



# Forest Peoples Programme

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## **Gabrielle Habtom**

Secretary

UN Committee on the Elimination of Racial Discrimination

Human Rights Treaties Division (HRTD)

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## **Request for Consideration of the Situation of the Saramaka People of Suriname under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures submitted by the Association of Saramaka Authorities and the Forest Peoples Programme**

Dear Ms. Habtom:

### **I. Introduction**

1. The Association of Saramaka Authorities and the Forest Peoples Programme (“the submitting organisations”) respectfully submit this report about the situation of the Saramaka people of Suriname. In particular, this report concerns the failure of the State of Suriname (“the State” or “Suriname”) to implement the 2007 judgment of the Inter-American Court of Human Rights in the case of the *Saramaka People v. Suriname* (Ser C No. 172/Ser C No. 185). The submitting organisations request that the Committee on the Elimination of Racial Discrimination (“the Committee”) considers this situation under its early warning/urgent action procedures at its 80<sup>th</sup> session. Specific requests are set out in paragraph 36 below.

2. During its review of Suriname’s eleventh and twelfth periodic reports at its 74<sup>th</sup> session, the Committee highlighted the importance of compliance with the *Saramaka People v. Suriname* judgment as well as Suriname’s on-going failure to recognise and protect the rights of indigenous and tribal peoples more generally. This binding judgment concerns recognition and protection of the rights of the Saramaka people to own and control its traditionally owned territory. It orders, *inter alia*, the adoption of the legislative enactments required to achieve this, to recognise the Saramaka people’s legal personality and to establish effective judicial remedies, and sets forth the rules that apply to state-initiated activities that may affect Saramaka territory.

3. With regard to the *Saramaka People* judgment, the Committee’s 2009 concluding observations express concern “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....”<sup>1</sup> In relation to this, the Committee reiterated “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>2</sup> Most of the other recommendations adopted by the Committee in 2009 also concern the subject matter of the *Saramaka People* judgment, in particular by addressing recognition of and respect for the rights of indigenous and tribal peoples at the national level.<sup>3</sup>

4. This is not the first time that the Committee has raised concerns with Suriname about indigenous and tribal peoples’ rights. On the contrary, the Committee has for almost a decade expressed grave concerns on this subject, including in its 2004 concluding observations and in decisions adopted under the early warning/urgent action and follow up procedures in 2003, twice in 2005, and in 2006.<sup>4</sup> The gravity of these concerns is abundantly evident in these decisions. For example, in 2003, the Committee stated that the “problems faced by the indigenous communities call for immediate attention...;”<sup>5</sup> while, in 2006, it decided to draw the attention of competent UN bodies to the “particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname....”<sup>6</sup> Nothing has changed since these decisions were issued.

5. Despite the express urgency of the Committee’s 2009 recommendation that Suriname fully implement the *Saramaka People* judgment within the timeframe prescribed by the Inter-American Court, Suriname has failed to do so, and the deadlines ordered by the Court have all expired in December 2010. There has been no progress at all since that time in implementing the most important of the Court’s orders, the subject of primary concern raised by the Committee. Suriname has also failed to give effect to the Committee’s other recommendations concerning the rights of indigenous and tribal peoples more generally, including those raised in the decisions adopted previously under the early warning/urgent action procedures.

6. To make matters worse, and as discussed below, in September 2011, Suriname informed the Human Rights Council that it was unable to comply with recommendations made during the Universal Periodic Review (“UPR”) that it fully and urgently implement the Court’s judgment in *Saramaka People*. Instead, the State claimed that these issues required further discussion and that the State would hold a ‘national land rights conference’ to agree on a way forward. Held in October 2011, this conference was prematurely terminated without any result when the President reacted angrily to a statement made by the assembled indigenous and tribal leaders. In particular, he expressly rejected any

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<sup>1</sup> *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*. UN Doc. CERD/C/SUR/CO/12, 13 March 2009, at para. 18.

<sup>2</sup> *Id.*

<sup>3</sup> For example, the Committee recommended that Suriname adopt legislative measure to secure the property rights of indigenous and tribal peoples (para. 12); that it ensure their effective participation in and consent to decisions that affect may their territories, particularly in the context of natural resources exploitation (para. 12 and 14); and that it ensure effective remedies by which they may seek protection for their rights in domestic venues (para. 19).

