

**A Report on the Situation of Indigenous and Tribal Peoples in Suriname  
and Comments on Suriname's 13<sup>th</sup> - 15<sup>th</sup> Periodic Reports  
(CERD/C/SUR/13-15)**

**Committee on the Elimination of Racial Discrimination, 87<sup>th</sup> Session (2015)**

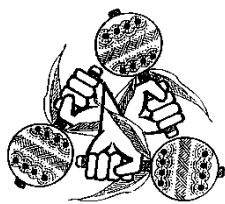
by

**The Association of Indigenous Village Leaders in Suriname  
The Association of Saramaka Authorities  
The Forest Peoples Programme**

**14 July 2015**

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## The Submitting Organisations:



**The Association of Indigenous Village Leaders in Suriname (*Vereniging van Inheemse Dorpshoofden in Suriname (VIDS)*):** VIDS is the traditional authority structure of the indigenous peoples of Suriname, uniting all indigenous village leaders (also known as Captains) from each of the 51 indigenous villages in Suriname. Each Captain is elected or appointed by the community or chosen in accordance with traditional practices. Established in 1992, VIDS' main goals and objectives are to promote and defend the rights of indigenous peoples, to speak for indigenous peoples on the national and international levels and to support sustainable development in Suriname. **Address:** Verl. Gemenelandsweg 18d, Paramaribo, Suriname tel. (597) 520130 fax. (597) 520131, e-mail: [infovids@vids.sr](mailto:infovids@vids.sr).



**The Association of Saramaka Authorities (VSG):** The VSG is a representative organization of traditional Saramaka village leaders formed in March 1998 in response to increasing pressure from multinational logging companies and the failure of the Surinamese government to recognize and respect rights to their ancestral lands. The VSG presently represents 71 Saramaka villages with a total population of approximately 34,000 persons. **Address:** Nieuw Aurora, Boven Suriname, Sipaliwini, (597) 8541904; e-mail: [bureuvsg@hotmail.com](mailto:bureuvsg@hotmail.com).



**The Forest Peoples Programme (FPP):** The FPP is an international NGO, founded in 1990 and based in the United Kingdom, which supports the rights of forests peoples. The organisation provides policy advice and training to indigenous peoples and other forest peoples at local, national and international levels for them to secure and sustainably manage their forests, lands and livelihoods. It aims to secure the rights of peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. The FPP Programme has had an extensive field programme in Suriname since 1996. **Address:** 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK Tel: (44) 1608 652893 fax: (44) 1608 652878 email: [info@forestpeoples.org](mailto:info@forestpeoples.org)

# PERSISTENT AND PERVASIVE RACIAL DISCRIMINATION AGAINST INDIGENOUS AND TRIBAL PEOPLES IN THE REPUBLIC OF SURINAME

## I. INTRODUCTION

1. The Association of Indigenous Village Leaders in Suriname, the Association of Saramaka Authorities and the Forest Peoples Programme (“the submitting organisations”) have the honour of again communicating with the United Nations Committee on the Elimination of Racial Discrimination (“the Committee”) about the rights of indigenous and tribal peoples (“ITPs”) in the Republic of Suriname (“Suriname” or “the State”). On this occasion, the submitting organisations respectfully offer comments on the State’s 13<sup>th</sup> to 15<sup>th</sup> periodic reports (“the State Party report”), and provide additional information on the situation of ITPs in Suriname. Specific requests are set out in paragraph 84 below.

2. The submitting organisations have previously submitted a number of reports to the Committee on the situation of ITPs, some of which requested that it considers this situation or aspects thereof under its early warning and urgent action (“EW/UA”) procedure. In addition to its 2004 and 2009 concluding observations, which detail extensive violations of ITPs’ rights,<sup>1</sup> the Committee has adopted a Decision under its follow up procedure in 2005<sup>2</sup> and Decisions or letters under its EW/UA procedure in 2003, 2005, 2006, 2011, 2012 and 2013.<sup>3</sup> The latter also identify “serious violations” of ITPs’ rights.<sup>4</sup> In 2003, the Committee decided that the “problems faced by the indigenous communities call for immediate attention...”<sup>5</sup> In 2006, it decided to draw the attention of competent UN bodies to the “particularly alarming situation in relation to the rights of ITPs in Suriname...”<sup>6</sup> In 2012, it observed that, despite its “numerous recommendations and decisions regarding the rights of indigenous peoples in Suriname, the marginalization of indigenous people, which constitutes violation of the human rights protected by the International Convention on the Elimination of All Forms of Racial Discrimination, continues in the State party.”<sup>7</sup> As discussed below, all of these conclusions remain valid in 2015 and the “serious violations” ascertained by the Committee persist undiminished.

3. The State Party report lacks any meaningful information about the measures Suriname has taken to give effect to the Committee’s numerous recommendations. This information is lacking precisely because the State has failed to adopt any such measures. To make matters worse, Suriname has not only disregarded the Committee’s urgent and critical recommendations, it has actively contravened their letter and spirit. The same can also be said of the plethora of recommendations adopted by other international human rights bodies and mechanisms and even the binding orders of the Inter-American Court of Human Rights (“IACtHR”).<sup>8</sup> The cases decided by

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<sup>1</sup> CERD/C/64/CO/9/Rev.2; and CERD/C/SUR/CO/12.

<sup>2</sup> *Decision 3(66), Suriname*, CERD/C/66/SUR/Dec.3.

<sup>3</sup> *Decision 3(62), Suriname*, CERD/C/62/Dec/3; *Decision 1(67), Suriname*, CERD/C/DEC/SUR/2; and *Decision 1(69), Suriname*. CERD/C/DEC/SUR/3; *Communications to Suriname, EW/UA Procedure*, 20 September 2011; 9 March 2012; and 1 March 2013 (reciting its extensive engagement with Suriname in relation to the rights of ITPs as well as the lack of any response”).

<sup>4</sup> *Communication to Suriname, EW/UA Procedure*, 20 September 2011 (where the Committee recalls its prior EW/UA decisions “related to the serious violations of the rights of indigenous peoples, the failure to recognize their rights to lands and resources, the refusal to consult them and to seek their prior, free and informed consent when granting mining concessions to foreign companies whose activities would have threatened their livelihood, as well as recommendations made accordingly”).

<sup>5</sup> *Decision 3(62), Suriname*, CERD/C/62/Dec/3, at para. 4.

<sup>6</sup> *Decision 1(69), Suriname*, CERD/C/DEC/SUR/3, at para. 4.

<sup>7</sup> *Communication to Suriname, EW/UA Procedure*, 9 March 2012.

<sup>8</sup> See e.g., CCPR/CO/80/SUR, para 21 expressing concern over “the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources;” regretting “that logging and mining

the IACTHR were submitted to its jurisdiction because Suriname had additionally failed to comply with the remedial recommendations adopted by the Inter-American Commission on Human Rights (“IACHR”). Suriname even explicitly rejected recommendations – stating that they “cannot be supported”<sup>9</sup> – that it urgently recognize the rights of ITPs made during the Human Rights Council’s Universal Periodic Review process in October 2011.<sup>10</sup> Moreover, Suriname continues to cite every conceivable excuse in an attempt to justify its prolonged and unreasonable non-compliance with its international obligations in this regard. The vast majority of these excuses are unfounded, illegitimately invoke domestic law, contravene basic tenets of human rights law, are based on entrenched discrimination against ITPs, or are a combination of two or more of these elements.

4. Numerous international human rights bodies, including the Committee, have found that ITPs lack access to any effective remedies to seek protection for their rights in domestic venues and that this absence of recourse is exacerbated by Suriname’s failure to recognize their juridical personality. Lacking any domestic protection, ITPs have been forced to turn to the organs of the inter-American human rights system. The IACTHR issued judgments in 2005 and 2007<sup>11</sup> and held a public hearing on the merits and possible reparations in an additional case in February 2015.<sup>12</sup> In accord with the Committee’s views, these judgments, reached after extensive examinations of the facts and law over a considerable period of time, hold that Suriname is responsible for grave, institutionalised, and long-standing violations of ITPs’ rights. Another case was submitted to the IACHR in February 2009 and declared admissible in 2013, and it is likely that it will also be submitted to the IACTHR at some point in the future in light of Suriname’s unreasonable delay in providing a serious response to a ‘friendly settlement’ proposal submitted on 4 February 2013.<sup>13</sup>

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concessions in many instances were granted without consulting or even informing indigenous and tribal groups;” and recommending “that Suriname guarantee the members of indigenous communities the full enjoyment of all the rights recognized by article 27 (rights of minorities) of the Covenant, and adopt specific legislation for this purpose”).

<sup>9</sup> A/HRC/18/12/Add.1, at Response of Suriname to Recommendations, para. 13 (*see esp.* recommendations 73.11, 73.52-73.57 listed therein; for instance, “73.52 Continue efforts to recognize and uphold the collective rights of the indigenous people”); and observing, at para. 14 (that “Although a number of recommendations are not accepted at this time, the State is aware of the fact that they represent challenges to an ideal Human Rights climate in Suriname”).

<sup>10</sup> *Id.* setting out Suriname’s position that it cannot support the recommendations on “Indigenous Rights and [L]and Rights Issues (recommendations 73.52-73.58).” *See also* ‘Human Rights Council adopts outcomes of Universal Periodic Review on Suriname, Greece and Samoa’, *UN Press Release*, 22 September 2011 (explaining that “Among the recommendations that could not be accepted were the claim to land rights...”), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11419&LangID=E>; and *Statement of the Minister of Justice and Police of the Republic of Suriname, Hon. Martin Misiedjan, at the 18<sup>th</sup> Session of the United Nations Human Rights Council*, 22 September 2011, (stating that “A number of recommendations could not be accepted by the State. ... One such issue was the claim to land rights”), [http://www.upr-info.org/sites/default/files/document/suriname/session\\_11\\_-\\_may\\_2011/surinameplenarystatement2011.pdf](http://www.upr-info.org/sites/default/files/document/suriname/session_11_-_may_2011/surinameplenarystatement2011.pdf).

<sup>11</sup> *Moiwana Village v. Suriname*, Inter-Am. Ct. H.R. Ser. C No. 124 (2005); and *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. Ser. C No. 172 (2007).

<sup>12</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013, <http://www.oas.org/en/iachr/decisions/court/12639FondoEn.pdf>. *See also* *Video of the Hearing*, <https://vimeo.com/album/3247192>; and *Expert Testimony of Victoria Tauli-Corpuz before the Inter-American Court of Human Rights in the Case of Kaliña and Lokono Peoples*, <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/56-testimony-case-surinam>.

<sup>13</sup> *Report 9/13 (Admissibility)*, Maho Indigenous Community Case (Suriname), 19 March 2013, <http://www.oas.org/en/iachr/decisions/admissibilities.asp>. *See also* MC-395-09, 27 October 2010 (adopting precautionary measures to protect Maho from imminent and irreparable harm caused by repeated incursions into its lands, destruction of its subsistence crops and violence and threats against the community), <http://www.oas.org/en/iachr/decisions/precautionary.asp>. These precautionary measures were extended by the IACHR in March 2011 in light of the persistent destruction of Maho’s subsistence crops and additional violent attacks on community members. *See also* *Communication to Suriname, EW/UA Procedure*, 20 September 2011 (discussing Maho).

5. In common with its disregard of the Committee's recommendations, Suriname has failed to comply with the IACTHR's fundamental orders adopted in 2005 and 2007, and this has been confirmed by the Committee, the IACHR and the IACTHR, including as recently as February and June 2015.<sup>14</sup> ITPs' rights continue to be routinely disregarded and violated with impunity. The "alarming situation" in Suriname is no better, and in some respects worse, today than it was when the Committee first identified it in 2006. This situation both invites and compels international scrutiny and action and the submitting organizations respectfully urge the Committee to continue to express deep concern about its urgency and gravity when it reviews Suriname at its 87<sup>th</sup> session and in any follow up measures it may choose to require and monitor.

## II. INDIGENOUS AND TRIBAL PEOPLES IN SURINAME: BASIC INFORMATION

6. According to the 2012 census, indigenous peoples comprise approximately four percent of the Surinamese population or around 20,000 persons. There are four distinct peoples (Kaliña, Lokono, Wayana, and Trio and associated peoples, e.g., Wai Wai and Akuriyo) living in around 51 villages. Each village has a chief who is also a member of the Association of Indigenous Village Leaders in Suriname ("VIDS"), the national representative organisation of indigenous peoples. Suriname is also home to six tribal peoples referred to generically as Maroons: the Saramaka, N'djuka, Matawai, Kwinti, Aluku, and Paramaka. They number approximately 117,500 persons, comprising 21 percent of the national population. Maroons are the descendants of African slaves who fought themselves free from slavery and established autonomous communities in Suriname's rainforest interior in the 17<sup>th</sup> and 18<sup>th</sup> centuries. The IACTHR recognised that Maroons are "tribal peoples" in *Moiwana Village* and *Saramaka People*.

7. Based on the data submitted by Suriname, ITPs together comprise around 25 percent of the national population.<sup>15</sup> They fall at the bottom of all economic and social indices and are the most disadvantaged sectors of Surinamese society. The State Party report cryptically notes that "recognition of their collective rights is the challenge in Suriname."<sup>16</sup> What is not said, however, is that the ongoing and abject failure of the State to rise to this "challenge" perpetuates and intensifies pervasive and systemic racial discrimination against ***one out of every four Surinamese citizens*** and threatens their collective integrity and survival as distinct cultural and territorial entities. This is especially true in relation to the notorious, unreasonable and prolonged failure – refusal may be a better term – to recognize and regularize their territorial rights and the persistent violations of these rights in multiple and decidedly detrimental ways.

## III. COMMENTS ON THE STATE PARTY REPORT

8. The State Party report provides very little meaningful information about the situation of ITPs or any efforts by the State to recognize and secure their internationally guaranteed rights.<sup>17</sup> It also fails to provide any information on any measures taken to give effect to the Committee's 2004 and 2009 concluding observations and the numerous Decisions and communications adopted by

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<sup>14</sup> See e.g., CERD/C/SUR/CO/12, para. 18 (stating that "the Committee is concerned at the ongoing delays in compliance of the most crucial aspects of the court judgements, in particular, concerning the recognition of communal and self-determination rights of the *Saramaka* People and the investigation and punishment of the perpetrators of the *Moiwana* Village massacre in 1986").

<sup>15</sup> CERD/C/SUR/13-15, at para. 12.

<sup>16</sup> *Id.* and, para. 36, explaining that: "Suriname has not yet adopted special measures to secure adequate advancement of certain racial or ethnic groups or individuals that require protection." See also CCPR/C/SUR/3, at para. 19 (identifying a "number of socio-economic challenges faced by Suriname, such as ... land rights of Indigenous and Maroon tribal communities." It is unclear why this is a "socio-economic" challenge and not primarily one of legislative and policy reform).

<sup>17</sup> *Id.* para. 39-50, 53-5.

the Committee under its EW/UA procedure. Instead, the State makes a number of selective or erroneous claims about the judgments of the IACTHR, a visit by the IACHR in 2013, and a report issued in 2011 by the Special Rapporteur on the Rights of Indigenous Peoples (“UNSRIP”).<sup>18</sup> The State’s 2014 report to the Human Rights Committee, large parts of which are a verbatim reiteration of a May 2013 submission to the IACTHR in the *Saramaka People* case, provides more detailed information, and the submitting organizations respectfully suggest that Committee should also review the information therein.<sup>19</sup> All of this is deeply troubling given the depth and extent of the Committee’s concern for ITPs in Suriname since 2003.

## A. Judgments of the Inter-American Court of Human Rights

9. With regard to the judgments of the IACTHR in *Moiwana Village* and *Saramaka People*, Suriname claims that it is “in the process of implementing both judgments ... with the participation of the relevant stakeholders.”<sup>20</sup> As discussed below (para. 42-59), this claim does not stand up to scrutiny: the State has failed to comply with all of the fundamental orders in these judgments and this has been confirmed by the IACHR (in June 2015) and IACTHR. Also, there is no extant process, participatory or otherwise, aimed at their implementation or otherwise meaningfully aimed at recognizing and securing ITPs’ rights (see para. 22-8 below). Additionally, the deadlines imposed by the IACTHR for compliance with its various orders all expired over six years ago in *Moiwana Village* and more than four and one half years ago in *Saramaka People*. There is no reasonable explanation for this substantial delay provided anywhere in the State Party report or elsewhere, nor is there any rational excuse that could justify this substantial derogation from the State’s international obligations.<sup>21</sup>

10. The State refers to a hearing in *Saramaka People* held before the IACTHR in May 2013 and notes that the “IACTHR propose[d] to Suriname to establish a commission, consisting of government officials and members of the tribal people to solve this problem and set a timeline.”<sup>22</sup> However, this ‘commission’ was proposed by the Saramaka during the hearing in light of the State’s unreasonable lack of progress in implementing the judgment and its complete failure to comply with a written agreement on implementation concluded between the Ministry of Regional Development and the Saramaka in October 2010.<sup>23</sup> In 2013, the State even repudiated this agreement.<sup>24</sup> The Saramaka spent a considerable amount of time and resources internally

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<sup>18</sup> *Id.* para. 13-9 (under the heading “Response to the prevention of racial discrimination and to the Committee’s previous recommendations”).

<sup>19</sup> CCPR/C/SUR/3, para. 102 *et seq.*

<sup>20</sup> CERD/C/SUR/13-15, at para. 13. *See also id.* at para. 17 (claiming that “Suriname is making a conscientious effort to deliver the most appropriate solution in order to fully comply and implement the judgment of the Inter-American Court of Human Rights in the Saamaka case”).

<sup>21</sup> Articles 67 and 68 of the American Convention on Human Rights provide, respectively that “The judgment of the Court shall be final and not subject to appeal” and; “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.”

<sup>22</sup> CERD/C/SUR/13-15, at para. 14.

