to provide adequate judicial remedies to protect indigenous property rights. Since Suriname has no national legislation governing indigenous peoples' land or other rights, current laws permit the granting of mining and logging concessions in indigenous occupied territories, which are classified as state lands. As noted by the Court, this lack of recognition:

> has been accompanied by the issue of individual property titles to non-indigenous persons; the granting of concessions and licenses to carry out mining operations; and the establishment and continuation of three nature reserves in part of their ancestral territory. The rights violations of the right to collective property resulting from this situation continue to this day.[46]

The Inter-American Commission had issued its merits in the case in April 2013 and referred the case to the Court in 2014. Specifically, the Commission requested the Court 'to declare the international responsibility of the State for the violations described in its Merits Report and that it order the State, as measures of reparation, to comply with the recommendations set out in that document'.[47] The Court found that

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(Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment of January 31, 2001. Series C No. 79, para. 149].

41 UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Suriname, 28 April 2004, CERD/C/64/CO/9.

42 *Moiwana Village v. Suriname*, Inter-Am Ct HR, Series C. No. 124, (15 June 2005) and *Case of the Saramaka People v. Suriname*, series C No. 172, (28 November 2007).

43 *Moiwana Village v. Suriname*, Inter-Am Ct HR, Series C. No. 124 (15 June 2005), at 86.

44 Ibid., at 87.

45 *The Kaliña and Lokono Peoples v. Suriname*, Case 198-07, Report No. 76/07, Inter-Am Ct HR, OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2007).

46 *The Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015, Series C. No. 309, at para 1.

47 Ibid., para 3.

Suriname was indeed responsible for the violation of the recognition of juridical personality, the right to collective property and political rights, and the right to judicial protection.[48] Among other things, Suriname was ordered to delimit and demarcate the traditional territory of the Kaliña and Lokono peoples, as well as grant them collective title and ensure their effective use and enjoyment thereof. The other orders related to the recognition of indigenous and tribal peoples as a whole in Suriname.[49] It remains to be seen whether this latest judgment will affect legislative reform in Suriname.

In contrast to Suriname, Guyana has the most extensive legislation governing indigenous rights in the Caribbean, since the adoption of the Amerindian Act in 2006.[50] However, a 2009 High Court judgment placed an onerous burden of proof for acquiring indigenous title to land,[51] and prior to that, the CERD Committee issued a critical report on the 2006 Act.[52] 'Traditional right' is narrowly defined in the Act as restricted to any 'subsistence right or privilege',[53] thus perpetuating essentialist stereotypes of indigenous peoples and attempting to limit the extent to which untitled communities can exploit resources. Another problematic aspect of the 2006 Act is the power of the state to override the refusal of consent by an indigenous village to largescale mining activities on its titled lands.[54] As pointed out by one country report, Guyana's indigenous communities are not trying to eliminate mining but rather gain some control over how, when and where mining is conducted, and to have the right to exclude or admit outsiders – rights that other land owners in Guyana have over their property.[55] More recently, in 2013, the Guyanese High Court ruled in favour of a miner who gained concessions on titled indigenous lands.[56] The ruling states that miners who obtained permits prior to the Amerindian Act of 2006 are not bound by its provisions and therefore do not have to seek permission from indigenous communities before carrying out works on village land. Guyana's indigenous communities mostly inhabit the interior of the country, and depend on forest resources for their livelihoods. This ruling is the third such case with negative implications for the issue of consultation and prior informed consent, making the enactment of the Amerindian Act and the consequent recognition of title for many villages almost irrelevant if those villages had been subject to project permits prior to 2006. Like Suriname, Guyana is also party to a number of human

48 Ibid., paras. 114, 142, 160, 198, 212, 258 and 268 respectively.
49 Ibid., para. 305.
50 Amerindian Act, #13 of 2006.
51 *Thomas and Arau Village Council v. Attorney General of Guyana and another*, No 166-M/2007, HC of Guyana, unreported decision dated 30 April 2009.
52 UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Guyana, 4 April 2006, CERD/C/GUY/CO/14.
53 Amerindian Act, #13 of 2006, s. 2.
54 Ibid., s. 50.
55 L.E. Susskind and I. Anguelovski (eds.) *Addressing the Land Claims of Indigenous Peoples*, Program on Human Rights and Justice, Massachusetts Institute of Technology, 2008, at 68.
56 *Chang v. Guyana Geology & Mines Commission & Isseneru Village Council*, Oral judgment of Justice Diane Insanally, delivered 17 January 2013.

