

Persistent and Pervasive Racial Discrimination Against Indigenous  
and Tribal Peoples in the Republic of Suriname

Third Submission Concerning the  
Formal Request to Initiate an Emergency/Urgent Action Procedure  
to Avoid Immediate and Irreparable Harm

Comments on Suriname's State Party Report  
(CERD/C/446/Add.1)

Submitted

by

The Association of Indigenous Village Leaders in Suriname,  
Stichting Sanomaro Esa,  
The Association of Saramaka Authorities  
The Forest Peoples Programme

26 January 2004

**Executive Summary****Submitting Organizations**

<b>I. Introduction</b>	<b>1</b>
<b>II. Comments on the State Party Report</b>	<b>2</b>
<b>A. Indigenous and tribal peoples' rights to lands, territories and resources</b>	<b>2</b>
<b>B. Natural resource exploitation</b>	<b>5</b>
<b>C. Cultural rights</b>	<b>8</b>
<b>D. Discrimination with regard to health, education and other basic services</b>	<b>8</b>
<b>III. Concluding remarks</b>	<b>10</b>
<b>IV. Requests</b>	<b>12</b>

## Submitting Organizations



### ***The Association of Indigenous Village Leaders in Suriname (VIDS)***

The VIDS is an association of indigenous village leaders (known as Captains) from each of the 35 indigenous villages in Suriname. Each Captain is elected by the community or chosen in accordance with traditional practices. Established in 1992, the VIDS' 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: PAS gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname tel. 597 520130 fax. 597 520131, e-mail: [vids@sr.net](mailto:vids@sr.net)



### ***Stichting Sanomaro Esa***

Sanomaro Esa is an indigenous organisation advocating for the rights and well-being of indigenous women and children in Suriname. It is constituted under the laws of Suriname and registered as a Foundation. Founded in 1989, Sanomaro Esa's objectives are to promote the rights of indigenous women and children, and indigenous peoples in general; to ensure that indigenous women and children have equal access to health, education and other national services and to promote respect for Indigenous culture and identity. Sanomaro Esa is also the coordinator

of the National Indigenous Women's Network in Suriname, which seeks to improve the lives of indigenous women and children through the concerted action of local indigenous women's organizations located in each of the 35 Indigenous villages. Address: PAS Gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname Tel. 597 490678; e-mail: [sanomaro-esa@sr.net](mailto:sanomaro-esa@sr.net)



### ***The Association of Saramaka Authorities (VSG)***

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 61 Saramaka villages with a total population of approximately 20,000 persons.

Address: Reinastraat 4a, Paramaribo, Suriname 597 464263 e-mail:

[tooka@sr.net](mailto:tooka@sr.net)



### ***The Forest Peoples Programme (FPP)***

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 Programme has had an extensive field programme in Suriname since 1996 and has produced numerous publications relating to the situation in Suriname, the most comprehensive of which is entitled *The Rights of Indigenous Peoples and Maroons in Suriname* published by the International Work Group for Indigenous Affairs.<sup>1</sup> Address: 1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK Tel: (44) 01608 652893 fax: (44) 01608 652878 email: [info@fppwrm.gn.apc.org](mailto:info@fppwrm.gn.apc.org)

---

<sup>1</sup> Kambel, E-R., & F. MacKay, *The Rights of Indigenous Peoples and Maroons in Suriname*. International Work Group for Indigenous Affairs, Doc. No. 96. Copenhagen, 1999.

## **Executive Summary**

This report, submitted by three indigenous and tribal peoples' organizations and one international NGO, provides comments on the Republic of Suriname's State Party report on the Convention on the Elimination of All Forms of Racial Discrimination. It is the third report submitted by these organizations: the first, in December 2002, requested that the Committee on the Elimination of Racial Discrimination initiate an Emergency/Urgent Action procedure with regard to the situation of indigenous and tribal peoples in Suriname; the second, in May 2003, reiterated this request and provided additional, updated information.

These three reports all highlight widespread, persistent and systematic violations of the Convention on the Elimination of All Forms of Racial Discrimination against indigenous and tribal peoples in Suriname. This discrimination is particularly evident in the failure of Suriname to recognize indigenous and tribal traditional occupation and use and laws as sources of property rights; in the denial of their linguistic and cultural rights; and in the provision of substantially lower education and health facilities compared to other sectors of Surinamese society. As territorial and other rights are not recognized and protected by Surinamese law, indigenous and tribal peoples are without adequate and effective remedies to assert and defend their rights in domestic venues leaving them no choice but to seek international oversight, intervention and protection.