<sup>23</sup> *Saramaka People (Monitoring Compliance)*, Orders of the Inter-Am. Ct. H.R., 23 November 2011, Considering 8 (stating that “With respect to the consultation that the State must carry out with the Saramaka people, the State reported that it has signed an agreement with the Association of Saramaka Authorities on the implementation of the Judgment”); Considering 9 (recording that “the representatives indicated that the State had failed to meet the deadlines established in the agreement subscribed with the Saramaka on October 21, 2010...”); and Considering 11 (stating that “The Court notes that the State and the representatives have come to an agreement regarding the former’s compliance with the Judgment and with this order in particular, and that regular meetings are being held to that end. Nevertheless, the Court notes that the State has failed to comply with the deadlines established in that agreement”).

<sup>24</sup> *Report of the State, Saramaka People (Monitoring Compliance)*, 10 July 2013, at p. 2 (repudiating this agreement and stating on spurious grounds that the prior Minister of Regional Development had no authority to conclude the agreement, despite the fact that his Ministry was designated to be the lead implementing agency in this respect, and arguing that it must be submitted to the National Assembly for ratification).

consulting about and drafting a proposal for this commission, including draft terms of reference, both of which were sent to the IACTHR and the State for its comments. Their proposal was for a commission comprised of an equal number of representatives chosen by the State and by the Saramaka as well as representatives of the IACHR and IACTHR. The Saramaka also proposed that it would have an officially sanctioned mandate and powers to take concrete action to implement the judgment.

11. The State failed to comment on this proposal. Instead, it separately proposed to the IACTHR on 8 July 2013 that this commission be composed of five persons representing the State and four Saramaka persons and unjustifiably and unilaterally designated how the Saramaka would be represented. It also discounted any representation by the IACHR or IACTHR. Moreover, Suriname stated that its mandate would be to merely “advise on the enforceability of the judgment” and, presumably once that had been done, to “establish a timetable” for its implementation.<sup>25</sup> The Saramaka explained in a 5 August 2013 submission to the IACTHR that they were “deeply saddened by the State’s response to their good faith and constructive proposal to establish a mechanism for dialogue that could further implementation of the judgment,” and stated that Suriname’s proposal was unacceptable.<sup>26</sup> Since that time they have heard nothing further from the State about this commission despite raising the issue more than once.

## **B. The UN Special Rapporteur on the Rights of Indigenous Peoples**

12. The State observes that the UNSRIP visited Suriname in 2011 to provide technical assistance as “it develops the legislative and administrative measures necessary to secure the territorial and other rights of the ITPs of Suriname.”<sup>27</sup> It fails to mention, however, that it has not implemented any of the UNSRIP’s recommendations, is not now discussing any of his recommendations, and nor has it drafted one single word of any of the legislative or other measures ordered by the IACTHR, even though the associated deadlines all expired long ago.<sup>28</sup> In this respect, the UNSRIP recommended that “priority should be placed on developing specific legal provisions for (1) a procedure to identify and title indigenous and tribal lands; and (2) a procedure to follow for consulting with and seeking consent of ITPs for resource extraction and other activities affecting their lands and resources.”<sup>29</sup>

13. To make matters worse, Suriname has repeatedly posed the following very peculiar, if not astonishing, questions in its submissions to the IACTHR, including in its March 2015 final written arguments in the *Kaliña and Lokono Peoples* case, and which are also repeated almost verbatim in its 2014 report to the Human Rights Committee:

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<sup>25</sup> *Submission of the State of Suriname, Saramaka People (Monitoring Compliance)*, 10 July 2013, at p. 2.

<sup>26</sup> *See Submission of the Saramaka People, Saramaka People (Monitoring Compliance)*, 5 August 2013, p. 13-4 (emphasizing, *inter alia*, that the Saramaka “have no interest in participating in a discussion about the “enforceability” (defined in dictionaries as ‘the quality of being enforceable’) of the Court’s judgment nor in a body that has no mandate to act other than by providing advice without any guarantee that this advice would be followed. They see nothing to discuss about the “enforceability” of the judgment as this is clearly defined in the American Convention. ... [They] can think of no valid or constructive reason why the State would propose an imbalance in the representation of the parties and the State’s proposal makes no mention at all of the involvement of the Court and/or Commission (whose guidance was one of the main reasons that the representatives suggested establishing a working group in the first place). ... Furthermore, the State’s proposal indicates that it has unilaterally decided to divide the Saramaka into different groups for the purposes of their participation in the working group, and, thus, seeks to usurp their right to freely identify their own representatives”).

<sup>27</sup> CERD/C/SUR/13-15, at para. 15-6.

<sup>28</sup> *See Annex A hereto containing Affidavit of Loreen Jubitana, Case of the Kaliña and Lokono Peoples v. Suriname*, 27 January 2015, para. 33-4.

<sup>29</sup> A/HRC/18/35/Add.7, at para. 35. *See also* para. 17 explaining that “Suriname must adopt measures to secure the rights of ITPs, and that these measures should comply with international standards and the legally binding judgments of the Inter-American Court of Human Rights.”

how can the State amend its legislative framework on land and natural resources rights in such a way that it can implement the Saramaka judgement [sic] without compromising the national development and other ethnic groups of the Surinamese society? Are the foundations of democracy not harmed by the conclusion of the judgment? If it were possible to make an attempt to implement the conclusion of the judgment, is the foundation of the form of government in Suriname not seriously challenged?"<sup>30</sup>

14. Noting the State's admission that it has yet to "make an attempt to implement the conclusion of the judgment," the Saramaka concluded that the "intent of the State in raising these issues appears to be to reject the judgment of the Court as an imposition that it does not agree with and that, in its view, its legislative body would not agree to endorse. It is 'undemocratic' in the sense that the State neither agrees with the judgment nor wants to comply with it."<sup>31</sup> That the State has repeatedly raised these exceedingly strange questions, almost eight years after the IACTHR's judgment was notified and almost five years after all of the deadlines imposed by the IACTHR have expired, speaks volumes about its willingness to comply with the IACTHR's judgment and the nature and extent of its efforts in this regard to date.

15. The submitting organizations highlight that Suriname, as a party to various international instruments, has voluntarily accepted obligations to harmonize its domestic laws with the rights set forth in those instruments and to maintain its laws and practices free from discriminatory provisions and treatment.<sup>32</sup> Domestic implementation of these rights and obligations is both fundamental to the international human rights regime and the effective exercise and enjoyment of rights in reality, its ultimate objective. The IACTHR has at no time suggested that Suriname use anything other than its parliamentary and constitutional processes to achieve these ends and respect for human rights, including the rights of ITPs, is itself one of the foundations of democracy.<sup>33</sup> That Suriname claims that compliance with a binding judgment of the IACTHR,

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<sup>30</sup> CCPR/C/SUR/3, at para. 104; *Oral Statement of the Government of Suriname*, Inter-Am. Ct. H.R., Compliance Hearing, 28 May 2013, at p. 3. See also *Report of the State of Suriname, Saramaka People (Monitoring Compliance)*, 10 July 2013, at p. 2 (stating, without any explanation, that "In practice, implementation of certain parts of the judgment, especially those relating to legislation, appeared to be very complicated and almost unfeasible;" and "[t]he implementation of the judgment entails that new legislation has to be formulated .... The question now is to what extent this is possible within the constitutional system of the Republic of Suriname"); and *Final Written Arguments of the State of Suriname, Case of the Kaliña and Lokono peoples v. Suriname*, 5 March 2015, at p. 3-4 (explaining that it "...would like to comply with its international obligations with respect to the rights of Indigenous peoples and Maroon[s] in a responsible way. ... However, upon closer study it became clear that there are challenges attached thereto, which can be derived from the following questions...").

<sup>31</sup> *Submission of the Saramaka People, Saramaka People (Monitoring Compliance)*, 5 August 2013, at p. 10 (further stating that "Based on [Suriname's] submissions, it may be concluded that the State sees the Court's judgment as an imposition that, *inter alia*, hinders its ability to exploit resources in Saramaka territory (and the territories of other ITPs) whenever it chooses to do so and that privileges the Saramaka vis-à-vis the general interest, the latter being a determination made entirely by the State on its own terms. The protestations of good will by the State coupled with its multiple and baseless excuses and delaying tactics are simply attempts to obfuscate its increasingly apparent rejection of the Court's judgment").

<sup>32</sup> See e.g., ICERD, Article 2(1)(c) (providing that "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists"); ICCPR, Article 2; and Am. Conv. H.R., Articles 1 and 2.

<sup>33</sup> See e.g., *Inter-American Democratic Charter*, adopted by the General Assembly of the OAS, 2001, Article 9 (stating, in pertinent part, that "[t]he elimination of all forms of discrimination ... as well as ... the promotion and protection of human rights of indigenous peoples ... and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation"); and *Río Negro Massacres v. Guatemala*, Inter-Am. Ct. H.R., Ser. C No. 250 (2012), para. 160 (citing the right to self-determination and explaining that indigenous peoples' cultural identity or integrity "is a fundamental and collective right of the indigenous communities that must be respected in a multicultural, pluralist, and democratic society...").



explicating and confirming the rights of the most “marginalized” sector of its population, somehow, and without any explanation, threatens its democracy, form of government and national development strikes at the very heart of the human rights regime and the international legal order more generally. These statements thus invite close scrutiny and expressions of profound international concern.

### C. The ‘Working Visit’ of the Inter-American Commission on Human Rights

16. With respect to the IACHR, the State recounts that a delegation of its members visited Suriname in January 2013. It explains further that the delegation “recognized the steps already adopted by the State to comply with the [IACTHR] judgments,” and highlighted recommendations “to comply with these judgments in the areas of demarcation and titling, and the development of a law and procedure to carry out this goal.”<sup>34</sup> The IACHR, however, explained that it had received “ample information throughout the visit - from both State and non-State actors - on the significance of the Inter-American Court judgments in the cases of *Moiwana* and *Saramaka* for human rights in Suriname, and considerable challenges that remain to implement the orders in those judgments.” It also “underscore[d] the need for Suriname to fortify its efforts to fully comply with these judgments....”<sup>35</sup> Moreover, as discussed below, the only progress made in implementing either of these judgments does not concern the fundamental orders, but rather measures such as publication of the judgment, issuance of a public apology and payment of compensation.

17. The IACHR additionally explained that the “principle of equality should not be equated with assimilation” and recalled the determination of the IACTHR “that cultural integrity is a fundamental right and respect for cultural diversity part of a democratic society.”<sup>36</sup> These excerpts of a much longer commentary were made in response to Suriname’s oft stated view that legislation providing for, in its view, ‘special treatment’ for ITPs will discriminate against the rest of its population, a contention unambiguously rejected by the IACTHR in *Saramaka People*.<sup>37</sup> Despite the authoritative rejection of this view, Suriname continues to assert multiple variations of the same today.

18. In its 2014 report to the Human Rights Committee, for example, Suriname asserts that it is “entrusted with the obligation to ensure that national regulations and policies do not attribute any form of favorable treatment to specific segments of the population, resulting in discriminating [against] the remainder.”<sup>38</sup> Explaining how it understands this obligation, it adds that the State “has committed itself to a social-economic development contract with the Surinamese population, by strategically [sic] exploitation of the countries [sic] natural resources. It needs no further explanation that a large segment of the Surinamese population fears that its legitimate development interests are marginalized at the expense of the interests of the tribal communities.”<sup>39</sup>

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<sup>34</sup> CERD/C/SUR/13-15, at para. 18-9.

<sup>35</sup> ‘IACHR Concludes its Working Visit to Suriname’, *IACHR Press Release 9/13*, 12 February 2013, [http://www.oas.org/en/iachr/media\\_center/PReleases/2013/009.asp](http://www.oas.org/en/iachr/media_center/PReleases/2013/009.asp).

<sup>36</sup> *Id.*

<sup>37</sup> *Saramaka People*, at para. 99. The IACTHR responded, at para. 104, that “It is a well-established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. Legislation that recognizes said differences is therefore not necessarily discriminatory. ... Thus, the State’s arguments regarding its inability to create legislation in this area due to the alleged complexity of the issue or the possible discriminatory nature of such legislation are without merit.”

<sup>38</sup> CCPR/C/SUR/3, at para. 103.

<sup>39</sup> *Id.* at para. 114. See also *Report of the State of Suriname, Saramaka People (Monitoring Compliance)*, 22 March 2013, at p. 2 (stating that “It could have never been the intent that the implementation of the *Saramaka* judgment in any way whatsoever would lead to the destabilization of the State and the stagnation of the national development of the country”). The State further explained before the IACTHR in May 2013, that “the public interest must always prevail over any interests or rights asserted by minority groups. The Surinamese nation after all determines its economic, social and cultural development in complete freedom.” *Saramaka People (Monitoring Compliance)*, *Audio Transcript*, Hearing of the Inter-Am. Ct. H.R., 28 May 2013.

This last statement is extremely difficult to understand in light of the judgment of the IACTHR in *Saramaka People*, which in no way impedes the State's development or ability to exploit natural resources,<sup>40</sup> and, at any rate, this is not a valid justification for denying the rights of 25 percent of its population.<sup>41</sup> Exploitation of natural resources must be undertaken with full respect for the rights of ITPs, a point emphasized in the Committee's 2004 review of Suriname, and the (unfounded) "fears" of the majority population cannot veto these rights, a proposition that, if allowed to stand, would entirely undermine the basis for the protection of ITPs' rights in international law.<sup>42</sup>

19. The IACHR also directly refuted Suriname's position that recognition of the rights of ITPs would constitute discrimination against other Surinamese citizens in its final written<sup>43</sup> and oral arguments in the case of the *Kaliña and Lokono Peoples*.<sup>44</sup> It emphasized that

what is at stake is not more favourable treatment for the Kaliña and Lokono indigenous peoples, but rather the very right to their identity as peoples and their right to hold collective title. The Commission and the Court have established that recognition of collective identity and rights for indigenous peoples is necessary to ensure that they are entitled equal protection of and before the law as collectives. It is not a form of discrimination against non-indigenous individuals. It is a form of recognition and protection for the rights of a people with a distinct culture and distinct needs.<sup>45</sup>

20. Suriname's (in the circumstances, to say the least, ironic) contention that it cannot recognize ITPs' rights as this would constitute discriminatory treatment against others directly contradicts a fundamental tenet of human rights law, including as enunciated on numerous occasions by the Committee.<sup>46</sup> In common with other international authorities, the Committee adheres to the principle that discrimination is evident and illegitimate where states treat persons differently in analogous situations without an objective and reasonable justification and where they, without satisfying this test, fail to treat differently persons whose situations are significantly different.<sup>47</sup> A significant difference, for instance, is communal property rights grounded in customary law coupled with culturally constitutive relations to lands, rather than individual property rights accorded by the national legal system. As the Committee stated in 2009, to "treat in

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<sup>40</sup> See e.g., *Saramaka People*, at para. 126 (explaining that "Article 21 of the [American] Convention should not be interpreted in a way that prevents the State from granting any type of concession for the exploration and extraction of natural resources within Saramaka territory") and; at para. 158 (explaining that this is the case "only if the State ensures the effective participation and benefit of the Saramaka people, performs or supervises prior environmental and social impact assessments, and implements adequate safeguards and mechanisms in order to ensure that these activities do not significantly affect the traditional Saramaka lands and natural resources").

<sup>41</sup> See e.g., *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF.157/23, 12 July 1993, Part I, at para. 10 Stating that "While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights").

<sup>42</sup> CERD/C/64/CO/9/Rev.2, para. 11 (stating that "While noting the principle set forth in article 41 of the Constitution that natural resources are the property of the nation and must be used to promote economic, social and cultural development, the Committee points out that this principle must be exercised consistently with the rights of ITPs").

<sup>43</sup> *Final Written Arguments of the Inter-American Commission on Human Rights in the Case of the Kaliña and Lokono peoples v. Suriname*, 5 March 2015, at para. 10. (explaining that Suriname, "for its part, has maintained before the Commission and the Court that the legislative recognition of such rights is complex, a matter of sovereignty, and would effectively discriminate against the non-indigenous population by giving favorable treatment to the indigenous population").

<sup>44</sup> See *Final Oral Statement of the IACHR*, Video of Hearing, *Kaliña and Lokono Peoples v. Suriname*, 4 February 2015, at 1:19:50 et seq., <https://vimeo.com/album/3247192/video/118766033>.

<sup>45</sup> *Id.*

<sup>46</sup> See e.g., CERD/C/COD/CO/15, at para. 14 (observing that "the principle of non-discrimination requires [state parties] to take account of the cultural characteristics of ethnic groups").

<sup>47</sup> See e.g., *General Recommendation XIV, Definition of discrimination* (1993), at para. 2.

an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect....”<sup>48</sup> It also made this point directly to Suriname over a decade ago, recommending that Suriname “respect and promote the [ITPs’] cultures, languages and distinctive ways of life.”<sup>49</sup>

21. Disregarding this basic and fundamental principle, Suriname continues to deny ITPs – again, one quarter of its national population – equal protection of the law. As discussed further below, it also impedes and negates their rights in manifold ways, including by routinely privileging the rights of third parties, often to ITPs’ extreme detriment and solely on the basis of their race or ethnicity. It thus not only denies equal protection of the law but also violates guarantees prohibiting various forms of discriminatory treatment. That it determinedly and unashamedly seeks to validate and excuse this long-standing, pervasive and unequal treatment on the specious grounds of avoiding discrimination against other Surinamese citizens further aggravates and compounds its international responsibility in this regard. Additionally, despite numerous authoritative decisions, including those adopted by the Committee and others noted above, confirming pervasive discrimination against ITPs, Suriname even continues to deny that there is any discrimination, curiously stating, *inter alia*, that it needs more information on this point.<sup>50</sup>

#### **D. There is no Extant Process to Implement the IACTHR’s Judgments or to Otherwise Recognise Indigenous and Tribal Peoples’ Rights**

22. Suriname has maintained that it is in the process of implementing the judgments of the IACTHR or is otherwise engaged in a process to recognize ITPs’ rights.<sup>51</sup> For example, in its submissions to the IACTHR in the *Kaliña and Lokono Peoples* case, Suriname claims that it is now engaged in a process to recognize the rights of ITPs and for this reason the Court should “allow it the opportunity to bring the course already agreed upon with the Indigenous Peoples and Maroons to a successful conclusion.”<sup>52</sup> However, this “course,” presumably referring to some discussions between the Presidential Commissioner on Land Rights and representatives of ITPs in 2013, merely consists of establishing three commissions: on an awareness campaign, on developing a consultation/consent protocol (not a law), and on recognition of the traditional authorities of ITPs.<sup>53</sup> The sworn testimony of Loreen Jubitana, the Director of the Secretariat of the national indigenous peoples’ organization (“VIDS”), confirms that, while the VIDS agreed to participate in

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<sup>48</sup> *General Recommendation 32, The meaning and scope of special measures* (2009), at para. 8 (explaining that “The term ‘non-discrimination’ does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration”).