<sup>4</sup> See *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004; *Decision 3(62), Suriname*. UN Doc. CERD/C/62/Dec/3, 03 June 2003; *Decision 1(67), Suriname*. UN Doc. CERD/C/DEC/SUR/2, 18 August 2005; *Decision 3(66), Suriname*. UN Doc. CERD/C/66/SUR/Dec.3, 09 March 2005; and *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006.

<sup>5</sup> *Decision 3(62), Suriname*. UN Doc. CERD/C/62/Dec/3, 03 June 2003, at para. 4.

<sup>6</sup> *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006, at para. 4.

discussion of ‘self-determination’ and ‘property rights’ as being contrary to Suriname’s constitution and stated that the use of these terms had caused him to cancel the remainder of the conference. Public statements in the following days explained that the State had concluded that it would be many years before it could address indigenous and tribal peoples’ rights and this remains the official position to this day.

7. Moreover, while it has unreasonably and unjustifiably delayed any meaningful implementation of the Inter-American Court’s judgment, Suriname has also adopted a number of measures (granting of logging and mining concessions in Saramaka territory, for instance) that directly contravene the terms of the judgment itself. As discussed below, the veracity of this is confirmed in an order adopted by the Inter-American Court in November 2011 pursuant to its jurisdiction to monitor compliance with its judgments (see Annex A hereto for this order).

8. Suriname’s failure to implement the *Saramaka People* judgment; its active violation of the express terms of that judgment; its disregard for the corresponding recommendations adopted by the Committee in 2009; its express and implied rejection of recommendations made by other United Nations human rights mechanisms that it implement the judgment; and its prolonged, on-going and unreasonable failure to otherwise recognise, secure and protect indigenous and tribal peoples’ rights in general, constitutes an urgent situation that is fully compatible with the criteria adopted by the Committee in relation to the use of the urgent action/early warning procedures. In addition to constituting a large-scale and serious “Encroachment on the traditional lands of indigenous peoples ... [including] for the purpose of exploitation of natural resources,”<sup>7</sup> it also represents a grave situation “requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention” and to reduce the risk of further racial discrimination.<sup>8</sup>

9. In this regard, the submitting organisations stress that, according to the most recent national census, indigenous and tribal persons comprise almost 20 percent of Suriname’s national population.<sup>9</sup> By persisting with its decades-long refusal to recognise and protect indigenous and tribal peoples’ rights, Suriname is intentionally prolonging a long-standing situation of systematic and pervasive racial discrimination against one out of every five of its citizens. This discrimination even extends to a denial of their right to collective juridical personality and, for this and other reasons, indigenous and tribal peoples and their members remain without access to effective domestic remedies that are taken for granted by other Surinamese citizens.<sup>10</sup> They thus remain defenceless and in desperate need of

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<sup>7</sup> See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at para. 12.

<sup>8</sup> *Prevention of Racial Discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination*. UN Doc. A/48/18, Annex III, at para. 8-9.

<sup>9</sup> See *Indigenous Peoples and Maroons in Suriname*. Economic and Sector Study Series, RE3-06-005, Inter-American Development Bank, August 2006, p. 10 (referring to the most recent national census data). Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=917350>.

<sup>10</sup> See *inter alia* CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 14 (stating that “the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons”); and CERD/C/SUR/CO/12, 13 March 2009, at para. 19 (stating that “The Committee notes with concern the recent trend of a growing flow of petitions regarding internal matters which have been addressed at international courts and bodies. This trend highlights the need to fortify national courts and create a legislative framework that adequately responds to domestic matters. While 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”).

international assistance and protection; indeed, they have no option available to them other than to seek international protection.<sup>11</sup>

10. The submitting organisations, therefore, request, as a matter of urgency, that the Committee consider this situation under its early warning/urgent action procedures, and that it issues appropriate recommendations in line with its 2006 Decision 1(69) on Suriname and the requests made in paragraph 36 below.<sup>12</sup>