The three reports assert that Suriname is the only state in the Americas that has failed to legally recognize and guarantee some measure of protection for indigenous and tribal rights to lands, territories and resources. Coupled with substantial and highly prejudicial resource exploitation operations – routinely authorized without notifying, consulting with or seeking the consent of the affected peoples – this failure to recognize and respect territorial and resource rights has led to gross violations of indigenous and tribal peoples' human rights, undermined their means of subsistence, and severely compromised their physical, cultural and economic integrity. Suriname is internationally responsible for these violations by virtue of its acts and omissions.

International attention is urgently needed as violations of indigenous and tribal rights guaranteed under the Convention are widespread, systematic and substantial, and the nature and impact of the violations is immediate, ongoing and, in some cases, irreversible. The rights presently violated with impunity in Suriname are fundamental to the physical and cultural survival of indigenous and tribal peoples. Without urgent international attention, the lands, territories and resources of indigenous and tribal peoples in Suriname will continue to be irreversibly degraded, further depriving the affected peoples of the source of their physical, cultural, economic and spiritual sustenance.

Finally, this report, as did the previous two, respectfully requests:

- (a) that the Committee formally initiates an Emergency/Urgent Action procedure on the situation in Suriname and gives its immediate and sustained attention to reversing

the acts and omissions of Suriname that have given rise to the present massive and persistent pattern of racial discrimination against indigenous and tribal peoples, with particular attention to the failure to recognize indigenous and tribal peoples' traditional occupation and use and laws as source of ownership and other rights to lands, territories and resources. Specifically,

- (i) that the Committee commences and, if necessary, maintains, a dialogue with Suriname to ensure that the rights of indigenous and tribal peoples to own their lands, territories and resources traditionally owned or otherwise occupied and used are recognized and respected; that their rights to participate in and consent to decisions and activities that may affect them are recognized and respected; that their rights to basic health and education services on a non-discriminatory basis are guaranteed and; that their cultural and linguistic rights are guaranteed;
- (ii) that the Committee offers to provide technical assistance to give effect to the preceding; and,
- (iii) that the Committee recommends that Suriname accedes to and implements, with the full participation of indigenous and tribal peoples, International Labour Organization Convention No. 169.

## **I. Introduction**

1. On 15 December 2002, the Association of Indigenous Village Leaders in Suriname, Stichting Sanomaro Esa, the Association of Saramaka Authorities and the Forest Peoples Programme ('the submitting organizations') submitted a report to the Committee on the Elimination of Racial Discrimination ('the Committee').<sup>2</sup> This report formally requested initiation of an 'Emergency/Urgent Action Procedure' and highlights widespread, persistent and systematic violations of the Convention on the Elimination of All Forms of Racial Discrimination ('the Convention') against indigenous and tribal peoples in the Republic of Suriname.

2. These violations are particularly evident in the failure of the Suriname to recognize indigenous and tribal peoples' traditional occupation and use and laws as sources of property rights and routine violation of those rights especially in connection with resource exploitation. Violations are also evident in the denial of their linguistic and cultural rights, in the provision of substandard education and health services and fewer development opportunities compared to other sectors of Surinamese society.

3. The 2002 report asserted that international attention is urgently needed as violations of indigenous and tribal rights under the Convention in Suriname are widespread, systematic and substantial and the nature and impact of the violations is immediate, ongoing and, in some cases, irreversible. Domestic remedies are absent or have proved ineffective and illusory necessitating urgent international oversight and intervention.<sup>3</sup> Without urgent international attention, the lands, territories and resources of indigenous and tribal peoples in Suriname will continue to be irreversibly degraded, depriving them of the source of their physical, cultural, economic and spiritual sustenance.

4. At its 62<sup>nd</sup> session, the Committee adopted Decision 3(62), which states that the problems faced by indigenous and tribal peoples in Suriname call for "immediate

---

<sup>2</sup> *Persistent and Pervasive Racial Discrimination Against Indigenous and Tribal Peoples in the Republic of Suriname. Formal Request to Initiate an Urgent Procedure to Avoid Immediate and Irreparable Harm.* Submitted to the Committee on the Elimination of Racial Discrimination by the Association of Indigenous Village Leaders in Suriname, Stichting Sanomaro Esa, the Association of Saramaka Authorities and the Forest Peoples Programme, 15 December 2002 (hereinafter '*First Submission*').