<sup>49</sup> CERD/C/64/CO/9/Rev.2, at para. 22 (noting “that the authorities appear to limit themselves to not hampering the exercise by the various ethnic groups and their members of their cultural rights”).

<sup>50</sup> CCPR/C/SUR/3, at para. 147 (stating that “In its initial response to the perceived discriminatory treatment of indigenous people, the State challenges this conveyed perception. ... Furthermore the State would also like to receive more detailed information on the types and forms of reported discrimination. Thus far the State contests the claim of discriminatory treatment as being a form of formal or institutionalized discrimination. At this point, the State cannot contest a claim of discriminatory practices. For the State to respond appropriately to these practices information sharing is necessary”).

<sup>51</sup> At the same time, it conceded before the Court, with respect to “the land rights issue,” that “up to this date [26 July 2013] this issue has not been addressed adequately, and up to now no solution has been found.” *Response of the State of Suriname to the Inter-American Commission on Human Rights in the Case of the Kaliña and Lokono Peoples*, 26 September 2013, at p. 2 in Annex 1A to the Response of the State of Suriname in the Case of the Kaliña and Lokono Peoples v. Suriname Inter-American Court of Human Rights, 3 October 2014 (quoting an unspecified source).

<sup>52</sup> *Response of the State of Suriname*, Case of the Kaliña and Lokono Peoples v. Suriname, 3 October 2014, at p. 23.

<sup>53</sup> *Id.* at p. 4-7.

these commissions, it nonetheless considers, and has formally informed the State, that these “are not the core issues to be addressed.”<sup>54</sup> These activities also bear no meaningful relationship to the orders of the IACTHR in *Saramaka People* and *Moiwana Village* or to the recommendations of the IACHR in *Kaliña and Lokono Peoples*. Ms. Jubitana further explains that none of the three commissions have been established yet;<sup>55</sup> and that “the Government fails to implement actual policy and legislative changes or undertake a consistent, structured process towards the legal recognition of our rights ... hiding behind the argument that it is a ‘sensitive’ and ‘difficult issue’ or other excuses.”<sup>56</sup>

23. She further explains that an individual consultant has “produced a draft law [on the position of traditional authorities] to which we gave no input at all in spite of repeated requests to do so, and which is also proposing totally new – and unacceptable – positions of our traditional authorities in spite of the agreement that the draft would capture the existing situation....”<sup>57</sup> This draft law, which the State claims in its response before the IACTHR would address the collective right to juridical personality<sup>58</sup> -- it in no way addresses this issue, or even legal personality otherwise<sup>59</sup> -- is regressive insofar as it would make ITPs’ traditional authorities subservient to a government minister, who would have the power to appoint, dismiss and sanction them, and even define their “dress code.”<sup>60</sup> Commenting on this draft law in May 2015, the IACHR “underline[d] its concern regarding the possibility that the elected traditional authorities could face disciplinary measures if they do not comply with the activities established in that Bill.”<sup>61</sup> The submitting organizations stress that this draft is the **only** outcome to date of the State’s supposed process to address ITPs’ rights.

24. With respect to this draft law on traditional authorities (see Annex C hereto), the submitting organizations emphasize the following and respectfully request that the Committee adopts an observation on this draft and makes appropriate recommendations. First, the IACHR agrees that this draft law “does not recognize in any way yet indigenous peoples’ legal personality.”<sup>62</sup> Illegitimately invoking its domestic law and disregarding a specific order of the IACTHR,<sup>63</sup> Suriname itself has steadfastly maintains that its legal system precludes recognition of ITPs’ collective legal personality and that such recognition “is not possible.”<sup>64</sup> Second, as the IACTHR

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<sup>54</sup> Annex A, Affidavit of Loreen Jubitana, at para. 27 (“Although we think and also mentioned that these issues are not the core issues to be addressed, we agreed to work on these proposed issues, for each of which a separate working group or commission would be formed”).

<sup>55</sup> *Id.* para. 27 and 29.

<sup>56</sup> *Id.* at para. 31.

<sup>57</sup> *Id.* at para. 27.

<sup>58</sup> *Response of the State, Kaliña and Lokono Peoples v. Suriname*, 3 October 2014, p. 9.

<sup>59</sup> See also CERD/C/64/CO/9/Rev.2, at para. 14 (expressing concern “that [ITPs] cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons”); and *Saramaka People*, at para. 167 (where the Court held that Suriname “does not recognize the Saramaka people as a juridical entity capable of using and enjoying communal property as a tribal group; [or] as a juridical entity capable of seeking equal access to judicial protection against any alleged violation of their communal property rights”) and at para. 174 (concluding that “the members of the Saramaka people form a distinct tribal community in a situation of vulnerability, both as regards the State as well as private third parties, insofar as they lack the juridical capacity to collectively enjoy the right to property and to challenge before domestic courts alleged violations of such right”).

<sup>60</sup> See Annex C, draft articles 2, 3, 7, 12, and 17(2); and Affidavit of Loreen Jubitana, at para. 27-8.

<sup>61</sup> *Submission of the IACHR, Case of the Kaliña and Lokono Peoples v. Suriname*, 12 May 2015, at p. 1.

<sup>62</sup> *Id.*

<sup>63</sup> *Saramaka People*, para. 194 (ordering that the state must recognize the Saramaka people’s collective legal personality in law and through judicial and administrative measures, all of which guarantee them “the use and enjoyment of their territory in accordance with their communal property system, as well as the rights to access to justice and equality before the law”).

<sup>64</sup> *Response of the State, Kaliña and Lokono Peoples v. Suriname*, 3 October 2014, at p. 8-9 (stating, at p. 8, that “Surinamese law is unfamiliar with the concept in which ethnic groups are attributed legal personality as a collectivity. As a rule it is assumed that it is a closed system. ... The consequence of this closed system is that, for

confirmed in *Saramaka People*, the collective right to juridical personality is vested in ITPs<sup>65</sup> and, in the exercise of their right to self-determination and autonomy,<sup>66</sup> each people has the right to designate how its personality shall be exercised, including in various situations (e.g., for the purposes of participating in decision making), and, by definition, this right cannot be denied or usurped by the State.<sup>67</sup> The IACTHR additionally confirmed in its 2012 *Sarayaku* judgment that international law recognizes indigenous peoples and their rights “as collective subjects” and they exercise certain rights “on a collective basis,” including the right to legal personality.<sup>68</sup> The IACHR has also emphasized this point.<sup>69</sup> Thus, the recognition of traditional authorities by itself is not equivalent to recognition of collective legal personality.<sup>70</sup>

25. Third, ITPs have long-called for legal recognition of their traditional authorities as the traditional or indigenous governing authorities in their territories not, as the draft Bill would have it, minor functionaries who are subservient to State officials. These authorities operate according to the customary laws and traditions of their respective peoples, which require that they take decisions subject to the consent of the members of the community or communities over which they preside. They are thus key figures in exercising ITPs’ right to self-determination, including as guaranteed in, *inter alia*, Articles 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples. The preceding is what Ms. Jubitana was referring to when she explained, as quoted above, that the draft Bill is “proposing totally new – and unacceptable – positions of our traditional authorities in spite of the agreement that the draft would capture the existing situation.” That the State has chosen to ignore this agreement, failed to involve ITPs in the process of drafting the Bill to-date (“in spite of repeated requests”), and proposed the structure for recognition of the traditional authorities presently set forth in the draft Bill is deeply disturbing and again demonstrates Suriname’s ongoing indifference to ITPs’ rights. If adopted as currently conceived, this draft Bill would be regressive and substantially undermine a wide range of inter-dependent and fundamental rights vested in ITPs.

26. Returning to the State’s claims about the broader ‘process’ to recognize ITPs’ rights, one of the (still unestablished) commissions listed by the State intends to focus on an awareness raising

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example, a self-invented entity with legal personality is not possible outside the framework of the Surinamese Civil Code”).

<sup>65</sup> *Saramaka People*, para. 167; and at para. 174 (where the Court extended the right to juridical personality to the Saramaka people, as a people. It ruled that the right to collective juridical personality is “one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions”).

<sup>66</sup> See e.g., *Xákmok Kásek Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R., Ser. C No. 214 (2010), at para. 255 (observing the inter-connectedness between the right of indigenous peoples to collective juridical personality, their territorial rights and the exercise of their right to self-determination).

<sup>67</sup> See e.g., *Saramaka People, Interpretation of the Judgment*, para. 18 (holding that “[b]y declaring that the consultation must take place ‘in conformity with their customs and tradition’, the Court recognized that it is the Saramaka people, not the State, who must decide which person or group of persons will represent the Saramaka people in each consultation process ordered by the Tribunal”).

<sup>68</sup> *Kichwa Indigenous People of Sarayaku*, Inter-Am. Ct. H.R., Ser. C No. 245 (2012), at para. 231.

<sup>69</sup> *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II. Doc. 56/09 (30 December 2009), at para. 66 (stating that the “collective nature of [ITPs] right to territorial property bears a direct incidence upon the content of other rights ..., giving them a collective dimension. Such is the case of the right to juridical personality or of the right to effective judicial protection”) (footnotes omitted).

<sup>70</sup> See e.g., *Chitay Nech et al*, Inter-Am. Ct. H.R., Ser. C No. 212 (2010), at para. 113-17 (recognizing that political participation and representation rights vest in both mandated indigenous leaders and collectively in the community or people to which they belong, which also has the collective right to be represented by persons or institutions of its choice; explaining that indigenous leaders “exercise their charge by mandate or designation and in representation of a community. This duality is both the right of the individual to exercise the mandate or designation (direct participation) as well as the right of the community to be represented;” and, stating that “the representation of groups in situations of inequality becomes a necessary prerequisite for the self-determination and the development of the indigenous communities within a plural and democratic State”)

campaign, the aim of which is “to inform [different sectors of society] as much as possible ... about the issue of land rights ... with the purpose of gaining important insights into solving this issue.”<sup>71</sup> It also explains in this respect that “it is clear that on a number of points ... [that] there is so far nationally no agreement (unfamiliarity with the issue of Indigenous and Maroon rights is probably the reason for this). This given necessitates the State to initiate concrete activities with the purpose of informing society on the issue of land rights for Maroons and Indigenous Peoples....”<sup>72</sup> Leaving aside the questions raised by these comments (e.g., what agreement by different sectors of society is required to recognise these rights?), they unmistakably illustrate just how abject Suriname’s purported efforts have been to date. The fact that these (unimplemented) initiatives are so meagre and misdirected and remain at such an elementary, confused and indeterminate level in 2015 speaks for itself and greatly contradicts the State’s assertions that it is committed to recognise and respect ITPs’ rights.

27. In light of the preceding, the State’s ‘process’ does not address recognition of property rights or collective legal personality, or the absence of legislation that could guarantee ITPs’ rights; is mostly dormant and unimplemented; and the little that has been done has been deemed objectionable and “unacceptable,” both in its content and the non-participatory manner in which it has been conducted, by the national indigenous peoples’ organization. Ms. Jubitana’s sworn testimony further demonstrates that this current ‘process’ is merely the latest in a long line of half-hearted and, at any rate, inconclusive initiatives,<sup>73</sup> dating back at least to 1992 when the State made a formal commitment to address indigenous peoples’ property rights.<sup>74</sup> This fact was also confirmed by the Inter-American Development Bank in a 2005 report, which explained that “Since the 1980s, subsequent governments have promised to address the land rights question but have not brought any change in the situation.”<sup>75</sup> Ms. Jubitana concludes that “it has become clear again that there is no concrete progress in any process related to legally recognizing our rights in Suriname and that we are just going in endless circles with the questionable ‘efforts’ by the government.”<sup>76</sup>

28. The submitting organizations observe that in 2009 when the Committee last reviewed Suriname, the State made much of a Presidential Commission on Land Rights, which it claimed would substantially further progress in resolving the long standing and pervasive discrimination suffered by ITPs.<sup>77</sup> However, its report has simply been discarded by Suriname, which has adopted two additional ‘processes’ since that time, both of which have been equally inconclusive. They note that, while briefly mentioned, neither of these ‘processes’ is explained in the State Party report or Suriname’s 2014 report to the Human Rights Committee.<sup>78</sup>

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<sup>71</sup> *Response of the State, Case of the Kaliña and Lokono Peoples v. Suriname*, 3 October 2014, Annex 1B, at p. 4.

<sup>72</sup> Affidavit of Loreen Jubitana, at para. 27.

<sup>73</sup> *Id.* para. 18 – 30.

<sup>74</sup> *Id.* para. 20, and, at para. 32 (explaining that “It also seems that whenever we are able to sufficiently pressure the State to address our rights, it establishes a commission as a way of diffusing that pressure and whatever work, if any, that the commission undertakes eventually dissipates and we are left where we started or, as happened with the “roadmap”, have to start all over again. This has been going on for decades...”).

<sup>75</sup> Inter-American Development Bank, *Country Environment Assessment (CEA) Suriname* (2005), at 4, <http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPublicDoc.aspx?docnum=482598>.

<sup>76</sup> Affidavit of Loreen Jubitana, at para. 30.

<sup>77</sup> CERD/C/SUR/CO/12, para. 13 (“noting with interest the final report by the Presidential Commission on Land Rights presented for analysis to the President of Suriname;” and “encourag[ing] the State to intensify its consideration of the final report in view to setting the principles for a comprehensive national land rights regime and appropriate relevant legislation with the full participation of the freely chosen representatives of [ITPs], as per the Commission’s mandate. In the Committee’s opinion the State Party’s consideration of the report of the Presidential Commission should not be in detriment of its full compliance with the orders of the Inter-American Court of Human Rights in the Saramaka People case”).

<sup>78</sup> CCPR/C/SUR/3, at para. 127 (stating that “Due to the disappointing results of the process leading to the production of a land use map, the State is even more motivated to engage in renewed efforts for putting together a pragmatic

## IV. ADDITIONAL INFORMATION

### A. Rights to Lands, Territories and Resources

29. A 2004 World Bank report concluded that “Suriname lacks even the minimal legal framework necessary to recognize the existence of its indigenous peoples, let alone to guarantee their rights.”<sup>79</sup> Every international human rights body that has examined this situation has reached the same conclusion.<sup>80</sup> The IACHR, for instance, observed in 2006 that ITPs in Suriname “have endured racial discrimination, and that one major manifestation of such discrimination has been the failure of state authorities to recognize customary indigenous forms of land possession and use.”<sup>81</sup> This lack of legal protection for ITPs’ collective rights “reflects unequal treatment in the law....”<sup>82</sup> It also found that Suriname applies its “legal and constitutional framework to defend its position that the Saramaka people has no property rights *per se*, but rather just a privilege or permission to use and occupy the lands at the discretion of the State.”<sup>83</sup> These conclusions and findings were all confirmed in 2007 by the IACTHR<sup>84</sup> and reaffirmed by the IACHR in July 2013.<sup>85</sup>

30. This wholesale and discriminatory disregard for the rights of ITPs persists to the present day. In July 2013, for instance, the IACHR ruled that their property rights “remain unrecognized by the laws of Suriname.”<sup>86</sup> It observed that the State “does not dispute this, but rather takes the position that in Suriname ‘the process of recognition in [its] domestic legislation of indigenous land rights is not yet completed or even only in early stages of development’.”<sup>87</sup> The IACHR further concluded that it “has been proven [that] Surinamese courts and other State authorities have failed to enforce and give effect to those rights at the domestic level. Moreover, Suriname points to no

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Road Map for the implementation of the outstanding commitments within the context of the Saamaka judgment”). The State abandoned this “Road Map” process in 2012. *See* Annex A, *Affidavit of Loreen Jubitana*, at para. (stating that the “roadmap” was “relegated to background information by the process overseen by the Presidential Commissioner,” established in mid-2013); and, at para. 118 (noting that “there is a Special Presidential Commissioner for Land Rights appointed. The Commissioner is entrusted with giving advisory tasks concerning all aspects of the land rights issue. A specific part of the advisory task of the Commissioner is to propose measures to prevent unbalanced social consequences of the land rights issue to the President”).

<sup>79</sup> *Models for Recognizing Indigenous Land Rights in Latin America*, World Bank: Washington D.C., October 2004, at p. 13, [http://siteresources.worldbank.org/BOLIVIA/Resources/Roque\\_Roldan.pdf](http://siteresources.worldbank.org/BOLIVIA/Resources/Roque_Roldan.pdf).

<sup>80</sup> *See e.g., Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013, at para. 95 (where the IACHR explains that the IACTHR “has twice looked at the lack of the recognition of property rights of [ITPs] in Suriname. It has held twice that Suriname’s failure to recognize these rights is inconsistent with the protections of the American Convention. International bodies such as the United Nations Committee on the Elimination of Racial Discrimination, the United Nations Human Rights Committee, and the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples have also noted that Surinamese law does not recognize the rights of indigenous peoples to their communal land, territories, and resources”).

<sup>81</sup> *Report No. 09/06 (Merits), Case of the Twelve Saramaka Clans*, 2 March 2006, at para. 235, [http://www.forestpeoples.org/documents/s\\_c\\_america/suriname\\_iachr\\_12\\_saramaka\\_clans\\_mar06\\_eng.pdf](http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_12_saramaka_clans_mar06_eng.pdf).