## **II. Suriname Rejects Compliance with the *Saramaka People* Judgment before the Human Rights Council**

### **A. Initial Review in May 2011**

11. Suriname was reviewed by the Human Rights Council under the UPR on 6 May 2011.<sup>13</sup> At that time, a number of statements were made by the State with respect to questions posed about its compliance with the Court's judgment in *Saramaka People*.<sup>14</sup> The most substantive response by the State is as follows:

The delegation stated 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>15</sup>

12. With regard to this statement, the submitting organisations point out, first, that almost all of the states in the Americas are 'ethnically diverse' and that there is no provision of applicable law that provides any basis for denying the rights of indigenous and tribal peoples due to a state's ethnic diversity, nor is said diversity a valid excuse for non-compliance with the binding orders of the Inter-American Court of Human Rights in a

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<sup>11</sup> *Id.*

<sup>12</sup> In August 2006, the Committee decided to draw the attention of competent UN bodies to the "particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname...." *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006, at para. 4.

<sup>13</sup> The State's report to the Human Rights Council (UN Doc. A/HRC/WG.6/11/SUR/1, 16 February 2011), may be accessed at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/107/32/PDF/G1110732.pdf?OpenElement>. For information on indigenous and tribal peoples, see para. 127-31; for specific information on the *Saramaka People* judgment see para. 129-30. See also para. 140. (stating that "Suriname considers the implementation of the recommendations of the various treaty bodies and the judgment of the Inter-American Court on Human rights as one of the great challenges, but is trying to implement them").

<sup>14</sup> See *Report of the Working Group on the Universal Periodic Review: Suriname*. UN Doc. A/ HRC/18/12, 11 July 2011, para. 15-8, 21, 50, and 53. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/SRSession11.aspx>.

<sup>15</sup> *Id.* at para. 67.

specific case. Nor is it valid cause for disregarding the State's other treaty obligations, such as those explicated in the Committee's concluding observations. Moreover, at no time has Suriname explained why its ethnic diversity precludes attention to indigenous and tribal peoples' rights other than by asserting that recognition of these rights would somehow discriminate against other ethnic groups. However, this is a baseless assertion that fails to comprehend basic principles of universally recognised non-discrimination and equal protection law.<sup>16</sup>

13. The submitting organisations further observe that indigenous and tribal peoples are presently the only ethnic groups in Suriname that are denied the recognition, exercise and enjoyment of their property rights. While public participation is always to be encouraged, it is not a valid excuse for non-compliance with the Court's judgment in *Saramaka People* and there is no lawful basis for allowing public participation to veto the internationally guaranteed rights of the Saramaka people or other indigenous and tribal peoples. To allow such a contention to stand would be to allow a majority to veto the rights of a minority, a proposition that would fatally undermine the very basis of international human rights law and, more specifically, the regime established by the International Convention on the Elimination of All Forms of Racial Discrimination.

14. Suriname states that because it considers itself to be so different from other countries in the Americas that it must "find a Surinamese solution" and needs more "time to deal with this matter." In this respect, the submitting organisations observe that Suriname now has had over four years to implement the judgment of the Court – one year longer than prescribed by the Court in its orders – and to find an appropriate national solution that conforms to its international obligations as explicated in that judgment. Yet, the State has done little more than hold a few meetings on this subject 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.

15. Additionally, the Inter-American Court explained the rights of the Saramaka and their basis in Suriname's international obligations in the judgment, including the parameters for determining the delimitation and demarcation of their territory. In the submitting organisations' view, there is no 'Surinamese way' of delimiting and demarcating this area that could be substantially different from the manner in which regularisation of indigenous and tribal property rights takes place elsewhere in the Americas or globally.

16. They further observe that the State committed to recognise the property rights of indigenous and tribal peoples in the 1992 *Lelydorp Accord* that concluded the 1986-92 civil war, and that it is almost 20 years since this agreement was concluded. In other words, it has had almost 20 years to articulate a Surinamese solution, yet it has failed to do so at even the most elementary level in that time. The Committee highlighted this Accord in both its 2004 and 2009 concluding observations.