<sup>3</sup> See, among others, *First Submission*, paras. 36-59. See, also, *De Ware Tijd*, 11 February 2003, "Acting Attorney General mr. Punwasi: 'Lack of judges is fatal for rule of law'", which in pertinent part states that:

According to acting Attorney General, mr. Subhas Punwasi, the lack of judges is undermining the foundation of the rule of law. ... 'A state under the rule of law the way we want to enjoy it is not consistent with a situation in which civilians are not able to seek or find justice in a timely manner', says the head of the public prosecutor's office. Besides the fact that lawyers lose their credibility towards their clients because procedures are taking too long, this situation is also demotivating for public prosecutors, because cases cannot be handled on time. 'This situation undermines the foundation of the belief in the rule of law', says the acting Attorney General.

attention” and requests that Suriname submit a report by June 2003 for consideration at the Committee’s 63<sup>rd</sup> session.<sup>4</sup>

5. On 21 May 2003, a second report was submitted providing the Committee with additional and updated information. The submitting organizations also reiterated the requests made in the first report and respectfully suggested questions that could be posed to Suriname.<sup>5</sup>

6. The first and second reports were submitted prior to seeing the State Party report (CERD/C/446/Add.1), dated 31 July 2003. After reviewing the State Party report, the submitting organizations take this opportunity to communicate specific comments on the report and to respectfully restate our prior requests to the Committee.<sup>6</sup>

## **II. Comments on the State Party Report**

### **A. Indigenous and tribal peoples’ rights to lands, territories and resources**

7. Pursuant to article 5(d)(v) of the Convention, states parties are obligated to recognize, respect and protect the right “to own property alone as well as in association with others.” The Committee has stated on numerous occasions that the Convention obligates states parties to recognize and respect indigenous and tribal peoples’ ownership and other rights in and to their lands, territories and resources.<sup>7</sup> In doing so, it frequently

---

See, also, *Reports Submitted by States Parties Under Article 9 of the Convention. Tenth Periodic Reports of States Parties Due in 2003: Suriname* UN Doc. CERD/C/446/Add.1, para. 181 (hereinafter ‘*State Party Report*’) – “At present, cases are not brought before the judge within a reasonable time. There is a considerable backlog in the processing of criminal and civil cases, which is due in part to a serious shortage of judges entrusted with the administration of justice. The Government is aware of this undesirable situation, which is a direct consequence of the failure of successive governments to take immediate and effective action.”

<sup>4</sup> *Prevention of Racial Discrimination, including Early Warning Measures and Urgent Action Procedures, Decision 3(62), Suriname*. UN Doc. CERD/C/62/CO/Dec.3, 21 March 2003, at para. 4.

<sup>5</sup> *Persistent and Pervasive Racial Discrimination Against Indigenous and Tribal Peoples in the Republic of Suriname. Second Submission Concerning Formal Request to Initiate an Emergency/Urgent Action Procedure to Avoid Immediate and Irreparable Harm*. Submitted to the Committee on the Elimination of Racial Discrimination by the Association of Indigenous Village Leaders in Suriname, Stichting Sanomaro Esa, the Association of Saramaka Authorities and the Forest Peoples Programme, 21 May 2003 (hereinafter ‘*Second Submission*’).

<sup>6</sup> For the requests, see, *First Submission*, para. 110 and *Second Submission*, para. 35.

<sup>7</sup> See, among others, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka*. 14/09/2001; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*. 23/08/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana*. 23/08/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Costa Rica*. 20/03/2002; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan*. 27/04/2001; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*. 20/08/99 and; *Decision 2(54) on Australia*, para. 4 - “land rights of

makes reference to General Recommendation XXIII, which calls upon states parties to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.”<sup>8</sup> It has also emphasized “that all appropriate means must be taken to combat and eliminate” discrimination against indigenous and tribal peoples.<sup>9</sup>

8. These immediate obligations have not been complied with by Suriname and racially discriminatory treatment of indigenous and tribal peoples' land and resource rights is firmly entrenched in Surinamese law and practice.<sup>10</sup> Also, in contravention of, *inter alia*, article 2 of the Convention, indigenous and tribal ownership and other rights are not recognized and guaranteed in any way in Surinamese law. This has been confirmed by numerous intergovernmental and non-governmental organizations and by Suriname itself.<sup>11</sup> Further, in contravention of article 6 of the Convention, there are no domestic remedies, either specific or generally applicable, designed to provide for recognition of and recovery of indigenous and tribal peoples' ancestral lands, territories and resources, to challenge State-authorized activities thereon, and to ensure that the State consults with and obtains their informed consent prior to issuing concessions.<sup>12</sup>

9. Suriname's Constitution and laws, on their face, preclude recognition of indigenous and tribal peoples' property rights and provide no basis for issuing adequate and effective title to their lands, territories and resources traditionally owned. The only form of title that presently can be obtained in Suriname is land lease (*grondhuur* in Dutch).<sup>13</sup> Land lease is a revocable,<sup>14</sup> 15-40 year lease of State land,<sup>15</sup> that “is issued

---

indigenous peoples are unique and encompass a tradition and cultural identification of the indigenous peoples with their lands that has been generally recognized.”