<sup>82</sup> *Id.* at para. 236.

<sup>83</sup> *Id.* at para. 190.

<sup>84</sup> *Saramaka People, e.g.*, paras. 115-116 (finding that “the State’s legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference;” and “the State’s legal system does not recognize the property rights of the members of the Saramaka people in connection to their territory, but rather, grants a privilege or permission to use and occupy the land at the discretion of the State. For this reason, the Court is of the opinion that the State has not complied with its duty to give domestic legal effect to the members of the Saramaka people’s property rights..”).

<sup>85</sup> *Saramaka People; Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013.

<sup>86</sup> Kaliña and Lokono Peoples, *id.* at para. 96. *See also* para. 112 (stating that “In this case, Suriname has acknowledged that its domestic legislation does not recognize the collective property rights of indigenous peoples. In fact, there is no disagreement between the parties on the fact that the laws of Suriname neither recognize nor guarantee the rights of the [ITPs] of Suriname to own their lands, territories, and natural resources”).

<sup>87</sup> *Id.*

concrete steps taken to accelerate this process of recognition or achieve its ultimate goals effectively.”<sup>88</sup> In other words, nothing has changed since 2004, when the World Bank report concluded that Suriname “lacks even the minimal legal framework necessary to recognize the existence” of ITPs, and 2007, when the IACTHR confirmed the IACHR’s finding that there is no recognition of or protection for their collective rights, and that this “reflects unequal treatment in the law....”

31. The Committee devoted considerable attention to the rights of ITPs to own their traditional lands, territories and resources in its 2004 and 2009 concluding observations and its EW/UA Decisions and letters.<sup>89</sup> It observed, *inter alia*, that Suriname has yet to adopt a law guaranteeing ITPs’ rights to own and control their traditional territories, and that these rights are routinely violated with impunity. In 2009, for example, the Committee stated that it was “concerned at the nonexistence of specific legislative framework to guarantee the realization of the collective rights of ITPs,” and it recommended that Suriname “ensure legal acknowledgement of the collective rights of ITPs ... to own, develop, control and use their lands, resources and communal territories according to [their] customary laws and traditional land tenure system....”<sup>90</sup> Again, nothing has changed since the Committee reached these and other conclusions and adopted its corresponding recommendations.

32. State law, policy and practice are based on the discriminatory principle that ITPs’ property rights entirely depend on formal recognition by the State, which has yet to materialize in any way in the 40 years since Suriname became independent,<sup>91</sup> and are subservient to an overriding title vested in the State or any interest granted by the State to third parties.<sup>92</sup> This principle is stated in a 1982 Decree adopted by the *de facto* military regime, which provides that “All land to which others have not proven their right of ownership, is domain of the State,” and where proving ownership depends on evidence of a State-issued title.<sup>93</sup> In Suriname’s words, ITPs’ territories form part of the ‘free domain’, meaning lands “which the State can dispose of freely,” and this is the case solely and precisely because Suriname itself has unreasonably failed to recognize their rights and issue them ownership titles.<sup>94</sup> Moreover, Suriname’s law merely accords ITPs an unenforceable “privilege or permission to use and occupy the lands at the discretion of the State.”<sup>95</sup> The 1982 Decree also

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<sup>88</sup> *Id.*

<sup>89</sup> See *inter alia* CERD/C/64/CO/9/Rev.2, para. 11-5, 17-8.

<sup>90</sup> CERD/C/SUR/CO/12, at para. 12.

<sup>91</sup> See *Response of the State of Suriname to the Inter-American Commission on Human Rights in the Case of the Kaliña and Lokono Peoples*, 14 January 2014, at p. 2 in Annex 1B to the Response of the State of Suriname in the Case of the Kaliña and Lokono Peoples v. Suriname Inter-American Court of Human Rights, 24 October 2014 (stating, despite having had 40 years to correct this problem, that the “land rights issue ... should be seen as a colonial inheritance by the young Republic of Suriname”).

<sup>92</sup> See *e.g.*, *Saramaka People*, para. 106 (“the State argued that, although it ‘may be correct that land related interests of the [Saramaka] are not recognized as a subjective right in the Suriname legal system[,] it is a tendentious misrepresentation to suggest that legitimate interests of the Tribe are not recognized by the system and respected in practice’”); and para. 115 (concluding that “the State’s legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference. The Court has previously held that, rather than a privilege to use the land, which can be taken away by the State or trumped by real property rights of third parties, members of [ITPs] must obtain title to their territory in order to guarantee its permanent use and enjoyment. This title must be recognized and respected, not only in practice, but also in law, in order to ensure its legal certainty”).

<sup>93</sup> Decree Principles of Land Policy (SB 1982, no. 10), Article 1(1).

<sup>94</sup> CERD/C/SUR/12, at p. 29.

<sup>95</sup> *Report No. 09/06 (Merits), Case of the Twelve Saramaka Clans*, 2 March 2006, at para. 235, [http://www.forestpeoples.org/documents/s\\_c\\_america/suriname\\_iachr\\_12\\_saramaka\\_clans\\_mar06\\_eng.pdf](http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_12_saramaka_clans_mar06_eng.pdf).



distinguishes these privileges,<sup>96</sup> which it refers to as “*de facto* rights,” from the legal (or *de jure*) rights accorded to holders of State-issued title or other registered property rights.<sup>97</sup> These privileges thus are not legal rights, they are inferior to and subordinate to the rights of others and they are of limited scope, applying only to “their villages, settlements and agricultural plots.”<sup>98</sup>

33. The Committee and other international human rights bodies have acknowledged on numerous occasions that it is a principle of international law that indigenous and tribal property rights arise from and are grounded in their customary law and tenure and they do not depend on the legal system of the State for their existence (i.e., to quote the IACTHR, “[t]raditional possession by indigenous of their lands has the equivalent effect of full title granted by the State”).<sup>99</sup> Indeed, their existence gives rise to corresponding obligations on the State to regularize these ownership rights and equally protect them under the law. Nonetheless, Suriname persists in asserting an exclusive and discriminatory public ownership of ITPs’ territories and in which they have inferior, subordinate and *de facto* privileges only. As recently as February 2013, the State explained that it still considers it contentious to even refer to ITPs as “rights-holders,” noting in this respect that the State remains the owner of their traditional lands under domestic law.<sup>100</sup>

34. The submitting organizations highlight the following statement in Suriname’s 2014 report to the Human Rights Committee to further illustrate that Suriname is not committed to recognizing and respecting ITPs’ property rights. Explaining how the “land rights issue” is addressed in its ‘National Development Plan 2012-2016’, “which is elevated to the status of national law through adoption by the National Assembly,” Suriname states that “two aspects should be kept in sight.”<sup>101</sup>

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<sup>96</sup> *Saramaka People*, para. 99 (observing that Suriname has “acknowledged that its domestic legal framework does not recognize the right of the members of the Saramaka people to the use and enjoyment of property in accordance with their system of communal property, but rather a privilege to use land”).

<sup>97</sup> *Saramaka People*, para. 109-10 (finding that “The official explanatory note to Article 4(1) of Decree L-1 explains that account should be given to the ‘factual rights’ of members of [ITPs] when domain land is being issued;” and “[t]he use of the term ‘factual rights’ (or *de facto* rights) in the explanatory note to Article 4(1) of Decree L-1 serves to distinguish these ‘rights’ from the legal (*de jure*) rights accorded to holders of individual real title or other registered property rights recognized and issued by the State. This limitation on the recognition of the legal right of the members of the Saramaka people to fully enjoy the territory they have traditionally owned and occupied is incompatible with the State’s obligations under Article 2 of the Convention to give legal effect to the rights recognized under Article 21 of such instrument”).

<sup>98</sup> *Id.* Decree L-1 of 1982, Article 4.

<sup>99</sup> *Xákmok Kásek Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R., Ser. C No. 214 (2010), at para. 109. See also O. Kreimer, *The Future Inter-American Declaration on the Rights of Indigenous Peoples: A Challenge for the Americas*, in C. Price Cohen (ed.), *HUMAN RIGHTS OF INDIGENOUS PEOPLES* (1998), at p. 69-70 (explaining that “Indigenous peoples, because of their preexistence to contemporary States, and because of their cultural and historical continuity, have a special situation, an inherent condition that is juridically a source of rights”).

<sup>100</sup> See e.g., *The National Biodiversity Action Plan (NBAP) 2012-2016. A Publication of the Ministry of Labour, Technological Development and Environment*, Government of Suriname, February 2013, at p. 18-9 (stating that “representatives of organizations which promote the interests of the Indigenous people, stated that the Indigenous people need to be considered rightholders and should also be designated as such.... The choice of words is a sensitive issue because it is related to judicial disputes between the state of Suriname on the one hand and on the other hand the Indigenous people and Maroons (and organizations that promote their interests). Based on the Constitution of the Republic of Suriname (1987) the entire Suriname territory, except for privately owned land, is ‘domain’ of the state. Neither this decree, nor the Constitution (1987; amended in 1992) provides for collective rights to property, while the Indigenous people and Maroons do claim these rights on the basis of international law”), <http://www.cbd.int/doc/world/sr/sr-nbsap-v2-en.pdf>. A few months later, the State official responsible for indigenous and tribal issues within the Office of the President explained in the press that “collective ownership is not an easy issue.... There are several consequences tied to issues for which there is currently no answer. The issue of creating a legal system which is foreign to that of Suriname is one risk.” ‘New case against Suriname at IACHR’, *Stabroek News*, 8 February 2014, <http://www.stabroeknews.com/2014/news/regional/02/08/new-case-suriname-iachr/>.

<sup>101</sup> CCPR/C/SUR/3, at para. 111-12.

First, “the State is obliged to recognize that land traditionally occupied, cultivated and otherwise necessary [sic] used by indigenous and tribal communities should remain at the[ir] disposal....”<sup>102</sup> Second, “the State holds the principle consideration that the total territory is public land of the nation. Nonetheless, Surinamese nationals, including indigenous and maroons, are entitled to apply for a plot of public land.”<sup>103</sup> Leaving aside the fact that Suriname has yet to do anything about these issues, “obliged” or otherwise, this statement is ambiguous unless viewed in the context of extant domestic law as well as tainted by racial discrimination.

35. In the first place, what is meant by “should remain at the[ir] disposal,” particularly as contemporary Suriname law merely accords ITPs unenforceable usufruct privileges<sup>104</sup> in relation to “their villages, settlements and agricultural plots,” not legal rights,<sup>105</sup> and which are only valid at the discretion of the State and to the extent that it has not issued the same lands to third parties.<sup>106</sup> The State has been ordered by the IACTHR to adopt legislative and other measures to grant collective title to traditionally owned indigenous and tribal lands and territories that guarantee their ownership and other rights, not merely that they should remain at their disposal. Second, the “principle consideration,” presumably meaning above all others, that the total territory is public land would seem to preclude recognition of ownership rights otherwise ITPs’ territories would no longer be “public lands.” As discussed further below, the State now recognizes that private ownership rights are vested in some non-indigenous and tribal persons and thus these lands are not public lands. It is discriminatory to deny ITPs the same rights, not the least and also because their rights are guaranteed as ownership rights by international law.

36. Last, the final statement that “indigenous and Maroons” are entitled to apply for “a plot of public land” is equally telling. This does no more than restate existing law that individuals may obtain a 15-40 year long lease of State lands. This provision is wholly unsuited to ITPs, who already hold pre-existing ownership rights, as collectives, that the State is obligated to recognize and regularize, and it would be perverse to require that they, as individuals only, obtain leases of their own lands from the State.<sup>107</sup> None of the preceding is evidence of any “commitment” on the part of the State or that ‘land rights’ have been placed high on the nation’s development agenda, as the State claims in its 2014 report to the Human Rights Committee.<sup>108</sup> On the contrary, it strongly

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<sup>102</sup> *Id.* at para. 112.

<sup>103</sup> *Id.* See also *Statement of the Minister of Justice and Police of the Republic of Suriname, Hon. Martin Misiedjan, at the 18<sup>th</sup> Session of the United Nations Human Rights Council, 22 September 2011, at p. 2 et seq.*, [http://www.upr-info.org/sites/default/files/document/suriname/session\\_11\\_-\\_may\\_2011/surinameplenarystatement2011.pdf](http://www.upr-info.org/sites/default/files/document/suriname/session_11_-_may_2011/surinameplenarystatement2011.pdf) (stating that “On the one hand were the claims made by the Maroon and indigenous peoples to the land which they lived on and cultivated for centuries. The other was that the Government deemed the entire territory of Suriname belonged to the State, with the exception of those instances in which a third party could prove otherwise”).

<sup>104</sup> *Saramaka People*, para. 99 (observing that Suriname has “acknowledged that its domestic legal framework does not recognize the right of the members of the Saramaka people to the use and enjoyment of property in accordance with their system of communal property, but rather a privilege to use land”).

<sup>105</sup> *Id.* para. 109-10.

<sup>106</sup> *Id.* at para. 108 (quoting Article 4 of Decree L-1 of 1982 as follows: (1) When domain land [which is defined as land owned by the State by virtue of its Constitution] is allocated, the rights of tribal Bushnegroes [Maroons] and Indians to their villages, settlements and agricultural plots are respected, provided that this is not contrary to the general interest. (2) General interest includes the execution of any project within the framework of an approved development plan”).

<sup>107</sup> See e.g., *Report on Admissibility and Merits No. 09/06, Twelve Saramaka Clans (Suriname)*, IACHR, 2 March 2006, at para. 166 (finding that “The information available indicates that land titling, leasing, and occupation on a permit basis is mainly governed by Decree L-1 of 1982 on Basic Principles of Land Policy. According to this law, any Surinamese citizen and any legal person is entitled to ask the government for a plot of uncommitted state land. These land titles are issued on an individual basis and are granted as leases vis-à-vis the State, renewable for periods of 15 to 40 years”).

<sup>108</sup> CCPR/C/SUR/3, at para. 112 (explaining that “Hence, the commitment of the State to effectively address the land right issue has been affirmed by putting it high on the national development agenda of the Government”).

indicates that the State is primarily vested in maintaining the *status quo* in which ITPs' territories remain part of the 'free domain', meaning lands "which the State can dispose of freely," irrespective of what rights that may have in international law.

37. Suriname's all-encompassing assertion of public ownership includes all natural resources in ITPs' territories and the forests therein.<sup>109</sup> This is the case even though Suriname admits that private ownership of forests is not only possible but in fact applies to some areas of the country,<sup>110</sup> and despite the ruling of the IACTHR that natural resources<sup>111</sup> and the forests in ITPs' territories are part of the protected property rights of the traditional owners thereof.<sup>112</sup> Suriname persists with this view even where it has been explicitly rejected by international supervisory bodies and others. For example, the member states of the World Bank Forest Carbon Partnership Facility rejected Suriname's views in this regard and decided in March 2013 "that it is very important to link legal recognition of land and resource rights of the [ITPs] to the further development of the REDD+ program in Suriname;" and Suriname must revise its funding request "to reflect that the Saramaka Judgment of the Inter-American Court of Human Rights and [ITPs'] rights have implications for REDD+ in Suriname."<sup>113</sup>

38. While it did indeed revise its funding proposal to the FCPF, although not with regard to the assertion of absolute State ownership of lands and forests in ITPs' territories (and thus it continues, as stated by the Committee in similar circumstances in 2009, "to deny any proprietary rights to indigenous peoples in forests"), the State, as discussed above and further below, has failed to take any steps to implement the fundamental orders in *Saramaka People* and continues to cite every conceivable excuse to justify its non-compliance.<sup>114</sup> Moreover, in a March 2015 submission to the IACTHR it stated that "**Suriname firmly posits that it cannot afford to share any control over**

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<sup>109</sup> See e.g., CERD/C/64/CO/9/Rev.2, para. 11 (stating that "While noting the principle set forth in article 41 of the Constitution that natural resources are the property of the nation and must be used to promote economic, social and cultural development, the Committee points out that this principle must be exercised consistently with the rights of ITPs"); and, at para. 12 ("not[ing] the efforts made by the State party, to some degree, to reconcile the State's title to the country's natural resources with the rights of [ITPs], in particular by means of the 1992 Peace Accord. It nevertheless observes that the Accord is not clear on this issue, and has not been put into effect"); CERD/C/SUR/CO/12, at para. 12 ("Recognizing the fact that the State Party's national economy heavily depends on the natural resource extraction industry- namely mining and logging- including in ancestral lands and traditional settlements of [ITPs], the Committee remains concerned about the protection of the rights to land, territories and communal resources of the [ITPs] living in the interior of the country").

<sup>110</sup> See e.g., *Suriname Readiness Preparation Proposal*, 24 June 2013, p. 66 (stating that "all forests, except private owned land, belong to the State. Forests on private land do not cover more than a total area of 50,000 ha."). [http://www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/REVISED\\_Suriname%20RPP%20finaldraft%2022juni.pdf](http://www.forestcarbonpartnership.org/sites/fcp/files/2013/june2013/REVISED_Suriname%20RPP%20finaldraft%2022juni.pdf).

<sup>111</sup> See e.g., *Saramaka People*, para. 121-22 (stating, respectively, that ITPs "have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake;" and "it follows that the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life").

<sup>112</sup> *Id.* at para. 144 (stating that "with regard to timber logging, a question arises as to whether this natural resource is one that has been traditionally used by the members of the Saramaka people in a manner inextricably related to their survival") and, at para. 146 (concluding that the "evidence shows that the members of the Saramaka people have traditionally harvested, used, traded and sold timber and non-timber forest products, and continue to do so until the present day").

<sup>113</sup> *Resolution PC/14/2013/7 on Suriname's Readiness Preparation Proposal*, adopted at the 14th Participants Committee Meeting of the World Bank Forest Carbon Partnership Facility, Washington D.C., 19-21 March 2013, Annex, <http://www.forestcarbonpartnership.org/sites/fcp/files/Final%20Resolution%207%20Suriname.pdf>.