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rights treaties that provide for minimum standards in relation to the treatment of indigenous peoples.[57]

In Belize, where international law has been successfully invoked before national courts, legal reforms have not resulted in effective protection of indigenous land rights on the ground. In October 2007, the Supreme Court of Belize ruled that the national government must recognize Mayan customary land tenure and abstain from any act that might prejudice the use or enjoyment of their land.[58] The Court recognized that 'both customary international law and general principles of international law would require that Belize respect the rights of its indigenous peoples to their lands and resources'.[59] However, the government interpreted the judgment narrowly as only applying to the two villages that had taken the case. The Mayan leaders had to return to court to secure the same pronouncement for all 38 Mayan villages in the Toledo district, which they did successfully in 2010.[60] The government appealed this decision and the matter went to the Caribbean Court of Justice.[61] In the meantime, the government continued to allow oil exploration and logging activities in traditional Mayan lands under permits issued by state authorities, without consultation with the communities in question. In a landmark ruling in October 2015, the Caribbean Court of Justice upheld the 2010 ruling of the Belizean Supreme Court and confirmed the existence of Maya customary land tenure in the Toledo district of Belize, ordering the government to recognize Mayan property rights and pay damages.[62] The ruling obliges the government of Belize to demarcate, protect and officially register the land. It also requires that the government abstain from interfering with the Maya land rights unless consent is given by the Maya people themselves. In effect, Belize is barred from issuing leases, permits, concessions, or contracts authorizing logging, petroleum, mineral extraction, or any activity that would affect Maya land rights.

What the aforementioned case law illustrates is that: (i) indigenous rights violations are ongoing in Suriname, Guyana and Belize; and (ii) there is a general lack of political will to implement binding judgments by the Inter-American Court (as well as national courts in the case of Belize), judgments which hold the states in question internationally responsible for violating indigenous rights in their territories and making reparation to remedy such violations. If we return to the aspect of native genocide and 'indigenous peoples development' within the Caribbean programme for reparations, this must be interpreted in light of the reality on the ground. The most crucial aspect for indigenous development in the Caribbean is the question of land. Yet land rights violations are being perpetrated against indigenous peoples by the same states who are representing them in the reparations programme. If the states in question are reluctant to implement binding judgments by an international court in

57 See *supra* note 40.
58 *Aurelio Cal v. Attorney-General of Belize*, Claim 121/2007 (Supreme Court, Belize, 18 October 2007).
59 Ibid., at 127.
60 *The Maya Leaders Alliance, the Toledo Alcaldes Association and Others v. Attorney General of Belize and Others*, Claim No 366 of 2008 (28 June 2010).
61 BZ Civil Appeal No. 27 of 2010 [2015] CCJ 15 (AJ).
62 CCJ Appeal No BZCV2014/002, paras. 79 and 80.

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relation to indigenous rights, how will the political will for indigenous development (as envisaged in the plan for reparations) alter this reality?

At this point, it is worth pointing out that although Dominica is the only CARICOM member state to have ratified the ILO Convention on Indigenous and Tribal Peoples (Convention No. 169), all CARICOM states with indigenous peoples voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples at the 61st session of the UN in New York in September 2007.[63] The Declaration specifically mentions the right of indigenous people to, 'practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures'.[64] The Declaration also provides for the, 'right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired', (Article 26) and the:

> right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. (Article 28)

The same CARICOM member states are also party to a number of relevant human rights treaties already mentioned above, which are binding in character and which include provisions relating to the rights of indigenous peoples and minorities, including cultural rights, land rights and restitution. These include the International Covenant on Civil and Political Rights[65] and the International Covenant on Economic, Social and Cultural Rights,[66] which both expand on the normative content of the United Nations Declaration on Human Rights. Article 27 of the International Covenant on Civil and Political Rights, in particular, deals with the rights of minorities, including indigenous peoples, and this has been interpreted to include access to traditional lands and resources.[67] General Comment No. 23 clarifying the content of this provision makes clear that the obligations pertaining to cultural rights in Article 27 are not only negative but positive in nature as well.[68] This means that the state has to take an active role in ensuring that the cultural development of its minorities, including indigenous peoples, is not hindered. Likewise the Convention on the Elimination of All Forms of Racial Discrimination (CERD) recognizes the right of indigenous people to collective reparation in the event that they are deprived of their right to own, develop, control and use their communal lands, territories and resources, 'where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent' and requires states to take steps to return those lands and territories.[69]

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63 UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: Resolution adopted by the General Assembly, A/RES/61/295 (2 October 2007).
64 Ibid., Art. 11.
65 1966 International Covenant on Civil and Political Rights, *supra* note 18.
66 1966 International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3.
67 Human Rights Committee, General Comment 23, Art. 27, *supra* note 40.
68 Ibid.
69 General Recommendation No 23: Indigenous Peoples, 18 August 1997, *supra* note 40.