<sup>8</sup> *General Recommendation XXIII on Indigenous Peoples*, at para. 5.

<sup>9</sup> *Id.*

<sup>10</sup> See, among others, *First Submission*, paras. 36-95.

<sup>11</sup> *Id.*, paras. 47-59

<sup>12</sup> *Yakye Axa Indigenous Community of the Exnet-Lengua People Report N° 2/02 (Admissibility)*, Annual Report of the Inter-American Commission on Human Rights 2002, para. 37.

<sup>13</sup> According to the Surinamese legislation, “[t]he right of land lease is a real right to have the free enjoyment of a piece of domain land [privately owned state land] under the requirement to utilize the land in accordance with the goal and provisions awarded by the State at the time of allocation.” *Decree of 15 June 1982, containing regulations with regard to the allocation of domain land* (Decree Allocation Domain Land), SB 1982, no. 11, as amended by SB 1990, no. 3, at art. 14(1)

<sup>14</sup> *Decree of 15 June 1982, containing general principles concerning Land Policy* (Decree Principles Land Policy), SB 1982, no. 10, art. 9(2) – “After lapse of this period, an extension of the same duration will be granted, unless the conditions under which the land was issued are no longer met, or it is against the general interest.”

unilaterally by the State.”<sup>16</sup> Land lease titles can be held only by recognized legal persons.<sup>17</sup> Indigenous and tribal peoples, their communities and traditional land holding entities (in the case of maroons, lands are vested in matrilineal clans) are not recognized as legal persons for the purposes of holding title. A UN FAO study on Suriname confirms this: “Since the legal system currently has no way of recognising traditional tribal groups and institutions as legal entities, they are effectively invisible to the legal system and incapable of holding rights.”<sup>18</sup> Even if indigenous and tribal peoples were to receive this title, a finite lease of State-owned land, revocable in the general interest and for which payment of rent is required, does not satisfy Suriname's obligations under the Convention and other human rights instruments.<sup>19</sup>

10. Additionally, Suriname has not given any indication that it is actively taking steps to legally recognize indigenous and tribal peoples' rights to lands, territories and resources and to guarantee these rights in fact. This is confirmed in the following statement, which is the only reference to this issue in the State Party report:

The majority of the indigenous peoples and Maroons live in the interior of the Republic of Suriname. These groups of Surinamese citizens have more privileges than the people living in the coastal area. By virtue of the Constitution of the Republic of Suriname (1987) all forests, with the exception of those on private property, are owned by the State. The total forest area on private land does not exceed 50,000 ha. The State grants rights of use in the form of logging rights, mining rights and licences for fishing, gathering of non-timber forest products and bioprospecting. In addition, areas are used in land leases, agriculture or ecotourism, etc. Part of the forest, about 435,000 ha, is allocated a woodcutting licence (HKV) and the rest since the Forest Management Act (1992), is community forest. The original aim of the woodcutting licence was that the members of the community actually living in the interior would be able to harvest timber and other forest products for their own use. The same now applies to the community forests. The woodcutting licence is registered in the name of the village chief or the captain. In many cases the consequence is that control over the rights and revenues remains concentrated with the licence-holder. Because of this it is possible that the villagers do not sufficiently benefit from their community forest and thus the allocation of community forests does

---

<sup>15</sup> *Id.*, at art. 9(1) and; *Decree Allocation Domain Land*, art. 14(3) – “The term of the right will be determined at the time of allocation for, at a minimum, fifteen and at most forty years.”

<sup>16</sup> *Id.*, at art. 14(1).

<sup>17</sup> *Decree Allocation Domain Land*, *id.*, art. 2 – “Only the following persons have the right to acquire domain land, as mentioned in the 'Decree Principles Land Policy': a. Surinamers, who live in Suriname; b. Corporations, legal persons and foundations if they are established under Surinamese law and are based in Suriname.”

<sup>18</sup> UN Food and Agriculture Organization, *Strengthening National Capacity for Sustainable Development of Forests on Public Lands; Report of the Legal Consultant, Cormac Cullinan*, FAO Project TCP/SUR/4551 (1996), at sec. 4.6.2.

<sup>19</sup> *Decree Principles Land Policy*, art. 6(3) – “For the use of domain land, regardless of its objective or issued under whatever title [land lease or personal], the State will receive remunerations to be established by decree;” and, *id.*, art. 14(2).

not produce the intended effect. This issue however has the attention of the Government, which needs to undertake appropriate action through the dignitaries in the seven Maroon and indigenous groups.<sup>20</sup>

11. This statement appears to equate revocable forestry concessions, issued to individuals, with recognition of and respect for indigenous and tribal peoples' internationally guaranteed rights to their traditional lands, territories and resources. Woodcutting permits (HKV) are issued pursuant to the *1947 Timber Ordinance*, which provides that individuals – almost always the village leader – may obtain wood cutting permits for the benefit of their family and “persons who could be considered as members of his tribe” (art. 9(3)). The permits, issued for an initial 5 year period, are automatically renewed unless the Governor (now the Minister of Natural Resources) decides that this is contrary to the general interest (art. 10). The Minister may also revoke the permit at any time for any reason.