<sup>114</sup> *Commication to Indonesia, EW/UA procedure*, 13 March 2009, at p. 1-2 (discussing Indonesia's 2008 "Regulation on Implementation Procedures for Reducing Emissions for Deforestation and Forest Degradation").

**its resources”** with ITPs.<sup>115</sup> Also, during a 2013 public hearing before the IACTHR on compliance with the judgment in *Saramaka People*, Suriname adamantly proclaimed that **“the public interest must always prevail over any interests or rights asserted by minority groups.”**<sup>116</sup> Suriname’s law and practice with respect to the public interest doctrine as applied to ITPs and its routine privileging of the rights and interests of third parties is discussed below. Both are substantially incompatible with contemporary human rights norms and the State’s corresponding obligations and further demonstrate Suriname’s determination to maintain its discriminatory policies.

39. Suriname’s above described acts and omissions are all the more egregious given that the recognition, securing and protection of ITPs’ property rights are inextricably related to their cultural survival and well-being as well as respect for a range of other interdependent rights.<sup>117</sup> For example, indigenous peoples’ property rights must be interpreted so as not to restrict their right to self-determination, by virtue of which ITPs may “freely pursue their economic, social and cultural development” and may “freely dispose of their natural wealth and resources.”<sup>118</sup> In line with this interpretation, the IACTHR explicitly ordered in *Saramaka People* that legislative recognition of territorial rights also must include recognition of the “right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system.”<sup>119</sup> The IACTHR thus affirms that, in order to freely determine, pursue and enjoy their own development, ITPs have the right, effectuated through their own institutions,<sup>120</sup> to make decisions about how best to use their territory; that they have a right to *effectively control, manage* and *distribute* their natural wealth and resources “without outside interference.”<sup>121</sup> The Committee has also highlighted these rights, reiterating its concerns in 2012 about the “ongoing delays ... concerning the recognition of communal and self-determination rights of the Saramaka people.”<sup>122</sup>

## **B. The Saramaka People, Moiwana Village, and Kaliña and Lokono Peoples Cases**

40. As noted above, the IACTHR has issued two judgments concerning the rights of ITPs in Suriname, the first in the 2005 *Moiwana Village* case, the second in the 2007 *Saramaka People* case. In each case, Suriname was found responsible for gross, long-standing, and systematic violations of

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<sup>115</sup> *Additional Information following the recently held public hearing in the case of the Kaliña and Lokono peoples v. The Republic of Suriname*, 2 March 2015, at p. 31 (emphasis added).

<sup>116</sup> *Audio Transcript*, Hearing of the Inter-Am. Ct. H.R., *Saramaka People* (Monitoring Compliance), 28 May 2013.

<sup>117</sup> *Yakye Axa Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R., Ser. C No 125 (2005), at para. 146 (explaining that “indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations”).

<sup>118</sup> *Saramaka People*, at para. 93-5.

<sup>119</sup> *Id.* at para. 194 and 214(7). See also UNDRIP, Art. 26(2) (providing that “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”).

<sup>120</sup> See UNDRIP, Article 4 (providing that “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”). The IACTHR has also highlighted the importance of the preservation of indigenous peoples’ communal structures and modes of self-governance in *Plan de Sánchez Massacre*, Inter-Am. Ct. H.R., Series C No 105 (2004), para. 85.

<sup>121</sup> *Saramaka People*, at para. 115 (stating that “the State’s legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference”). See also *Yakye Axa*, at para. 146 (where the Court observes that “indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations”).

<sup>122</sup> *Communication to Suriname, EW/UA Procedure*, 9 March 2012.

ITPs' rights.<sup>123</sup> The IACHR reached the same conclusion in each of these cases prior to taking the decision to transmit them to the jurisdiction of the IACTHR. *Moiwana Village* concerns a 1986 massacre of N'djuka maroons and its consequences, while *Saramaka People* deals with Suriname's failure to legally recognize and secure the Saramaka people's collective ownership rights to its traditional territory and grants of logging and mining concessions therein. In his capacity as UNSRIP, and because the same structural problems in Suriname law are generally applicable to other ITPs, James Anaya explained that these judgments of the IACTHR "imply international legal responsibility on the part of Suriname in regard to all the [ITPs] of the country under the American Convention."<sup>124</sup>

41. The submitting organizations disclose that they are all involved in these cases, either as petitioners or as legal counsel (the VSG and the VIDS are petitioners in *Saramaka People* and *Kaliña and Lokono Peoples*, respectively, and the FPP is legal counsel for the victims in all three cases). For this reason, they not only have an interest in the cases but also have access to information about all aspects thereof, including the various submissions made to the IACTHR, some of which are referred to above and below.

### **1. Saramaka People: a "prolonged condition of international illegality"**

42. The State maintains, on the one hand, that it is "in the process of implementing" the IACTHR's judgment in *Saramaka People* "with the participation of the relevant stakeholders," and on the other, cites numerous excuses to justify why it has not implemented it or will only do so in the manner of its choosing. Some of these excuses are discussed above and below. As discussed in this section, Suriname is not in the process of implementing the *Saramaka People* judgment and has not addressed any of the issues therein for at least the past four years. Its claims to the contrary are extremely difficult to understand, contradicted by its own statements, and refuted by the authoritative views of the IACTHR and others.<sup>125</sup> The "prolonged condition of international illegality" identified by James Anaya in 2011,<sup>126</sup> and verified by the current UNSRIP, Victoria Tauli-Corpuz, in her 2015 testimony in *Kaliña and Lokono Peoples*, therefore persists and intensifies unabated.<sup>127</sup> This is the also case despite the Committee's 2009 recommendation that the State, "with urgency," implement the judgment within the deadlines set by the IACTHR;<sup>128</sup> and its 2012 recommendation, reiterating its concern about the "ongoing delays in compliance of the most crucial aspects of the of the court judgment, in particular, concerning the recognition of communal and self-determination rights of the Saramaka people'.<sup>129</sup>

43. Suriname has complied with some of the IACTHR's orders (e.g., translation of the judgment, payment of compensation, and publication of the judgment). However, as confirmed by the

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<sup>123</sup> See e.g., *Saramaka People*, at para. 115-16 (stating that Suriname's extant legal framework is substantially inadequate because it "merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference"); and, at para. 106 (explaining that "an alleged recognition and respect in practice of 'legitimate interests' of the members of the Saramaka people cannot be understood to satisfy the State's obligations under Article 2 of the Convention with regards to Article 21 of such instrument").

<sup>124</sup> A/HRC/18/35/Add.7, at para. 12.

<sup>125</sup> See e.g., CERD/C/SUR/13-15, at para. 14 (where Suriname asserts that its failure to implement the *Saramaka People* judgment is due to unspecified "complexity" caused by "the composition of Suriname's population..."),

<sup>126</sup> A/HRC/18/35/Add.7, at para 11 (stating that "It is imperative that Suriname take steps to fully implement the judgment of the Court, in order to avoid a prolonged condition of international illegality").

<sup>127</sup> *Testimony of Expert Witness Victoria Tauli Corpuz, Audio Transcript, Part 2*, at 1:40:17, [corteidh.or.cr/tablas/audio/eng/caso-pueblos-kalina-y-lokono-suriname-eng-02.MP3](http://corteidh.or.cr/tablas/audio/eng/caso-pueblos-kalina-y-lokono-suriname-eng-02.MP3).

<sup>128</sup> See CERD/C/SUR/CO/12, at para. 18 ("reiterates its recommendation, with urgency, that the State party initiate steps towards the full implementation of the Court's orders according to the set implementation timeline").

<sup>129</sup> *Communication to Suriname, EW/UA Procedure*, 9 March 2012.

Committee, IACHR, IACTHR and the UNSRIP, it has failed to make any meaningful progress in complying with any of the Court's fundamental orders, including those pertaining to recognition of Saramaka territorial rights, the adoption of legislation, recognition of legal personality and reviews of concessions.<sup>130</sup> This was corroborated in detail by the IACTHR, pursuant to its jurisdiction to monitor compliance with its judgments, based on information submitted by the State and the Saramaka in additional orders issued in 2011 and 2013.<sup>131</sup> Not only has the IACTHR verified Suriname's prolonged and unreasonable failure to comply, it has also had to remind the State more than once not to "exert pressure" on the alleged victims and their representatives "on account of statements, opinions, or legal defenses presented to the Court."<sup>132</sup>

44. When the IACTHR adopted additional orders in November 2011, Judge Vio Grossi issued a separate opinion. He stated that "according to pertinent norms and in light of the extended, and therefore imprudent or unreasonable, amount of time elapsed since the issuance of the Judgment at hand without the State concerned ... having complied with its fundamental orders, the [IACTHR] ... should inform the General Assembly ... of this lack of compliance."<sup>133</sup> He also commented on Suriname's various excuses to justify its non-compliance, observing that this constitutes a "prolongation of the proceeding in which a judgment has already been delivered..." where "the victims of the human rights violations are placed in a situation of disadvantage, because they must continue litigating ... against arguments relating to domestic law that the State usually invokes in order not to comply with the Court's decision and that obviously were not admissible in the proceeding itself...."<sup>134</sup> This indeed has been the experience of the Saramaka since 2007, although

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<sup>130</sup> *Saramaka People (Monitoring Compliance)*, Orders of the Inter-American Court, 23 November 2011, para. 50 (stating that "given the Republic of Suriname's alleged statements before the UN Human Rights Council to the effect that it cannot support recommendations that it comply with the Saramaka Judgment ...; the fact that most of the Court's orders in the Judgment have not been implemented despite the expiration of the deadlines set therein; and the State's failure to fulfill its obligation to duly inform the Court on its implementation of the Judgment, the Court finds it appropriate to convene a private hearing during the year 2012"); and, at para. 17 (stating that the "Court notes that despite its repeated requests ... the State has not adequately reported on the measures taken to review concessions existing in Saramaka territory prior to the issuance of the Judgment"); and A/HRC/18/35/Add.7, at para. 11 (stating that "While there have been some advancements made in the implementation of the orders of the Inter-American Court, including the payment of the costs that the Court ordered be paid to the Saramaka communities, Suriname has not yet complied with the most substantive elements of the Court's judgment, including those parts requiring the demarcation and titling of the Saramaka communities' lands and the development of a law or procedure to carry out that process").

<sup>131</sup> *Saramaka People (Monitoring Compliance)*, Orders (2011); and *Saramaka People (Request for Provisional Measures and Monitoring Compliance)*, Orders of the Inter-Am. Ct. H.R., 4 September 2013. See also *Saramaka People (Monitoring Compliance)*, Order of the President of the Inter-Am. Ct. H.R., 20 April 2010, [http://www.corteidh.or.cr/docs/supervisiones/saramaka\\_20\\_04\\_10\\_ing.pdf](http://www.corteidh.or.cr/docs/supervisiones/saramaka_20_04_10_ing.pdf).

<sup>132</sup> See e.g., *Saramaka People (Request for Provisional Measures and Monitoring Compliance)*, Orders (2013), Having Seen, para. 7 and Considering, para. 16 (referring to Article 53 of the IACTHR's Rules of Procedure, which provides that "States may not institute proceedings against witnesses, expert witnesses, or alleged victims, or their representatives or legal advisers, nor exert pressure on them or on their families on account of statements, opinions, or legal defenses presented to the Court"); and *Communication of the IACTHR*, CDH-12.338/322, 06 June 2013, at p. 1 (reminding the State of its obligations pursuant to Article 53 of the Court's Rules of Procedure and Article 1(1) of the American Convention on Human Rights, and requesting that Suriname submit "information on the alleged acts of intimidation against Saramaka leaders"). The Court's communication of 31 July 2013 notes that the State failed to submit said information.

<sup>133</sup> *Concurring Opinion of Judge Vio Grossi. Saramaka People (Monitoring Compliance)*, Orders of the Inter-Am. Ct. H.R., 23 November 2011, at p. 1 (referring to Article 65 of the American Convention on Human Rights, which provides, in pertinent part, that the IACTHR shall submit an annual report to the General Assembly of the Organization of American States, and "shall specify, in particular, the cases in which a state has not complied with its judgments..."); and p. 2 (stating that in cases "such as the one at hand, in which not only has the established deadline expired, but too much time has passed, more than what could be considered prudent or reasonable, without the State having complied with the Judgment's fundamental aspects").

<sup>134</sup> *Id.* at p. 6.

they have also had to constantly refute and disprove numerous other excuses beyond the State's arguments about its domestic law.

45. In February 2015 during the public hearing in *Kaliña and Lokono Peoples*, after reviewing numerous submissions and hearing statements over two days by the State, Judge García Sayán stated that:

I was here seven or more years ago when we issued our judgment in *Saramaka*. ... I must confess my frustration at not finding any response on the part of the State which would allow me to be optimistic that the decisions or the judgments handed down by this Court here in this case are going to be fulfilled because whatever the Court decides is ultimately going to be left to the State to implement, and we are going to have a problem which is very similar to what we saw seven years ago with regard to *Saramaka*. So, more than a question, this is a comment asking the State, in its final written pleading ... to inform the Court of the commitments it is willing to fulfil, as well as the assurances that it can provide to the Court that it will fulfil those obligations in terms of deadlines, in terms of the specific institutions that are going to carry out each one of these actions, so that the Court will actually have firm reason to believe that the State's statements are not simply a collection of assertions that are not grounded in reality because the judgments of the Court are intended for implementation. So I would, in a friendly manner, ask the State to truly address the matters raised in this case and not simply limit itself to rhetorical assurances.<sup>135</sup>

46. To be sure, Judge García Sayán concluded that he did not find "any response on the part of the State which would allow [him] to be optimistic that the ... judgments handed down by this Court ... are going to be fulfilled...." He sought assurances from Suriname so that the IACTHR "will actually have firm reason to believe that the State's statements are not simply a collection of assertions that are not grounded in reality..." and; he asked "the State to truly address the matters raised in this case and not simply limit itself to rhetorical assurances." These views were also "echoed" by Judge Roberto Caldas,<sup>136</sup> who also emphasized that Suriname needs to "take ownership of human rights and comply [with] and respect all human rights of the people of Suriname. Therefore, this collective agreement that is the Inter-American Commission and the Court demands that the State of Suriname takes measures and that it devotes itself to complying with these measures."<sup>137</sup>

47. The same rhetorical and unsupported assurances identified by Judge García Sayán are also to be found in the State Party report now before the Committee, as are some of the excuses routinely put forward by Suriname to justify its non-compliance. In short, Suriname has failed to comply with the most crucial orders of the IACTHR and, as discussed above, it is not now engaged in any process aimed at compliance. Indeed, since late 2010, it has ceased even meeting with the *Saramaka* to discuss implementation of the judgment. This situation is so obvious and the State's excuses so transparent, that judges of the IACTHR have even publicly sought assurances from Suriname that its "statements are not simply a collection of assertions that are not grounded in reality...."

48. Not only has Suriname failed to implement the IACTHR's orders in *Saramaka People*, it has actively contravened them. For example, referring to an order made in its 2007 judgment, the IACTHR's 2011 Compliance Orders state unambiguously that "the granting of any new concessions

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<sup>135</sup> See *Video of Hearing, Kaliña and Lokono Peoples v. Suriname*, 4 February 2015, at 1:55 *et seq.*, <https://vimeo.com/album/3247192/video/118766033>.

<sup>136</sup> *Id.* at 2:08:40 *et seq.* (stressing the 'essential importance' of implementation of and compliance with the judgment in *Saramaka People*).

<sup>137</sup> *Id.* at 2:10:50 *et seq.*

in [Saramaka territory] after December 19, 2007 ... without the consent of the Saramaka and without prior environmental and social impact assessments, would constitute a direct contravention of the Court's decision, and, accordingly, of the State's international treaty obligations...."<sup>138</sup> The Saramaka have submitted evidence that the State has, all in Saramaka territory and all after 19 December 2007, upgraded a major road without consultation or an impact assessment, issued a stone mining concession, issued at least one and possibly up to six logging concessions, and issued a permit for a tourist resort *in* a Saramaka village. Most recently, on 13 April 2013, Suriname's legislative body approved a Mineral Agreement and adopted legislation to enact it into law that grants new and massive mining rights to the Canadian company, IAMGOLD, in Saramaka territory.<sup>139</sup>

49. This new concession directly affects up to 33 Saramaka villages and indirectly affects all Saramaka given its large-scale impact on the integrity of their territory in general. Suriname reported to the IACTHR on 22 March 2013 that it intends to consult the Saramaka after the agreement has been concluded<sup>140</sup> – this has yet to occur and, at any rate, such consultation is required prior to, not after, the agreement has been concluded and enacted into law<sup>141</sup> – and strangely asserts that it will comply with the order of the IACTHR that the free, prior and informed consent of the Saramaka be obtained in relation to the Mineral Agreement, “provided that the final decision is reserved to the national government.”<sup>142</sup> On 25 February 2013, the IACHR in plenary decided that the extension of mining rights in Saramaka territory “appear[s] to threaten the rights of the Saramaka people and therefore contravene [Suriname’s] obligation to comply with the judgment.”<sup>143</sup> In September 2013, the IACTHR decided that “the analysis and assessment of the information provided concerning the mining exploitation project on Saramaka territory is related to monitoring compliance with the Judgment...,” and requested that the parties submit additional information.<sup>144</sup>

50. Finally, after being prompted a number of times by the IACTHR to report on its compliance with the judgment in *Saramaka People*, Suriname submitted a long overdue (by more than 18 months) report on 27 April 2015.<sup>145</sup> The IACHR submitted its observations on that report in June

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<sup>138</sup> *Saramaka People (Monitoring Compliance), Orders* (2011), Considering, para. 19; and *Saramaka People*, at para. 194(a) and 214(5) (ordering that “Until said delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people”).