In the context of the Caribbean islands, there is a lack of international and national case law dealing with indigenous rights violations. Perhaps the most relevant instrument for shedding light on the indigenous rights situation in the islands is the CERD Convention of 1965.[70] The concluding observations of the CERD Committee raise various issues with regard to current inequalities in CARICOM's island states. The CERD Committee's concluding observations on Trinidad and Tobago between 1980 and 2006, for example, made continuous reference to the need for 'positive measures to protect and encourage the economic and social progress of the Carib people', [71] as well to the 'preservation of cultural identity'[72] and importantly, 'compensation for historical injustice they suffered'.[73] This is noteworthy, since the committee places the responsibility for compensation on the state of Trinidad and Tobago, even if the original transgressor, who appropriated indigenous lands, was not the modern state but the United Kingdom. Indeed, Trinidad has done much to support its indigenous community since then, and has recently granted 25 acres of land (of the original 1,320 expropriated) to the Santa Rosa First Peoples' Community in Arima.[74]

The most recent CERD report on the situation in St. Vincent is also of significance, although not in relation to land. The Committee noted in 2004 that persons of 'Carib ancestry tend to be viewed at the base of the social pyramid and experience discrimination' and consequently recommended 'that the State party include in its next periodic report information on affirmative action measures in order to ensure the adequate development and protection of minority groups, in particular the Caribs'.[75] The UN Special Rapporteur on Cultural Rights, who produced a report on St. Vincent in 2012, also mentioned the lack of access to important historical documents as precluding cultural development[76] and recommended the consideration of the 'importance of Balliceaux island for the Garifuna people, to ensure that their relation to the island as a site of remembrance is respected and maintained'.[77] Although this does not relate to land rights per se, it does imply that access to Balliceaux as a lieux de memoire be maintained and facilitated by the Vincentian government for the Garifuna at home and abroad. Despite over 200 years of absence, St. Vincent (Yurumein) is still considered as the Garifuna ancestral homeland, just as Balliceaux Island is considered a cultural heritage site and place of memory. Indeed Balliceaux was the subject of a plea on the part of the Garifuna Council of Belize to the government of St. Vincent in 2005, to attempt to block its private sale for tourist development. The letter reads:

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70 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195.
71 CERD A/39/18 (1984), para. 198, available at www.ohchr.org/EN/HRBodies/CERD.
72 CERD A/36/18 (1981), para. 436. Although, it must be pointed out that cultural identity is constantly in flux and therefore cannot really be 'preserved'. The language of the Committee has progressively developed since then.
73 CERD A/50/18 (1995), para. 34.
74 This was originally promised in December 2012 (after many years of requests) and finally occurred in October 2015.
75 CERD/C/63/CO/10 (2003), para.10.
76 F. Shaheed, Report of the Special Rapporteur in the Field of Cultural Rights on her Mission to St. Vincent and the Grenadines (5–9 November 2012), A/HRC/23/34/Add.2, (g) (22 April 2013), para. 64.
77 Ibid., para. 64(h).

> We must point out … that Balliceaux is regarded as sacred ground and is viewed with the greatest reverence by the descendants of the Garinagu who were imprisoned by the British on this island from July, 1796, to 11th March, 1797. History records that 2,500 or more men, women and children died there from starvation and disease … Balliceaux is a monument to the suffering and survival of indigenous people against incredible odds. Let it be so declared, so preserved, honoured and respected.

The private island is still on sale for the price of $30 million,[78] a fact that has caused much consternation amongst Vincentians and the Garifuna diaspora, and which has ignited a debate over possible conservation mechanisms.[79] While the Vincentian government has the option of preserving the site as national heritage or issuing a compulsory purchase order to safeguard the island,[80] the cost of compensation to be paid under such an order would likely be prohibitive, and this also raises the question as to whether the state of St. Vincent should bear the burden of preserving a site that is directly linked to genocidal acts committed by the British government.