12. Community forests may be issued to indigenous and tribal communities pursuant to the 1992 Forest Management Act. Under Article 41 of the Act, community forests are issued at the discretion of the Minister responsible for forests after consultation with the Minister of Regional Development.<sup>21</sup> There is no right of appeal should the Minister deny an application for a community forest and there is no actionable right to obtain a community forest. Irrespective, according to the most recent records, only one community forest area has been formally established throughout the entire country.

13. The failure to recognize, guarantee and respect indigenous and tribal collective ownership rights over their lands, territory and resources, based upon traditional occupation and use and indigenous and tribal custom, is discriminatory and contravenes the right to equal protection of the law.

## **B. Natural resource exploitation**

14. In addition to failing to recognize indigenous and tribal rights to lands, territories and resources, Suriname has authorized numerous resource exploitation operations in indigenous and tribal territories that have had and continue to have a substantially negative impact upon the human rights, environment, health, dignity, resource base, standard of living and quality of life of indigenous and tribal peoples.<sup>22</sup> These operations are not monitored or controlled in any meaningful way and concessions are routinely granted without informing, consulting with or seeking the agreement of the affected peoples or communities.

---

<sup>20</sup> *State Party Report* at para. 97 (hereinafter '*State Party Report*').

<sup>21</sup> Article 41(2) reads: “Upon consultation with the minister responsible for regional development, the Minister will declare certain forestry areas to be communal forest for the benefit of the tribal inhabitants of the interior. The utilisation and management of the communal forest are to be further established by state decree.” The state decree referred to here has not been issued.

<sup>22</sup> *First Submission*, paras. 24-35, and *Second Submission*, paras. 5-33.

15. The Committee has previously called upon states-parties to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>23</sup> The Committee has also recognized indigenous peoples’ rights to “effective participation ... in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of ensuring the ‘informed consent’ of indigenous peoples.”<sup>24</sup>

16. In the State Party report, Suriname

acknowledges that several mining activities take place in its interior. Since the natural resources of the State must be used for the benefit of the whole nation, the State has to exploit its natural resources to bring development to its citizens. It is possible that in this process of exploiting its natural resources, acts take place in the interior of which the State is unaware. If these are reported to the proper authorities the State will certainly not hesitate to take corrective measures.<sup>25</sup>

17. Regarding this, the submitting organizations observe that indigenous and tribal peoples have submitted numerous formal complaints, petitions and conference resolutions to the State concerning the human rights impact of resource exploitation and many of these complaints have been covered, in some cases extensively, in the press.<sup>26</sup> Despite being aware of these situations, Suriname has not taken any action to investigate, mitigate or otherwise address the alleged violations. Indeed, as the following statement from the State Party report indicates, Suriname is primarily interested in maximizing its own economic benefits:

To date, NIMOS (National Institute for Environment and Development in Suriname) has compiled some 90 different studies that have been performed on the Surinamese ecosystems. Some of these deal with the mercury problems associated with small-scale gold mining in the Surinamese interior.

The Government has not yet taken any specific steps towards the implementation of these recommendations. It is true to say that the recent and present Governments have made efforts to bring the gold mining activities under control.

---

<sup>23</sup> *Id.*, at para. 4(d).

<sup>24</sup> *Concluding Observations by the Committee on the Elimination of Racial Discrimination : Australia. 24/03/2000. CERD/C/56/Misc.42/rev.3, at para. 9. See, also, among others, Concluding observations of the Committee on the Elimination of Racial Discrimination: Costa Rica. 20/03/2002 and, Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America. 14/08/2001.*

<sup>25</sup> *State Party Report*, at para. 90.

<sup>26</sup> See, Annexes to First and Second Submissions.

Although at the moment the main focus seems to be more the organization of the financial and fiscal aspects of this gold mining, other more population-based aspects such as health issues, will receive more attention.<sup>27</sup>

18. The State Party report provides no information on legislative provisions concerning resource exploitation that may provide adequate and effective protection and remedies for indigenous and tribal peoples. As detailed in previous submissions these protections do not exist or have proved illusory. Even environmental and social impact studies are not required by law. Moreover, as confirmed by the preceding statement, Suriname has failed to take “any specific steps” to implement measures to ensure the effective enjoyment of indigenous and tribal peoples’ rights in practice.