<sup>139</sup> See e.g., ‘Iamgold’s Rosebel mine expansion approved by Suriname’, *Financial Post*, 13 April 2013, <http://business.financialpost.com/2013/04/15/iamgold-s-rosebel-mine-expansion-approved-by-suriname/>; and ‘Suriname/Iamgold sign deal to expand Rosebel mine’, *Reuters*, 7 June 2013, <http://www.mineweb.com/mineweb/content/en//mineweb-fast-news?oid=193459&sn=Detail>.

<sup>140</sup> *Report of the State, Saramaka People (Monitoring Compliance)*, 22 March 2013, at p. 5.

<sup>141</sup> See e.g., *Kichwa Indigenous People of Sarayaku*, Inter-Am. Ct. H.R. Ser. C No. 245 (2012), at para. 181 (stating that “the requirement of prior consultation implies that this process should take place before undertaking an action or implementing a project that is likely to affect the communities, including legislative measures, and that the affected communities must be involved as early as possible in the process. When the prior consultation concerns the adoption of legislative measures, indigenous peoples must be consulted in advance during all stages of the process of drafting legislation, and these consultations should not be restricted to proposals”).

<sup>142</sup> *Report of the State, Saramaka People (Monitoring Compliance)*, 22 March 2013, at p. 4.

<sup>143</sup> *Submission of the IACHR, Saramaka (Monitoring Compliance)*, 12 March 2013, at p. 2 (stating also that urgent attention was required to this situation and that the extension of mining rights in Saramaka territory “constitute[s] a serious obstacle in the State’s compliance with the judgment”).

<sup>144</sup> *Saramaka People (Monitoring Compliance), Orders* (2013), at Considering, para. 23.

<sup>145</sup> *Saramaka People (Monitoring Compliance), Orders* (2011), p. 17, Decides 2, (where the Court decided that “Suriname must submit reports on its compliance with the Judgment every three months”). See also *Moiwana Village (Monitoring Compliance)*, *Orders of the Inter-Am. Ct. H.R.*, 22 November 2010, Having Seen, para. 4 (stating that “The Secretariat’s notes of October 23, 2008, and May 13, 2009, in which the State was advised that in accordance with



2015 and “express[ed] its deep concern regarding the complete lack of measures adopted by Suriname to comply with the measures of reparations ordered by the Court.”<sup>146</sup> It is expected that the IACTHR will issue additional compliance orders in the near future, including in relation to the massive, new mining rights issued by the State in Saramaka territory.

## 2. Moiwana Village

51. In the 2005 *Moiwana Village* case, the IACTHR found Suriname responsible for the ongoing failure to investigate and punish those responsible for the 1986 massacre during which the National Army killed at least 39 Maroons, the vast majority of whom were women and young children. During the public hearing before the IACTHR in September 2004, Suriname expressly admitted that the massacre was “systematic,” committed by “agents of the State,” and that its 1992 *Amnesty Law* does not apply to the massacre<sup>147</sup> because that law contains an exception for crimes against humanity.<sup>148</sup> The 2002 merits decision adopted by the IACHR also concluded that the Moiwana massacre constituted a crime against humanity.<sup>149</sup> The IACTHR also held that Suriname had violated the right to collective property.<sup>150</sup> It ordered that the State “shall adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community.... These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories.”<sup>151</sup>

52. While the State has paid the compensation awarded to the victims and complied with other orders (e.g., a public apology, establishment of a development fund and construction of a monument), it has to-date failed to comply with the fundamental orders of the Court. These orders concern commencing and completing an investigation and the prosecution of the perpetrators and intellectual authors of the massacre, returning the remains of those killed so that they can be buried according to the appropriate cultural traditions, and regularization of the community’s land rights. Suriname’s failure to comply with these orders was confirmed by the IACTHR in 2007 and 2010, and nothing has changed since then. This is profoundly disturbing given Suriname’s (wholly appropriate) characterisation of the massacre as a crime against humanity.<sup>152</sup> The Committee’s

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Operative Paragraph two of the aforementioned Order, the deadline for the submission of a detailed report on its implementation of the reparations ordered by the Tribunal had expired on March 25, 2008, yet no report had been received. Accordingly, the Secretariat requested that the State submit such a report as soon as possible. Subsequently, through the Secretariat’s note of September 2, 2009, the State was given a new deadline for the submission of a report on its compliance with the Judgment. This deadline expired on October 2, 2009, yet no report was received. Thus, through the Secretariat’s note of October 22, 2009, the State was again asked to submit a report on compliance as soon as possible. The State did not submit the report requested”, [http://www.corteidh.or.cr/docs/supervisiones/moiwana\\_22\\_11\\_10\\_ing.pdf](http://www.corteidh.or.cr/docs/supervisiones/moiwana_22_11_10_ing.pdf).

<sup>146</sup> See Annex B hereto, *Observations of the IACHR, Saramaka People (Monitoring Compliance)*, 18 June 2015, at p. 1.

<sup>147</sup> See CCPR/C/SUR/3, para. 41 (referring to the Amnesty Law 1989, as amended by S.B. 2012 No. 49, as explaining that the Explanatory Memorandum to the 2012 amendment “emphasizes that the Moiwana Judgment of the Inter-American Court of Human Rights does not fall within the scope of the Amnesty Law, and therefore must be implemented unabridged. Article 2 of the Amnesty Law reads as follows: “1. However, the amnesty provided for in Article 1 shall not apply to offenses which must be regarded as crimes against humanity”).

<sup>148</sup> Audio transcript of the hearing before the Inter-American Court of Human Rights, part 5, 09 September 2004.

<sup>149</sup> IACHR, *Report No. 35/02, Village of Moiwana (Suriname)*, Case 11.821, 28 February 2002, para. 50 & 90. See also *Separate Concurring Opinion of Judge A.A. Cançado-Trindade, Moiwana Village v. Suriname*, at para. 32 (stating that “The Moiwana massacre was State-planned, State-calculated and State-executed: it was a crime of State”).

<sup>150</sup> *Id.* at para 86(5) (finding, as a ‘proven fact’, that “the State’s legal framework does not recognize such communities as legal entities,” and “national legislation does not provide for collective property rights”).

<sup>151</sup> *Id.* at para. 209.

<sup>152</sup> *Moiwana Village (Monitoring Compliance)*, Order of the Inter-Am. Ct. H.R., 21 November 2007, [http://www.corteidh.or.cr/docs/supervisiones/moiwana\\_21\\_11\\_07\\_ing.pdf](http://www.corteidh.or.cr/docs/supervisiones/moiwana_21_11_07_ing.pdf). See also *Moiwana Village (Monitoring Compliance)*, *Orders* (2010) (e.g., at Considering, para. 12, stating that “It is lamentable that twenty-four years after the attack, and five years after service of the Judgment, the State has not been able to provide the Tribunal with any

2004 concluding observations also address this matter, specifically mentioning the Moiwana massacre. In particular, the Committee recommended that Suriname attach the highest “priority to ensuring that those guilty of human rights violations during the civil war do not go unpunished, and that the victims are offered appropriate compensation as swiftly as possible.”<sup>153</sup>

53. As noted above, Suriname has not undertaken even the most rudimentary steps to investigate the massacre. What is more, the State continues to assert that there is little evidence available to initiate prosecutions because, it claims, witnesses will not come forward.<sup>154</sup> Suriname’s statement in the regard ignores the fact that there is considerable and reliable non-testimonial evidence available. The IACTHR, for example, stated that “there is abundant evidence in the record that attests to the involvement of Suriname’s military regime in the overt obstruction of justice in the instant case.”<sup>155</sup> These statements also ignore the fact that the State has done nothing to reassure potential witnesses of their safety should they come forward, despite repeated calls to this effect from the victims.<sup>156</sup> They further ignore Suriname’s “obligation to act ex officio in human rights violation cases.”<sup>157</sup> Indeed, as the IACTHR stated in *Moiwana Village*, inter-American “case law is unmistakable: the State has an ex officio duty to initiate, without delay, a serious, impartial, and effective investigation;”<sup>158</sup> and this investigation “decidedly does not depend upon the initiative of victims and their family members or upon their submission of evidence.”<sup>159</sup>

54. Finally, the State claims in its 2014 report to the Human Rights Committee that it is in “the process of developing tailor made legislation and administrative and other measures necessary to ensure the property rights in relation to traditional territories of the members of the Moiwana Community, which includes land rights, [but] [t]his subject is still not resolved due to its complexity.”<sup>160</sup> As noted above, this claim does not stand up to scrutiny: the State has not been and is not now engaged in any process of drafting legislation on this or any related issue. According to the State, this “complexity” is in part based on its view that “an indigenous tribe of the village Alfonsdorp, nearby to the Moiwana maroon village, claims the Moiwana area as their traditional tribal territory.”<sup>161</sup> However, Alfonsdorp, one of the eight communities involved in the *Kaliña and Lokono Peoples* case, does not claim “the Moiwana area,” which is located elsewhere, but its own traditional lands.

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details on advances in either one of these investigations”, [http://www.corteidh.or.cr/docs/supervisiones/moiwana\\_22\\_11\\_10\\_ing.pdf](http://www.corteidh.or.cr/docs/supervisiones/moiwana_22_11_10_ing.pdf).

<sup>153</sup> *Suriname*, CERD/C/64/CO/9/Rev.2, para. 20.

<sup>154</sup> See e.g., CCPR/C/SUR/3, at para. 45 (stating that “Due to the fact that many of the relatives of the victims of the Moiwana Case live in French Guiana and because of a lack of valuable witnesses – for a criminal prosecution – who want to testify, the criminal investigation has not yet reached a stage in which suspects have been identified. Although Mr. Andre Ajintoena, the representative of the relatives of the victims and of the survivors in the Moiwana Case, publicly stated that witnesses are prepared to testify, no one has yet signed up to the police in order to give details and to make statements. The same applies to other human rights violations from the military period”).

<sup>155</sup> *Moiwana Village*, at para. 157. See also *Moiwana Village (Monitoring Compliance), Orders* (2010), at Considering, para. 10 (stating that “the lack of testimonies cannot be used as an excuse for not proceeding with investigations, as there is other evidence available to the State, including alleged perpetrators’ public acknowledgments of responsibility”); and at Considering, para. 14 (explaining that “the investigations into the obstruction of justice committed by State authorities do not require witness statements in order to proceed, yet the State has offered no information as to its progress in complying with this order”).

<sup>156</sup> See *Moiwana Village (Monitoring Compliance), Orders* (2007); and *Moiwana Village (Monitoring Compliance), id.* at Considering, para. 12 (stating that the “Court finds that the State’s efforts to date have been insufficient to instill confidence in witnesses as to their safety...”).

<sup>157</sup> *Observations of the IACHR, Moiwana Village (Monitoring Compliance)*, 18 June 2015, at p. 1.

<sup>158</sup> *Moiwana Village*, at para. 145.

<sup>159</sup> *Id.* at para. 146; and *Moiwana Village (Monitoring Compliance), Orders* (2010), at Considering, para. 13.

<sup>160</sup> CCPR/C/SUR/3, para. 17.

<sup>161</sup> *Id.*

55. While it is true that the massacre occurred at locations in Alfonsdorp's lands, where members of Moiwana had established camps along the east-west highway, the traditional lands of Moiwana and the site of Moiwana village itself (the areas to be titled), are located some 20 kilometers to the north-west of these camps in the territory of the Cottica N'djuka people to which Moiwana belongs. Moreover, the IACTHR ordered that the Moiwana community's property rights be regularised "with the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages and the neighboring indigenous communities, including the community of Alfonsdorp."<sup>162</sup> It clarified in 2006 that "the Court has not made any determination as to the appropriate boundaries of the territory ... [and] has simply left the designation of the territorial boundaries in question to 'an effective mechanism' of the State's design."<sup>163</sup>

56. In sum, the State has failed to adopt the legislative or other measures to determine the "appropriate boundaries of the territory," a fact confirmed by the IACHR in June 2015.<sup>164</sup> Neither has Alfonsdorp, the other indigenous communities or anyone else had the opportunity to consider, let alone consent to any boundaries, which have not been identified, even on a preliminary basis, in any formal process to date. Therefore, there is no rational basis for the State's above stated conclusion in this regard. Nor has the State held any structured consultation with any of the affected parties to ascertain their views or proactively attempted to resolve any conflicts that may exist. Instead, the State seeks to use this supposed conflict to excuse and disguise its prolonged disregard for the IACTHR's corresponding orders.

57. This excuse has also been asserted by the State at the national level as well and is expressed in Suriname's 2014 report to the Human Rights Committee in addition to its submissions to the IACTHR. In its report to the Human Rights Committee, Suriname claims that ITPs have "Divergent positions ... with respect to agreeing on an applicable land use map.... This makes it rather complex for the State to embark upon concrete actions for delimitation and demarcation."<sup>165</sup> It further claims that "a consensual documented arrangement concerning a land use map between the indigenous and other tribal communities could accelerate the entire process of drafting a Bill related to the delimitation and demarcation of indigenous and tribal communities...;"<sup>166</sup> and, "[i]t is without any doubt, that only after agreement is reached by all communities involved, the Government will proceed with drafting legislation based on the agreed maps on inter alia collective land titles."<sup>167</sup>

58. The submitting organizations – which include the national indigenous peoples' organization, VIDS, and the organization representing Saramaka traditional authorities, the VSG - offer the following comments on these assertions. First, these statements are an admission that the State has not begun any process of drafting legislative or other measures and directly controvert the State's contentions to contrary. Second, they are unaware of any process to develop any

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<sup>162</sup> *Moiwana Village*, at para. 210; *Moiwana Village (Monitoring Compliance)* (2010), at Considering, para. 25

<sup>163</sup> *Moiwana Village, Interpretation Judgment*, Inter-Am. Ct. H.R., Ser. C No. 145 (2006), para 19 (where "the Court deems pertinent to point out that, by recognizing the right of the Moiwana community members to the use and enjoyment of their traditional lands, the Court has not made any determination as to the appropriate boundaries of the territory in question. ... If said rights are to be properly ensured, the measures to be taken must naturally include 'the delimitation, demarcation and titling of said traditional territories', with the participation and informed consent of the victims as expressed through their representatives, the members of the other Cottica N'djuka villages and the neighboring indigenous communities. In this case, the Court has simply left the designation of the territorial boundaries in question to "an effective mechanism" of the State's design").

<sup>164</sup> *Observations of the IACHR, Moiwana Village (Monitoring Compliance)*, 18 June 2015, at p. 1 (stating that "the State has not adopted any measure to ensure the right to collective property of the community").

<sup>165</sup> CCPR/C/SUR/3, at para. 106.

<sup>166</sup> *Id.* at para. 121.

<sup>167</sup> *Id.* at para. 123.

national land use map and nor have there been any consultations about such a map. While various ITPs have made maps of their occupation and use of lands themselves, the State has at no time suggested that these be compiled, and nor it would it be appropriate to do as some of these maps are incomplete and, as they often document only occupation and use, they do not convey a complete picture of their customary tenure systems, the basis for delimitation, demarcation and titling. It is thus entirely unclear by what process the land use maps referred to by the State would be made or employed and, at any rate, there is no such extant process. Moreover, the Saramaka have repeatedly rejected the State's unsupported contentions that there are any conflicts between them and their neighbors that could impede delimitation and demarcation of their territory and, in the nearly eight years that this matter has been before the IACTHR, the State has not presented any evidence that could disprove this.

59. Second, and equally importantly, there is no valid reason that land use maps must be a prerequisite to drafting and enacting the necessary legislative and other measures required to recognize ITPs' territorial rights and to define mechanisms for delimitation, demarcation and titling. Additionally, these legislative measures could and should specify the principles and mechanisms that may be needed to resolve any conflicts that may arise during the process of regularization of collective rights on a case by case basis, a point expressly made by James Anaya in his 2011 report.<sup>168</sup> This would be a rational approach to this issue, yet, as it does in *Moiwana*, the State employs an irrational and unfounded excuse in an attempt to disguise its lack of action. This is all the more egregious given that the UNSRIP recommended that "priority" should be placed on developing specific legal provisions for "a procedure to identify and title indigenous and tribal lands..."<sup>169</sup> and the fact that the deadlines ordered by the IACTHR in *Moiwana* and *Saramaka* to adopt such legislative measures have all long expired.

### 3. The Case of the Kaliña and Lokono Peoples

60. As noted above, the IACHR decided the *Kaliña and Lokono Peoples* case in July 2013, holding that Suriname had violated a number of provisions of the American Convention on Human Rights to the detriment of the Kaliña and Lokono peoples of the Lower Marowijne River, and adopted remedial recommendations. Suriname failed to implement these recommendations, even though it obtained a significant extension of the deadline in this regard, and the IACHR submitted the case to jurisdiction of the IACTHR in January 2014.<sup>170</sup> The case was heard by the IACTHR in February 2015, during which testimony was presented and final arguments were made.<sup>171</sup> The IACTHR has decided to undertake an on-site visit to Suriname (16-20 August 2015) in order to further verify the facts and hear additional testimony, and it is expected that a judgment will be issued before the end of this year.

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<sup>168</sup> A/HRC/18/35/Add.7, at para. 36 (explaining that "the procedure for land demarcation and titling would contain, at a minimum, the following components: ... (b) resolution of conflicts over competing uses and claims...").

<sup>169</sup> *Id.* at para. 35. See also para. 17 explaining that "Suriname must adopt measures to secure the rights of [ITPs], and that these measures should comply with international standards and the legally binding judgments of the Inter-American Court of Human Rights."

<sup>170</sup> *Letter of Submission to the Inter-American Court*, 27 January 2014, at p. 2 (explaining that "In a communication received on September 26, 2013, the State submitted a response noting that the recommendation [adopted by the IACHR in the Case of the Kaliña and Lokono Peoples] ignores the particular characteristics of the ethnic composition of Suriname and mentioning that there may be difficulties in implementing the recommendations. The State requested an extension, which was granted by the Commission.... On January 15, 2014, the State submitted a report ... but did not provide any information or any specific plan regarding compliance with each recommendation"), <http://www.oas.org/en/iachr/decisions/court/12639NdeREn.pdf>.