With regard to Dominica, the situation of collective tenure in the Kalinago Territory presents a challenge for local development. When Dominica became independent from Britain in 1978, the Kalinago Territory was legislated for under the Carib Reserve Act 1978, becoming the only legally constituted indigenous space in the islands. Land is held in collective tenure by the residents of the Kalinago Territory; it cannot be bought or sold and is passed on from generation to generation. Yet while indigenous communities in other islands often look to Dominica as ideal, issues remain in relation to land security and socio-economic development. Education, employment and logistics place the Territory's residents at the bottom of the occupational hierarchies in each sector.[81] In addition, Dominica illustrates a common paradox within tourism that its poorest community – i.e., the Kalinago – is itself a tourist attraction, contributing to the distinctive image promoted by the island, even though potential Kalinago guides and vendors are dissociated from opportunities of equitable tourism revenue.[82] Furthermore, the exact borders of the Kalinago Territory as demarcated in 1903 have never been clarified, leading to insecurity in relation to land encroachment and the exact nature of the rights of the Kalinago over lands located in disputed areas. For these reasons old documentation and maps are important to the community, as they might help to clarify the Territory's borders and contribute to the resolution of disputes. However, much of the historical

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78 www.privateislandsonline.com/islands/balliceaux-island.

79 See for example, B.-R. Middleton, 'A Landscape of Cultural Patrimony: Opportunities for Using Private Conservation Tools to Protect Balliceaux', (2014) 60 *Caribbean Quarterly* 29.

80 According to the Land Acquisition Act 1946 (revised), the government may issue a compulsory purchase order, provided that adequate compensation is provided to the owners of said land. According to the National Trust Amendment Act No. 37 (2007), the National Trust is authorized to declare any site as 'protected national heritage', which it has already done for the neighbouring island of Battowia, a designated wildlife reserve and one of the five breeding sites of frigate birds in the Caribbean.

81 K. de Albuquerque and J. McElroy, 'Race, Ethnicity, and Social Stratification in Three Majority Afro-Caribbean Societies', (2009) 24 *Journal of Eastern Caribbean Studies* 1–29. Pan American Health Organization basic country health profiles, (1999) 21 *Epidemiological Bulletin.*

82 T. Patterson and L. Rodriguez, 'Political Ecology of Tourism in the Commonwealth of Dominica', in S. Gössling (ed.), *Tourism and Development in Tropical Islands: Political Ecology Perspectives* (2003), 60–87.

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record relating to Kalinago history is located in archives in Europe, particularly at the British National Archives in London, which poses problems of accessibility.

It is clear that the situation pertaining to indigenous rights is less grave in the islands than on the mainland, and it must be acknowledged that the governments of Trinidad and Tobago, Dominica and St. Vincent and the Grenadines have made progress in recent years in recognizing their indigenous communities and granting them corresponding rights, for example through support for the Garifuna Heritage Foundation (St. Vincent), the establishment of a Ministry for Kalinago Affairs (Dominica) and the granting of land, albeit minimal, at Arima (Trinidad).[83] Yet issues remain with regard to discrimination, socio-economic development and access to cultural heritage. For the purposes of the present analysis, we will now turn to the latter, that is, access to cultural heritage. This is an area in which European governments could play a significant role within the context of reparatory justice.

5. Cultural heritage, reparatory justice and the role of former colonial powers

The article has until now mainly focused on the responsibility of the present day states towards their indigenous populations, and has postulated a contradiction in the reparations discourse with regard to this responsibility. This line of reasoning could be scrutinized as one-dimensional, in so far as it does not consider the role of former European powers in accepting responsibility for past wrongs perpetrated against the region's indigenous populations. While there is a lack of legal basis for bringing these wrongs to bear in a judicial setting, it must be underlined here that there is a strong moral and ethical imperative for European states to acknowledge the past and contribute towards reconciliation through dialogue and other conciliatory means. This holds true for slavery as much as for native genocide. Lixinski notes that cultural heritage is often overlooked in processes of transitional justice.[84] Yet it can be an effective tool in remedying past wrongs due to its symbolic importance and its essential role in cultural revival and development. As stated by Amadou-Mahtar M'Bow, 'the vicissitudes of history have robbed many people of a priceless portion of the inheritance in which their enduring identity finds its embodiment'.[85] What is interesting is that the CARICOM ten-point plan for reparations specifically mentions 'cultural institutions' in point 4 of the programme. It refers to the existence in Europe of museums and institutions which 'serve to reinforce within the consciousness of their citizens an understanding of their role in history as rulers and change agents' but that, conversely, Caribbean schoolteachers and researchers do not have the same opportunity, 'as there are no such institutions in the Caribbean'.[86] Indeed, in addition to the lack of resources and material for Caribbean schoolteachers and researchers,