19. The State Party report also fails to mention that Suriname is in the advanced stages of adopting a new mining Act, an Act that on its face discriminates against indigenous and tribal peoples. There has been no public consultation on the draft Act and no consultation with indigenous and tribal peoples, their communities or their organizations to date.

20. The draft Mining Act contains a chapter on the rights of third parties, which distinguishes between two categories: “title-holders” and “traditional rights-holders.”<sup>28</sup> Title-holders are persons possessing real title to land and registered “personal” use rights. Traditional rights-holders are indigenous and tribal peoples. Both title-holders and traditional rights-holders must accept mining on their land, subject to prior notification and agreement concerning compensation for damages. If title-holders are unable to agree with the mining company, they have a statutory right to appeal to the courts.<sup>29</sup> If traditional rights-holders are unable to reach agreement however, the “Executive” is authorized to resolve the matter by issuing a binding decision: there is no right of appeal to the courts. According to the explanatory note, this overt discrimination against indigenous and tribal peoples is warranted because “traditional rights are not suited to the normal [judicial] procedure, because these concern communal rights and not individual rights”<sup>30</sup>

21. The case of *Tjang A Sjin v. Zaalman and Others* demonstrates that the same discriminatory treatment of indigenous and tribal peoples’ rights found in the draft Mining Act is otherwise entrenched in Surinamese law.<sup>31</sup> In this case, the plaintiff, a Paramaribo resident, filed suit against the traditional leader (Captain) of the indigenous

---

<sup>27</sup> *State Party Report*, at paras. 91-3.

<sup>28</sup> *Concept Herzien Mijnbouwwet*, 11 April 2002 (Draft Revised Mining Act), Chapter IV, (unofficial translation).

<sup>29</sup> *Id.*, articles 70-3, 71-2 and 74.

<sup>30</sup> *Explanatory Note to article 76 of the Draft Revised Mining Act*, page 28.

<sup>31</sup> *Tjang A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, 21 May 1998.

community of Wan Shi Shia. The plaintiff claimed that he was unable to enjoy his property rights because villagers had interfered with reconstruction of his vacation home – located in the immediate vicinity of the village – that had been destroyed during the ‘Interior War’. The judge ruled in the plaintiff’s favour holding that he held valid, real title to the land. In so holding, the judge rejected the Captain’s defense and counter claim – and the intervention of six other Captains from that region – that the land was traditionally and immemorially owned by the Lokono indigenous people of Wan Shi Shia and neighbouring communities and that it also fell within the economic zone proposed in the 1992 Lelydorp Peace Accord.<sup>32</sup>

22. This case further illustrates that the rights of indigenous and tribal peoples to their traditional lands, territories and resources are not recognized in the laws of Suriname and that ‘real rights’ issued by the State will always take precedence over these so-called traditional rights. Pursuant to article 25(1)(a) of the Forest Management Act, concessions constitute a registered grant of a real right in favour of the holder.<sup>33</sup> The same is also the case under the current 1986 Mining Decree.

### **C. Cultural rights**

23. The State Party report also asserts that Suriname respects the rights of indigenous and tribal peoples to enjoy their culture.<sup>34</sup> This assertion stands in stark contrast to the numerous reports detailing the negative impact of resource exploitation on indigenous and tribal peoples’ ability to enjoy and transmit their culture. Indigenous and tribal culture and identity are fundamentally tied to their relationship with their ancestral lands, territories and resources. In many areas of Suriname they can no longer enjoy this relationship and their cultural integrity is seriously undermined. The UN Special Rapporteur on indigenous land rights concurs stating that: “[i]ndigenous societies in a number of countries are in a state of rapid deterioration and change due in large part to the denial of the rights of the indigenous peoples to lands, territories and resources ...”<sup>35</sup>

### **D. Discrimination with regard to health, education and other basic services**

24. The State Report acknowledges that indigenous and tribal children receive substantially worse education services than non-indigenous and tribal children.<sup>36</sup> It

---

<sup>32</sup> The Peace Accord is discussed in *First Submission*, para. 48.

<sup>33</sup> Article 25(1)(a) provides that “[a] concession confers upon the holder the exclusive right to harvest and transport wood within the boundaries .... This right is a real right.” *Forest Management Act*, 18 September 1992, English Translation (FAO Project TCP/SUR/4551), done by the Ministry of Education and National Development.

<sup>34</sup> *State Party Report*, paras. 69 and 212.

<sup>35</sup> *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/2001/21, at para. 123.