<sup>171</sup> See *Order of the President of the Inter-American Court of Human Rights*, Kaliña and Lokono Peoples v. Suriname, 18 December 2014, [http://www.corteidh.or.cr/docs/asuntos/kaliñaylokono\\_18\\_12\\_14\\_eng.pdf](http://www.corteidh.or.cr/docs/asuntos/kaliñaylokono_18_12_14_eng.pdf).

61. In its July 2013 decision, the IACHR found violations in relation to Suriname's failure to recognize and regularize the Kaliña and Lokono peoples' rights to own and control their traditionally owned lands, territory and resources. It also found violations of their rights due to grants of large scale-bauxite mining and logging concessions, the establishment and management of three nature reserves, and the alienation of lands in favour of third parties, including the judicially sanctioned privileging of their rights over the indigenous peoples' rights. Additional violations were determined in relation to the denial of collective legal personality, the absence of judicial remedies and the failure to respect the rights guaranteed to the Kaliña and Lokono without discrimination.<sup>172</sup>

62. The violations found by the IACHR all confirm that the "serious violations" identified previously by the Committee continue to persist and that Suriname has failed to correct or even modify its policy and practice in this respect. For instance, the Committee has consistently called on Suriname to ensure indigenous peoples' effective participation in decision making that may affect them and to obtain their consent, particularly in connection with resource extraction projects.<sup>173</sup> However, with respect to the bauxite mining concessions and permits issued in the territory of the Kaliña and Lokono, the IACHR confirmed – and Suriname did not dispute – that these were issued without any form of even basic consultation or safeguards for their rights, which also led to the mining activities causing "a significant negative impact on the Kaliña and Lokono's traditional territory."<sup>174</sup> It further concluded that this mining operation "is precisely the type of activity that the Inter-American Court has stated should be subject to consultations and the consent of the affected indigenous peoples."<sup>175</sup> Note again in this respect, Suriname's statement in *Saramaka People* that it will comply with the order of the IACTHR that the free, prior and informed consent of the Saramaka be obtained in relation to the Mineral Agreement concluded with IAMGOLD, "provided that the final decision is reserved to the national government."<sup>176</sup>

63. The Committee has also recommended that indigenous rights to participate in natural resource management be recognized and respected and that nature conservation activities must respect indigenous peoples' rights, including to own and control their territories and to consent to activities therein.<sup>177</sup> Yet, in the three nature reserves established in the territory of the Kaliña and Lokono, the IACHR found that they did not participate in decision making about either the establishment or management of these reserves. Moreover, the IACHR ruled that "it is undisputed that the property rights of the Kaliña and Lokono Peoples over their ancestral lands are subordinate to the legal status" of the reserves, and Suriname has not "considered other conservation alternatives that are less infringing of the Kaliña and Lokono's property rights."<sup>178</sup> This view was echoed by UNSRIP, Victoria Tauli-Corpuz in her expert testimony, concluding that these reserves "illustrate a considerable deviation" from contemporary international standards;<sup>179</sup> and that they are "coercive and exclusionary and the means employed are unnecessary and

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<sup>172</sup> *Letter of Submission to the Inter-American Court*, 27 January 2014 (summarizing the facts and violations),

<sup>173</sup> See e.g., CERD/C/SUR/CO/12, para. 12.

<sup>174</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013, at para. 132.

<sup>175</sup> *Id.* at para. 155.

<sup>176</sup> *Report of the State, Saramaka People (Monitoring Compliance)*, 22 March 2013, at p. 4.

<sup>177</sup> See e.g., CERD/C/ETH/CO/15, at para. 22 (expressing concern "about the consequences for indigenous groups of the establishment of national parks in the State party and their ability to pursue their traditional way of life in such parks;" and recommending that "the State party provide ... information on the effective participation of indigenous communities in the decisions directly relating to their rights and interests, including their informed consent in the establishment of national parks, and as to how the effective management of those parks is carried out"); *Botswana*, A/57/18, paras. 292-314, at 304; and *Sri Lanka*, A/56/18, paras. 321-342, at 335.

<sup>178</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013, at para. 52.

<sup>179</sup> Testimony of Expert Witness Victoria Tauli Corpuz, Kaliña and Lokono Peoples, *Audio Transcript*, Part 2, at 1:35:14.

disproportionate to the asserted public interest, which could be achieved in a different and less drastic way.”<sup>180</sup>

64. The submitting organizations highlight that the manner in which nature reserves are established and managed in Suriname is itself evidence of structural discrimination against ITPs. The *Nature Protection Act* makes no reference to the existence of ITPs nor does it recognize or protect their ownership or any other rights to their traditional territories despite the fact that ITPs are disproportionately and overwhelming affected by the establishment of these reserves. Article 1 of the Act provides that “For the protection and conservation of the natural resources present in Suriname, after hearing the Council of State, the President may designate lands and waters belonging to the State Domain as a nature reserve.” As ITPs’ territories are legally classified under extant domestic law as state domain lands, this provision permits the State to unilaterally declare any ITPs territory or part thereof to be a nature reserve by decree. The State admitted that this applies in the case of *Kaliña and Lokono Peoples*, stating that “the reserves were established ... in areas which were and still are domain land....”<sup>181</sup>

65. The *Nature Protection Act*, therefore excludes lands held by private persons under title issued by the State, but negates indigenous peoples’ property rights precisely because the State has failed to recognize and secure their title thereto. This discriminatory treatment is even more evident in the 1986 Nature Protection Decree which established the Wane Kreek Nature Reserve over 45,000 hectares of the territory of the Kaliña and Lokono and which explicitly saved the prior property rights of all persons except those of the indigenous traditional owners.<sup>182</sup> This included saving the bauxite mining concession, which caused a “significant negative impact” on the environment and indigenous peoples’ subsistence and other rights in direct contravention of the public interest justification asserted by the State.<sup>183</sup>

66. This privileging of the rights and interests of non-indigenous/tribal people over those of the ITPs, the traditional owners of the lands, is a common theme that runs throughout Suriname’s law and practice. In the 1998 case of *Tjang A Sjin v. Zaalman*, for example, the judiciary ruled in favour of a non-indigenous title holder on the basis that he held title issued by the State, which, as a matter of settled law, will always supersede any interest asserted by indigenous peoples.<sup>184</sup> The IACTHR observed in this respect that ITPs in Suriname are placed in a “vulnerable situation where individual property rights may trump their rights over communal property.”<sup>185</sup> It ruled that “rather

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<sup>180</sup> *Id.* at 1:35:34.

<sup>181</sup> *Further comments offered by the State on the Merits, Kalina and Lokono Peoples v. Suriname (Case 12.639)*, 12 September 2008, at p. 10.

<sup>182</sup> *Nature Protection Resolution of 1986* (SB 1986, 52), Art. 4.

<sup>183</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), 18 July 2013, at para. 132.

<sup>184</sup> *Tjang A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, 21 May 1998 (holding that real title to land will void any interest claimed by indigenous peoples on the basis of traditional occupation and use). *See also Saramaka People*, at para. 180 (observing that “In another case [*Tjang A Sjin v. Zaalman*], a State-issued, privately held land title within a residential area of an indigenous village was upheld over the objections of the Captain of that village. The judge held that since the holder of the land had a valid title under Surinamese law, and the indigenous community did not have title or any other written permit issued by the State, the village had to respect the ownership right of the private title holder”).

<sup>185</sup> *Id.* at para. 173 (citing *Tjang A Sjin v. Zaalman* (also known as the “*Marijedorp case*) (holding that private property titles trump traditional forms of ownership)); and, and para. 174 (concluding that “the members of the Saramaka people form a distinct tribal community in a situation of vulnerability, both as regards the State as well as private third parties, insofar as they lack the juridical capacity to collectively enjoy the right to property and to challenge before domestic courts alleged violations of such right”). *See also Saramaka People*, para. 108-10, at para. 109-10 (discussing the Decree L-1 of 1982 and explaining that “The official explanatory note to Article 4(1) of Decree L-1 explains that account should be given to the “factual rights” of members of ITPs when domain land is being issued. The use of the term “factual rights” (or *de facto* rights) in the explanatory note to Article 4(1) of Decree L-1 serves to

than a privilege to use the land, which can be ... trumped by real property rights of third parties ... [ITPs] must obtain title to their territory in order to guarantee its permanent use and enjoyment.”<sup>186</sup> Addressing an analogous situation, the Committee determined that Australia’s amended *Native Title Act* was discriminatory because, *inter alia*, “[w]hile the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.”<sup>187</sup> The latter point is certainly the case in Suriname.

67. Additionally, subordination of ITPs’ property rights in the absence of a prior recognition of those rights, as is the case in Suriname for ITPs, constitutes a racially discriminatory measure because no other ethnic group or its members is denied due process of the law, legal certainty and compensation with respect to actual or constructive takings of their property. ITPs are uniquely situated because their property rights arise from and are grounded in their customary law and tenure systems, rather than the legal system of the State. In Suriname, the law neither recognises nor provides any effective means to protect or even consider their property rights and the State is free to disregard these rights at will and for any reason and it does so regularly. This was confirmed by the IACHR and the IACTHR in *Saramaka People*. The same cannot be said for non-indigenous persons’ property rights as the law sets out procedures by which they may obtain title and procedures and remedies in relation to potential or actual takings or subordination, and the State generally follows these procedures.<sup>188</sup>

68. ITPs in Suriname are the only groups to suffer from the above mentioned legal disabilities. It is well established there are no laws in Suriname governing the recognition of ITPs’ property rights, nor any laws setting out the process for the balancing of those rights with a compelling public interest and associated criteria when restrictive measures may be under consideration or pursued.<sup>189</sup> As the IACHR and IACTHR have found, their rights are subordinated *ab initio* in favour of anything the State chooses to define as being in the public interest and are “trumped” by third party interests.<sup>190</sup> In this regard, the Committee has previously expressed concern that “the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development,” and this is also the case in Suriname.<sup>191</sup>

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distinguish these “rights” from the legal (*de jure*) rights accorded to holders of individual real title or other registered property rights recognized and issued by the State”) (footnotes omitted).

<sup>186</sup> *Id.* at para. 115.

<sup>187</sup> *Decision 2(54) on Australia*, at para. 6.

<sup>188</sup> Article 34 of the 1987 Constitution provides for a right to the enjoyment of property, and provides in pertinent part that “1. Property, of the community as well as of the private person, shall fulfil a social function. Everyone has the right to undisturbed enjoyment of his property subject to the limitations which stem from the law. 2. Expropriation shall take place only in the general interest, pursuant to rules to be laid down by law and against compensation guaranteed in advance.” This article however does not apply to indigenous peoples because their traditional forms of land tenure are not classified or recognized as property under Suriname law.

<sup>189</sup> *Report on Admissibility and Merits No. 09/06, Twelve Saramaka Clans (Suriname)*, 2 March 2006, at para. 170 (“in none of its submissions does the State identify any legal framework to recognize these so-called privileges or to mediate between them and the State’s prerogative to subordinate them to a wider social or public interest”).

<sup>190</sup> *Id.* at para. 241-42 (observing that the public interest doctrine in Suriname “substantially limit[s] the fundamental rights of the indigenous and Maroon peoples to their land *ab initio*, in favor of an eventual interest of the State that might compete with those rights. What is more, according to Suriname’s laws, mining, forestry, and other activities classified as being in the general interest are exempted from the requirement to respect customary rights. In practice, the classification of an activity as being in the “general interest” is not actionable and constitutes a political issue that cannot be challenged in the Courts. What this does in effect is to remove land issues from the domain of judicial protection”).

<sup>191</sup> CERD/C/IDN/CO/3, at para. 16 (recommending that the “State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development

69. However, even if the criteria for a valid subordination of ITPs' property rights were to be applied by Suriname in practice, the lack of legislative incorporation of their rights and these criteria denies them due process and any measure of legal certainty and transparency, and provides the state with a degree of latitude far in excess of that accorded in the case of non-indigenous people. ITPs are therefore subject to legal disabilities that are neither justifiable nor reasonable, and which, solely on the basis of their race or ethnicity, operate to negate the exercise and enjoyment of their rights. The submitting organizations highlight that Article 46(2) of the UN Declaration on the Rights of Indigenous Peoples is also relevant in this context, providing, *inter alia*, that restrictions on indigenous peoples' rights must be "non-discriminatory and strictly necessary."

70. The Committee has also recommended that Suriname "strengthen judicial procedures ... for effective protection and remedies against acts of discrimination affecting [ITPs]."<sup>192</sup> However, the IACHR observed that Suriname has not adopted any measures to address the lack of effective judicial remedies for ITPs.<sup>193</sup> It ruled that "there are no effective domestic judicial means available for the Kaliña and Lokono Peoples to assert their rights," a conclusion that applies *mutatis mutandis* to all other ITPs.<sup>194</sup> Likewise, the Committee has called on Suriname to recognize the legal personality of ITPs.<sup>195</sup> The IACHR noted in its July 2013 decision that the IACTHR had explained in *Saramaka People* "that Surinamese law does not recognize collective tribal peoples as juridical entities capable of using and enjoying property, or of seeking equal access to judicial protection against alleged violations of their communal rights."<sup>196</sup> It further explained that "the petitioners have proven, and the State does not dispute, that Surinamese law does not recognize the legal personality of indigenous people."<sup>197</sup> Additionally, it explained that Suriname "has provided no concrete evidence in this case to demonstrate that it has enacted laws, regulations or other provisions to give effect to the Saramaka decision relating to Article 3; [and otherwise] has also not demonstrated that it has adopted measures to recognize the legal personality of the Kaliña and Lokono indigenous peoples."<sup>198</sup>

71. In sum, the case of the *Kaliña and Lokono Peoples* amply illustrates Suriname's ongoing and unmitigated disregard for the rights of ITPs as well as the State's active violation of those rights in numerous instances. It confirms also that nothing has changed since the IACTHR adopted its 2007 judgment in *Saramaka People* as well as Suriname's ongoing indifference to the Committee's numerous recommendations. The same "structural" defects identified by the IACHR in February 2014 when it submitted *Kaliña and Lokono Peoples* to the IACTHR thus continue to undermine,

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are defined in a participatory way ... and are not used as a justification to override the rights of indigenous peoples...").

<sup>192</sup> CERD/C/SUR/CO/12, para. 19 ("noting the State Party's view that the remedies provided under Surinamese law are sufficient to assert and seek protection of rights, the Committee stresses the analysis by the Inter-American Commission of Human Rights and the judgements by the Inter-American Court of Human Rights, which found the domestic legal system does not provide adequate effective remedies to collective rights"). See also CERD/C/64/CO/9/Rev.2, para. 14 (expressing concern "that ITPs cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons").

<sup>193</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), at para. 161 (also explaining that "at the hearing held in connection with this case, the State cited a number of laws, policies and procedures to support the proposition that the Kaliña and Lokono have judicial protections under Surinamese legislation. However, the cited laws and measures were the same that the Inter-American Court dismissed in *Saramaka*").

<sup>194</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), at para. 161.

<sup>195</sup> CERD/C/64/CO/9/Rev.2, para. 14.

<sup>196</sup> *Report 79/13 (Merits)*, Kaliña and Lokono Peoples (Suriname), at para. 84.

<sup>197</sup> *Id.* at para. 86.

<sup>198</sup> *Id.*



impede and negate ITPs' internationally guaranteed rights, and they continue to suffer from pervasive and institutionalized racial discrimination.<sup>199</sup>

### **C. Baseless Excuses to Justify Non-Compliance and Ongoing Lack of Recognition of Indigenous and Tribal Peoples' Rights**

72. Suriname has asserted numerous excuses in an attempt to justify its increasingly transparent refusal to recognize and respect ITPs' rights, including in relation to its evident and uncontested non-compliance with the fundamental orders of the IACTHR. The vast majority of these excuses are factually unfounded, illegitimately invoke domestic law or otherwise contradict fundamental tenets of human rights law, and some are peculiar to say the least (e.g., the assertion that compliance with the IACTHR's orders in *Saramaka People* could somehow harm the foundations of democracy or the State's form of government). Some of these excuses are discussed above: for instance, Suriname's assertions about discrimination against other ethnic groups if ITPs' rights are recognized and its contentions about the need for an agreed 'land use map' as a prerequisite to drafting legislative measures.

73. This section briefly highlights two other excuses asserted by the State because they are particularly relevant to the Committee's mandate and because they further illustrate the paucity of Suriname's claims with respect to any process to recognize ITPs' rights. The first concerns the claim that Suriname's ethnic diversity somehow represents an impediment to recognition of ITPs' rights, the second relates to the State's contention that it must amend its constitution in this respect. These excuses were asserted in the State party report, the State's 2014 report to the Human Rights Committee, and in relation to the 2011 UPR process and elsewhere. In her affidavit in the *Kaliña and Lokono Peoples* case, Loreen Jubitana comments on the information set forth in the State party report and report to the Human Rights Committee, explaining that these reports repeat "the usual arguments and excuses that recognizing [ITPs'] rights in Suriname is politically sensitive, difficult and a lengthy process."<sup>200</sup> She observes in this regard that none of this "is an excuse not to act concretely and set an agreed, joint, structured process in motion; even that is not done while threats to our rights continue and increase, so we interpret this as fundamental unwillingness to make structural changes."<sup>201</sup>

#### **Ethnic Diversity:**

74. Suriname has repeatedly asserted that ITPs' property rights, including as addressed in *Saramaka People* and "the subsequent implementation measures need to be considered against the backdrop of the unique and rather complex societal structure of Suriname. The complexity of Suriname's society is due to its multi-ethnic, multi-religious and multicultural composition."<sup>202</sup> In 2013, it commented that the recommendation adopted by the IACHR in *Kaliña and Lokono Peoples* "ignores the particular characteristics of the ethnic composition of Suriname" and hence that "there

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<sup>199</sup> 'IACHR Takes Case Involving Kaliña and Lokono Peoples v. Suriname to the Inter-American Court', *IACHR Press Release*, 4 February 2014 (explaining that there exists "a structural problem area involving a lack of recognition in domestic law of the juridical personality and right to collective property of indigenous peoples in Suriname;" and also stating that "the violations have to do with an existing legal framework that prevents recognition of the indigenous peoples' juridical personality, a situation that to this day continues to keep the Kaliña and Lokono peoples from being able to protect their right to collective property. In addition, the State has failed to establish the regulatory foundations that would allow for recognition of the right to collective ownership of the lands, territories, and natural resources of the Kaliña and Lokono indigenous peoples"), [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/009.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/009.asp).