[83] Ibid.
[84] L. Lixinski, 'Cultural Heritage Law and Transitional Justice', (2015) 9 *International Journal of Transitional Justice* 278–96.
[85] Cited in L.V. Prott (ed.), *Witness to History: Documents and writings on the return of cultural objects* (2009), iii.
[86] See CARICOM's ten-point action plan for reparations, at *supra* note 15.

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a sense of cultural loss is one of the greatest looming legacies amongst contemporary indigenous communities in the region.[87] The issue of cultural heritage is therefore appealing for its potential to unify the various communities represented in the Caribbean reparatory justice programme: access to material cultural heritage (conceived broadly as historical documents, maps, archaeological and ethnographic objects) is a problem not only for Caribbean society more broadly, but also indigenous communities. One of the findings of the present research in the Caribbean is that there is a strong desire on the part of such communities to know and access their history and heritage, including maps and historical documents.[88] This is due to a sense of cultural loss, combined with the struggle to survive and maintain cultural identity against the traditional narrative of extinction.[89] As already mentioned, the UN Declaration of the Rights of Indigenous Peoples specifically mentions the right to practice and revitalize cultural traditions and customs, which includes the right to maintain, protect and develop the past, present and future manifestations of their cultures.[90] In the context of Caribbean reparations, extralegal means of repairing this loss and rebuilding cultural confidence can be greatly facilitated by European governments through political channels. Archival documents and cultural material could be made accessible via bilateral agreements with European institutions, leading to digitization of material and symbolic returns. At present, access to such documents and material can be difficult if not impossible for many Caribbeans. Funds could be made available for the digitization of those relevant archives that have yet to be digitized, such as the records dealing with the Kalinago Territory in Dominica (located at the British National Archvies at Kew Gardens); assistance with the costs involved in preserving cultural heritage sites, such as Balliceaux island; the return of certain important pieces; and other agreements with European museums could all be considered in this regard. If reparatory justice also includes re-writing the past in a more equitable way, then it is axiomatic that the materials required to re-write that past be made available and accessible for Caribbean citizens in the present. Furthermore, part of re-building identities and creating cultural confidence is premised on the accessibility and availability of cultural resources. European governments bear a strong moral and political obligation in this regard.

6. Conclusion

This article has focused on the responsibility of the present day states towards their indigenous populations, and has postulated a contradiction in the reparations discourse with regard to this responsibility. I have argued that land rights constitute the basis not only for economic but also socio-cultural development, and without land rights, many indigenous communities find themselves in a situation of great

[87] For a more in-depth discussion on indigenous rights in the Caribbean islands, see A. Strecker, 'Revival, Recognition, Restitution: Indigenous Rights in the Eastern Caribbean', (2016) 23 *International Journal of Cultural Property* 167.
[88] Ibid.
[89] See *supra* note 6.
[90] Art. 11, *supra* note 63.

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insecurity. If we return to the indigenous development programme in the ten-point plan for reparations, this must be interpreted in light of the current situation on the ground. Indeed, the above analysis reveals a tension between indigenous communities' development needs on the one hand, and the actions of CARICOM states representing them on the other, states that have an international legal responsibility themselves to uphold indigenous rights within their territories. If indeed the reparations claim succeeds politically, to what extent will the indigenous development programme be implemented by governments who are already unwilling to pursue that same development? The answer to this question is central to the legitimacy of the reparations discourse as a whole. Nonetheless it would be remiss not to recognize the responsibility of Western European governments to meaningfully acknowledge past wrongs committed against Caribbean indigenous peoples and contribute to reparatory justice through political and diplomatic channels. One such channel suggested in the article was cultural heritage programmes, for example through bilateral agreements between European and Caribbean insitutions, the digitization of archival material (historical documents, maps) and symbolic returns. This would benefit not only indigenous communities but Caribbean societies as a whole. In the meantime, CARICOM states with indigenous communities have an international legal responsibility in relation to land rights. Only they are responsible for discontinuing the ongoing legacies of colonialism, while European governments bear the responsibility of acknowledging past wrongs more broadly.