<sup>36</sup> *State Party Report*, paras. 80-8.

proceeds to justify this disparity by saying that indigenous and tribal communities are remote and difficult to access. However, there are at least 50 indigenous and maroon communities located in or near the coastal area – communities that are not remote, in some cases being less than two hours drive from Paramaribo – and these communities also receive lower levels of service than that provided in non-indigenous and tribal areas.<sup>37</sup>

25. The State Party Report further notes that

At this particular moment the Government of Suriname has not yet adopted special measures to secure adequate advancement of certain racial or ethnic groups or individuals that require protection.

The Government does not have data available that sections of the ethnically diverse population (groups or individuals) need special protection in order to ensure equal enjoyment or exercise of human rights. If this is deemed necessary, the Government will not hesitate to act accordingly.<sup>38</sup>

This statement is difficult to understand in light of the acknowledgment that indigenous and maroon children receive lower levels of education than others noted in the State Party report and the numerous reports presented to the State that demonstrate the dire state of education, health and other services for indigenous peoples and maroons.<sup>39</sup> The most recent *Suriname Multiple Indicator Cluster Survey* report, for instance, states that “There are remarkable differences between the interior – that is mainly populated by maroons and indigenous people – on the one hand, and the urban and rural region on the other hand. Compared to the urban and rural region, the interior stands out by its unfavorable position on most of the indicators.”<sup>40</sup> This and other reports also detail a series of severe negative consequences caused by this neglect and differential treatment.<sup>41</sup>

---

<sup>37</sup> *Preliminary Survey of the Education Needs of Indigenous Communities*, Sticting Sanomaro Esa, Paramaribo, April 2003. This survey of 15 indigenous schools found little difference between the quality of services in indigenous schools closer to the coast and those in remoter areas. These 15 primary schools serve all 37 indigenous communities in Suriname.

<sup>38</sup> *State Party Report*, at paras. 72-3.

<sup>39</sup> See, among others, reports cited in *First Submission*, paras. 16-23.

<sup>40</sup> *Suriname Multiple Indicator Cluster Survey*. Funded by UNICEF, March 2001, at 6. Available at: <http://www.childinfo.org/MICS2/newreports/surinam/surinamreport.PDF> With regard to education, this report determines that: 51.6% of urban children and 40.8% of rural children have access to early childhood education compared to 4.3% of interior children and; 81.6% and 81.9% of urban and rural children, respectively, have access to primary schooling compared to 61.2% of interior children. *Id.*, 22. Further, only 64.5 percent of children in the interior who enter grade 1 reach grade 5 in comparison to 92.8 percent of those in urban areas and 82.5 percent in rural areas. *Id.*, 23.

<sup>41</sup> See, *First Submission*, paras. 26-9 and 32.

26. The State Party Report also acknowledges that indigenous and maroon children are denied access to bilingual education and implies that Suriname is not contemplating changing this:

One main issue is the language barrier. Since Dutch is the official language in Suriname, education is almost completely in this language. So are the books and other materials. ... The Department of Education has made several studies to revise the curriculum of the education system for lower-grade children in the interior. The purpose is to let them get acquainted with the system and the Dutch language and then continue their education. ...

The Committee has previously commented on state party obligations in this respect, recommending that a state party “fully recognize and respect the culture, history, languages and way of life of its various ethnic groups as an enrichment of the State’s cultural identity, and adopt measures to protect and support minority languages, in particular within education.”<sup>42</sup>

27. The obligation not to discriminate against indigenous and tribal children is an immediate obligation. Not all indigenous and tribal communities are remote and such considerations do not at any rate excuse substantial disparities in the quality and quantity of services vis-à-vis non-indigenous and tribal children. In some cases, indigenous and tribal peoples receive no services at all. Suriname may validly claim that fulfillment of rights to health and education are subject to resource availability, but wide disparities between and differential treatment of persons, solely on the basis of race and ethnicity, are not justifiable. Suriname has an obligation to provide equal services to all citizens and an obligation to implement special measures, where warranted, to ensure both *de facto* and *de jure* equality.

### III. Concluding remarks

28. The State Party report is disappointing insofar as it provides very little information on the *de jure* and *de facto* situation of indigenous and tribal peoples, particularly in light of the large number of reports that could be used to present an accurate and detailed account of their situation. The majority of the information presented is simply a repetition of that found in Suriname’s report to the Human Rights Committee.<sup>43</sup> Lack of attention to indigenous and tribal peoples is especially disappointing given that the Committee’s Decision 3(62) states that

serious violations of the rights of indigenous communities, particularly the Maroons and the Amerindians, are being committed in Suriname: in addition to discrimination against these communities in respect of employment, education, culture and participation in all sectors of society, particular attention is drawn to the lack of recognition of their rights to

---

<sup>42</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Botswana. 23/08/2002.*