<sup>200</sup> Annex A, Affidavit of Loreen Jubitana, at para. 37.

<sup>201</sup> *Id.*

<sup>202</sup> CCPR/C/SUR/3, at para. 102.

may be difficulties in implement[ation].”<sup>203</sup> Likewise, in 2014, it maintained that its failure to implement the *Saramaka People* judgment is due to unspecified “complexity” caused by “the composition of Suriname’s population....”<sup>204</sup> Also, when first reviewed by the Human Rights Council in May 2011, the State explained that:

it had concrete plans to involve stakeholders in its commitment to indigenous peoples and Maroons concerning their collective land rights, because Suriname was very diverse and there were more than six ethnic groups. Suriname would like all these groups to be involved in the process to reach the solution for the issue of Maroons and indigenous peoples. The delegation furthermore stated that the situation in Suriname was somewhat different from other Latin American countries which had indigenous peoples. The Maroon community in Suriname was not small and in fact larger than indigenous communities, and they had been living in the interior for more than three hundred years. The judgment of the Inter-American Court of Human Rights stated that they should have the same rights as indigenous peoples. In some areas, there was a clear overlap of land rights matters. Therefore, it was just not a matter of copying what had happened in other countries in the region. Suriname needed to find a Surinamese solution, and that was why Suriname would ask for some time to deal with this matter.<sup>205</sup>

75. With regard to these statements, first, almost all of the states in the Americas are ‘ethnically diverse’ and there is no provision of applicable law that provides any basis for denying the rights of ITPs due to a state’s ethnic diversity, nor is said diversity a valid excuse for non-compliance with the orders of the IACTHR in a specific case. At no time has Suriname explained why its ethnic diversity precludes attention to ITPs’ rights other than by routinely repeating the (baseless) assertion that recognition of these rights would somehow discriminate against other ethnic groups. Moreover, it must be emphasized that ITPs are presently the only ethnic groups in Suriname that are denied the recognition, exercise and enjoyment of their property and other rights and that they, not the other ethnic groups, suffer entrenched and systemic discrimination in this regard. Also, there are ‘Maroons’ in other countries in the Americas and this has not hindered or barred recognition of their collective rights or the rights of indigenous peoples in those countries (see constitutional and legislative enactments on tribal peoples in Colombia, Ecuador and Brazil, for instance). That tribal peoples may out-number indigenous peoples in Suriname is also of no legal relevance and no impediment to implementation of the IACTHR’s orders or recognition of their rights otherwise.

76. Second, Suriname states that because it considers itself to be so different from other countries in the Americas (i.e., because of its ethnic diversity) that it must “find a Surinamese solution” and needs more “time to deal with this matter.” Suriname has had over seven years to implement the orders in *Saramaka People* and to find an appropriate national solution, yet the State has done very little in that time and has not committed one word to paper to explain what this Surinamese solution may entail or why, objectively, the basic principles employed by other states may be inapplicable to its situation. Additionally, the State committed to recognise the property rights of ITPs in the 1992 *Lelydorp Accord* that concluded the 1986-92 “interior war.” In other words, it has had over 20 years to articulate a Surinamese solution and has failed to do so at even the most elementary level in that time. Indeed, during the proceedings before the IACHR and the IACTHR in *Saramaka People* and *Kaliña and Lokono Peoples*, it strenuously argued that ITPs

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<sup>203</sup> IACHR, *Letter of Submission of the Case of the Kaliña and Lokono Peoples v. Suriname to the Inter-American Court of Human Rights*, 26 January 2014, at p. 2

<sup>204</sup> CERD/C/SUR/13-15, at para. 14.

<sup>205</sup> A/HRC/18/12, 11 July 2011, at para. 67.

have no property rights at all.<sup>206</sup> As discussed above, it continues to make the same assertions today. The IACTHR explained the rights of the Saramaka, and by extension all of the ITPs, in its judgment, including the parameters for regularizing their territorial rights. The submitting organizations consider that there is no ‘Surinamese way’ of delimiting and demarcating these areas that could be substantially different from the manner in which regularisation of ITPs’ property rights takes place elsewhere in the Americas or globally. Moreover, the legislation ordered by the IACTHR need not be the same as other countries and it has not ordered that Suriname adopt any particular model; on the contrary, it simply ordered that Suriname adopt legislative and other mechanisms of its own design, provided that they are consistent with ITPs’ rights.

78. It is important to fully appreciate Suriname’s contentions about its ethnic diversity, which is not so unique (neighbouring Guyana, for example, has a similar ethnic composition, yet it has managed to both enact and implement laws related to indigenous peoples’ rights for over 50 years), and to also understand this in the broader context of State law and policy. Basically stated, Suriname erroneously considers that it has allowed ITPs certain privileges in relation to their use of State owned lands, and that these are indeed privileges, irrespective of their inadequacy in relation to the State’s international obligations, because they are not held by other ethnic groups. It considers that recognizing ITPs’ ownership rights would amount to further privileges and unjustifiable special treatment, and hence added discrimination against other ethnic groups, and that this will, in its view, inflame social and ethnic tensions as well as undermine its national development and even the democratic fabric of the State.

79. However, Suriname fails, or rather refuses, to comprehend or entertain that ITPs are groups “whose situations are objectively different,” not the least because they have internationally protected collective rights as *peoples*, and thus require distinct treatment to eliminate discrimination against them and provide equal protection of the law. It moreover adamantly asserts that the will of the dominant ethnic groups – always defined as the (non-justiciable) “public interest” – must always prevail irrespective of the rights vested in ITPs by international law. The State has made clear that this especially relates to the ability of the dominant ethnic groups to exploit natural resources in lands traditionally owned by ITPs (where the vast majority of these resources are located).<sup>207</sup> Thus, in its view, its ethnic diversity (really the interests of the majority) is itself valid cause to deny and violate the rights of two of the ethnic groups (generically speaking) that comprise that diversity. This is perverse logic, a fundamental distortion of basic human rights norms and a gross misconstruction of ITPs’ rights.

### **Constitutional Amendments:**

80. Suriname has also repeatedly contended that compliance with the *Saramaka People* judgment implies or requires that Suriname should amend its Constitution. It explains that this “is certainly the case when the judgment orders a strict ‘delimitation, demarcation, and the granting of collective title’” to ITPs’ traditional territories.<sup>208</sup> Yet, at no time has it identified which part or parts

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<sup>206</sup> See e.g., Report No. 09/06 (*Merits*), *Case of the Twelve Saramaka Clans*, 2 March 2006, at para. 168 (stating that “the State has repeatedly expressed the view that the use and occupation of lands and resources by the Saramaka people is not equivalent to ‘a right to property in the sense of the right to property of the Convention, the Declaration, or the Constitution of Suriname,’ but, at most, a ‘privilege’ or ‘right of use,’ for which reason the State maintains that it has not violated any individual or collective right to property of the Saramaka people”).

<sup>207</sup> See e.g., CCPR/C/SUR/3, at para. 114 (stating that the State “has committed itself to a social-economic development contract with the Surinamese population, by strategically [sic] exploitation of the countries [sic] natural resources. It needs no further explanation that a large segment of the Surinamese population fears that its legitimate development interests are marginalized at the expense of the interests of the tribal communities”).

<sup>208</sup> See e.g., CCPR/C/SUR/3, at para. 109 (and, at para. 106, stating that “The State’s cautiousness is also motivated by the fact that various elements regarding the land rights issue in general and in particular the Saamaka judgment implicitly or explicitly require new or revised legislation and even Constitutional amendments”).

of its Constitution require amendment to issue title to the Saramaka or any other ITPs, nor explained why its Constitution would now preclude the granting of land titles, collective or otherwise.

81. The submitting organizations consider that, with one hypothetical exception, there is nothing in Suriname's Constitution that would require amendment to implement the IACTHR's judgment in *Saramaka People* or to recognize and adhere to the rights of ITPs more generally. Indeed, a correct interpretation of Article 8 thereof would constitutionally sanction and mandate that those rights be recognized and secured, including ITPs collective legal personality. Article 8(1) reads that "All who are within the territory of Suriname have an equal claim to protection of person and property," while Article 8(2) prohibits discrimination on the grounds of, *inter alia*, race or any other status. The submitting organizations say a 'correct interpretation' – meaning in accordance with international legal standards – insofar as Suriname cites this provision to justify its position that recognition of the rights of ITPs would somehow discriminate against other ethnic groups and that this is constitutionally prohibited.

82. The 'hypothetical exception' refers to Article 41 of the Constitution and which itself very much depends on how this provision is interpreted. It provides that "Natural riches and resources are property of the nation and shall be used to promote economic, social and cultural development. The nation shall have the inalienable right to take complete possession of the natural resources in order to apply them to the needs of the economic, social and cultural development of Suriname." This would only preclude recognition and respect of ITPs' property and related rights to the extent that "land" is encompassed by the phrase "natural riches and resources." Since Suriname has admitted that private ownership of land is possible, and in fact exists, this would mitigate against such an interpretation. Irrespective, respect for ITPs' rights, including legally securing and guaranteeing their territories, can be understood to promote both their (25 percent of the population) and the State's economic, social and cultural development and, as is made clear in *Saramaka People*, the State would still be able to exploit natural resources therein provided it complies with its human rights obligations.<sup>209</sup> At any rate, the language in Article 41 is broad enough that it would only act as a barrier to recognition of ITPs' rights should the State itself adopt a such an interpretation and, as the Committee<sup>210</sup> and others have made clear, that would itself contravene the State's international obligations.<sup>211</sup>

83. In sum, there is no valid basis for Suriname to claim that it should or must amend its Constitution in order to recognize ITPs' rights or to issue land titles confirming their collective ownership rights. This is only relevant, as an obstacle, should the State itself adopt an interpretation of Article 41 that is contrary to its international obligations or should it continue to

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<sup>209</sup> See e.g., Report No. 09/06 (Merits), *Case of the Twelve Saramaka Clans*, 2 March 2006, at para. 218 (stating that "The norms of the Inter-American System neither prevent nor discourage development; rather they require that development take place under conditions that respect and ensure the human rights of the individuals affected").

<sup>210</sup> See e.g., CERD/C/64/CO/9/Rev.2, at para. 11 ("noting the principle set forth in article 41 of the Constitution that natural resources are the property of the nation and must be used to promote economic, social and cultural development, the Committee points out that this principle must be exercised consistently with the rights of ITPs. It recommends legal acknowledgement by the State party of the rights of [ITPs] to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;" and, at para. 15 (explaining that "development objectives are no justification for encroachments on human rights, and that along with the right to exploit natural resources there are specific, concomitant obligations towards the local population").

<sup>211</sup> See e.g., *Saramaka People*, at para. 121 (confirming that ITPs "have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake").

misconstrue Article 8 to further perpetuate discrimination against ITPs and deny them equal protection of person and property.

## V. CONCLUSION AND REQUEST

84. Much more could be said about the situation of ITPs in Suriname, in particular with regard to persistent discrimination in the provision of health and education services and the many extant examples of violations of their rights in relation to, *inter alia*, extractive industries. Indeed, the situation in Suriname remains in desperate need of “immediate attention” and is just as “alarming” as it was in the numerous instances where the Committee has previously reviewed Suriname under its EW/UA procedure. ITPs continue to live in an enduring and even deepening state of insecurity and continuous threats to their basic livelihoods, the lands on which they live and to their cultural integrity, and they continue to be treated as second class citizens and groups who, according to the law, do not even ‘exist’, whose voices are not heard and who are simply disregarded in decision-making. The State’s prolonged and unreasonable failure to comply with its international obligations coupled with its recitation of numerous unfounded and illegitimate attempts to excuse and justify the perpetuation of racial discrimination against 25 percent of its population reinforces and intensifies the Committee’s conclusion that the situation in Suriname is “alarming.” The submitting organisations therefore respectfully request that the Committee:

- a) Continues to express profound concern about Suriname’s disregard for ITPs’ rights and treats this as an alarming and grave situation, “which constitutes violation of the human rights protected by the International Convention on the Elimination of All Forms of Racial Discrimination,” and which requires immediate attention by both the State and relevant UN and other international bodies;
- b) Deplores Suriname’s ongoing failure to comply with, and its increasing transparent rejection of, the judgments of the IACTHR and reiterates the urgent need to fully comply with those judgments in accordance with the orders set forth therein, including the judgment to be issued shortly in the case of *Kaliña and Lokono Peoples*;
- c) Expresses its profound concern about Suriname’s authorisation of activities that are contrary to the judgment of the IACTHR in *Saramaka People*, including the 2013 grant of mining rights to the Canadian company, IAMGOLD;
- d) Expresses its profound concern about the nature and extent of the excuses put forward by the State to justify its failure to comply with the IACTHR’s judgments in *Moiwana Village and Saramaka People*;
- e) Rejects as incompatible with the human rights regime and the international legal order more generally, Suriname’s claims that compliance with binding judgments of the IACTHR, explicating and confirming the rights of the most “marginalized” sector of its population, somehow threatens its democracy, form of government and national development;
- f) Rejects Suriname’s attempts to deny ITPs’ rights on the basis of alleged discrimination against other ethnic groups or on the basis of its ethnic diversity, and explains the state of the law and Suriname’s obligations in this respect;
- g) Affirms that, while public participation is always to be encouraged, the views of all sectors of society or the other ethnic groups in Suriname cannot veto, modify or hinder the rights of ITPs or the obligation of the State to give domestic legal effect to those rights, and that the

State's primary obligation is to achieve this end with the full and effective participation of ITPs through representatives of their own choice;

- h) Expresses profound concern about the pervasive and persistent discrimination that characterizes extant domestic law with regard to ITPs' property rights, including in connection the establishment and management of protected areas/nature reserves and the *ab initio*, and *prima facie* discriminatory subordination of their rights in the name of the public interest;
- i) Reiterates that exploitation of natural resources must be undertaken with full respect for the rights of ITPs, including their right to effectively participate in decision making and consent to the use of their lands and territories for these purposes;
- j) Reiterates the urgent need to recognize ITPs' collective juridical capacity and to adopt measures to ensure that they can otherwise access effective judicial and other remedies to seek protection for their collective rights;
- k) Expresses its views about the draft law on traditional authorities and makes recommendations on the same;
- l) Expresses concern that REDD+ initiatives in Suriname, as currently funded by the World Bank's FCPF, do not continue to deny "proprietary rights" to ITPs in forests.

## VI. SUGGESTED QUESTIONS

85. The submitting organizations additionally and respectfully propose the following questions for the Committee's consideration in its dialogue with Suriname:

- a) Can the State please explain how, as stated in its 2014 report to the Human Rights Committee, compliance with the IACTHR's judgment in the *Saramaka* People case could compromise its national development or the other ethnic groups of Surinamese society? Likewise, can it explain how the "foundations of democracy" could be harmed or how the "foundation of the form of government in Suriname" could be "seriously challenged" by compliance with that judgment?
- b) The State has said that compliance with the IACTHR's judgment in the *Saramaka People* case may require that its Constitution be amended and that this "is certainly the case when the judgment orders a strict 'delimitation, demarcation, and the granting of collective title'." Can it explain which Article or parts of its constitution would require amending in this respect and why this would be the case? Is there something in the Constitution now that would prohibit recognition of collective ownership rights and the granting of title?
- c) The State has said that it is concerned that recognition of ITPs' rights could constitute discrimination against other sectors of its society. Can it please explain the basis for this view, particularly in light of the constant jurisprudence of the Committee and others that would require the State to recognize and equally protect cultural and other differences, including ITPs' collective rights?
- d) Can the State please explain why it was unable to support recommendations made during the Human Rights Council's UPR process in 2011 calling on it to urgently implement the IACTHR's judgment in *Saramaka People* and otherwise recognize ITPs rights?

- e) Can the State comment on reports that the conclusion of a Mineral Agreement with the Canadian company, IAMGOLD, in 2013, which granted the latter additional mineral rights in the territory of the Saramaka people, would constitute a violation of the orders of the IACTHR in the *Saramaka People* case, particularly the order that no additional concessions be granted in Saramaka territory until such time as the territory has been legal recognized and regularized or unless the Saramaka consent?
- f) Can the State explain what it is doing now to implement the judgments of the IACTHR in the *Moiwana* and *Saramaka* cases and how any activities may correspond to the specific orders of the IACTHR in those cases? How are the actual beneficiaries of those judgments specifically involved in any activities that may be taking place?
- g) Can the State explain how it is possible for private ownership of lands and forests to co-exist with its asserted exclusive public ownership of the State's territory and how, if this is possible for some people, it also not possible for ITPs? This also applies to REDD+ projects in Suriname: if private persons can own forests, as stated in Suriname's proposals to the World Bank's FCPF, why cannot the same also apply to ITPs, particularly in light of the IACTHR's ruling in *Saramaka* about forests and natural resources also being part of ITPs internationally protected property rights?
- h) Can the State explain what measures it will take to ensure that the draft Law on the Position of Traditional Authorities will be consistent with ITPs' internationally protected rights?
- i) Please explain the statement in Suriname's 2014 report to the Human Rights Committee, which observes that the State "has committed itself to a social-economic development contract with the Surinamese population, by strateg[ic] exploitation of the countr[y's] natural resources. It needs no further explanation that a large segment of the Surinamese population fears that its legitimate development interests are marginalized at the expense of the interests of the tribal communities"? On what basis does the State consider is self-evident that the development interests of the majority could be marginalized by the interests of ITPs?