<sup>43</sup> *Second Periodic Report of Suriname*, UN Doc. CCPR/C/SUR/2003/2, 4 July 2003

the land and its resources, the refusal to consult them about forestry and mining concessions granted to foreign companies and the fact that the mining companies' activities, especially the dumping of mercury, are a threat to their health and the environment.<sup>44</sup>

29. The submitting organizations emphasize that the preceding is an accurate reflection of the current situation in Suriname. Indeed, the Committee, as have other UN treaty bodies,<sup>45</sup> has highlighted and expressed concern about discrimination against indigenous and tribal peoples in Suriname on other occasions.<sup>46</sup>

30. Indigenous and tribal peoples have made numerous good faith efforts to enter into constructive dialogue with the State about rights to lands, territories and resources, all of which have produced no result. Two agreements have been concluded with the State on recognition of these rights, neither has been honoured or implemented, in the case of the Peace Accord for almost 12 years. Domestic remedies, both judicial and administrative, where they exist, have proved ineffective and indigenous and tribal peoples remain subject to pervasive discrimination in law and fact. As a consequence, their rights are presently violated with impunity in Suriname. The absence of adequate and effective domestic remedies coupled with the nature and extent of the extant violations both invite and compel international oversight and intervention.<sup>47</sup>

31. The situation in Suriname may in some ways be compared with that of Australia which prompted the Committee to review that country under its early warning and urgent action procedures.<sup>48</sup> In Decision 2(54), the Committee stated that "While the original Native Title Act recognizes and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While 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>49</sup> As discussed above, and bearing in mind that Suriname has not enacted any legislative measures guaranteeing indigenous and tribal land and resource rights, Surinamese legislation discriminates in precisely the same manner by privileging the

---

<sup>44</sup> *Prevention of Racial Discrimination, including Early Warning Measures and Urgent Action Procedures, Decision 3(62), Suriname.* UN Doc. CERD/C/62/CO/Dec.3, 21 March 2003, at para. 3.

<sup>45</sup> Among others, *Concluding Observations of the Committee on the Rights of the Child: Suriname.* 28/06/2000. CRC/C/15/Add.130, paras. 25-6, 43, 51.

<sup>46</sup> See, *Summary record of the first part (public) of the 1237th meeting: Burkina Faso, Suriname.* 22/08/97. CERD/C/SR.1237, 22 August 1997, paras. 35-37.

<sup>47</sup> *Godinez Cruz Case, Judgment of January 20, 1989*, Inter-American Court of Human Rights, Ser. C No.5, para. 66, at 108; *Velasquez Rodriguez Case, Judgment of July 29, 1988*, Inter-American Court of Human Rights Ser. C No. 4, para. 63, at 114.

<sup>48</sup> *Decision 2 (54) on Australia: Australia.* 18/03/99. UN Doc. A/54/18, para.21(2).

<sup>49</sup> *Id.*, at para. 6.

property rights of non-indigenous title-holders and the State over those of indigenous and tribal peoples.

32. The failure of Suriname to recognize, guarantee and protect indigenous and tribal peoples' rights to lands, territory and resources and active, pervasive and long-standing violations of those rights underscores the need for immediate international action. The rights presently violated with impunity in Suriname are fundamental to the physical and cultural survival of indigenous and tribal peoples. Without immediate international attention, their lands, territories and resources will be irreversibly degraded, further depriving them of the source of their physical, cultural, economic and spiritual sustenance and causing them further pain and suffering. This suffering is greatly compounded by institutionalized discrimination with regard to health, education and other services and development opportunities.

#### **IV. Request**

33. In light of the preceding, we respectfully request the following:

(a) that the Committee formally initiates an Emergency/Urgent Action procedure on the situation in Suriname and gives its immediate and sustained attention to reversing the acts and omissions of Suriname that have given rise to the present massive and persistent pattern of racial discrimination against indigenous and tribal peoples, with particular attention to the failure to recognize indigenous and tribal peoples' traditional occupation and use and laws as sources of ownership and other rights to lands, territories and resources. Specifically,

(j) that the Committee commences and, if necessary, maintains, a dialogue with Suriname to ensure that the rights of indigenous and tribal peoples to own their lands, territories and resources traditionally owned or otherwise occupied and used are recognized and respected; that their rights to participate in and consent to decisions and activities that may affect them are recognized and respected; that their rights to basic health and education services on a non-discriminatory basis are guaranteed and; that their cultural and linguistic rights are guaranteed;

(ii) that the Committee offers to provide technical assistance to give effect to the preceding; and,

(iii) that the Committee recommends that Suriname accedes to and implements, with the full participation of indigenous and tribal peoples, International Labour Organization Convention No. 169.