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<sup>16</sup> Suriname was reminded of this by the Inter-American Court in the *Saramaka People* judgment itself. See *Saramaka People v. Suriname*. Judgment of 28 November 2007. Series C No. 172, para. 102-03, (stating that "the State's argument that it would be discriminatory to pass legislation that recognizes communal forms of land ownership is also without merit. 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").

## B. Suriname's Response, September 2011

17. Returning to the UPR, a series of recommendations were made by member states of the Human Rights Council during the interactive dialogue in May 2011 explicitly calling on Suriname to comply with and execute the judgment of the Court.<sup>17</sup> Suriname reported back its views on these recommendations to the Human Rights Council on 22 September 2011.<sup>18</sup> The official report documents Suriname's position that it 'cannot support' the recommendations on "Indigenous Rights and [L]and Rights Issues (recommendations 73.52-73.58)." These recommendations however are all consistent with the orders of the Court and the recommendations of the Committee. Paraphrasing the State, the report observes that

Prior to the upcoming National land Rights conference, there has been discussion with stake-holders, NGO's and civil society, as well as with the UN special rapporteur on land rights [*sic*]. The consultation regarding land rights is aimed at preparing both the Government as well as indigenous and maroon organizations for effective participation in the upcoming National [L]and Rights Conference. This national debate will officially commence a broad national effort for a just and balanced solution to the issue of land rights.<sup>19</sup>

18. The report further records Suriname's explicit statement that the specific recommendations calling on it to execute the judgment of the Court in *Saramaka People* "cannot be supported."<sup>20</sup> The report provides no direct explanation as to why Suriname cannot support these recommendations or those regarding recognition of indigenous and tribal peoples' rights more generally. However, the UN press release pertaining to the session in question contains statements made by the State's delegation that provide some insight. This includes the following:

Among the recommendations that could not be accepted were the claim to land rights and Mr. Misiedjan said the Government of Suriname would plan a land rights conference to provide a platform for all representatives of society to participate to gain consensus on this issue;

and,

Martin P. Misiedjan, Minister of Justice and Police of Suriname, informed the Council that ... A number of recommendations could not be accepted by the State. The issues that these recommendations pertained to were being analyzed. One such issue was the claim to land rights. Subsequent governments had each in the[ir] own way tried to address this. 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. The issue had developed so that it had

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<sup>17</sup> *Report of the Working Group on the Universal Periodic Review: Suriname*. UN Doc. A/HRC/18/12, 11 July 2011, para. 73.11, 73.54-73.57.

<sup>18</sup> *See Report of the Working Group on the Universal Periodic Review: Suriname. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*. UN Doc. A/HRC/18/12/Add.1, 13 September 2011 (containing its responses and views).

<sup>19</sup> *Id.* at para. 11.

<sup>20</sup> *Id.* at para. 13 (*see esp.* recommendations 73.11, 73.52-73.57 listed therein).

assumed the nature of a conflict between the Government on one side and the Maroon and indigenous peoples on the other. The need for a satisfactory solution was more pressing than ever. The land rights issue was an issue that concerned the entire nation. Land right conferences had been planned by the Government. The conferences strove to provide a platform for representatives from all areas of society to arrive at the redefinition of the issue, thus laying the groundwork for an environment in which the rights of all of Suriname's citizens including those of Maroon and indigenous peoples could be secured.<sup>21</sup>

19. To conclude this section, the submitting organisations are deeply disturbed by the position adopted by the State before the Human Rights Council. While it professes to be committed to the rule of law and respect for human rights, Suriname has explicitly rejected non-binding recommendations calling on it to comply with the binding judgment of the Court, and expressly states that it cannot support those recommendations. The submitting organisations consider that this demonstrates disregard and disrespect not only for the judgment of the Court, but also for the rule of law more generally. Compliance with the judgments of the Inter-American Court is not discretionary and is grounded in basic tenets of international law. These statements also directly reject the recommendations made by the Committee that Suriname, "with urgency," implement the judgment of the Court in *Saramaka People*, as well as its other recommendations pertaining to indigenous and tribal peoples more generally.

### III. The Failed National Land Rights Conference

20. Suriname's statements to the Human Rights Council make reference to a 'national land rights conference' that the State appears to see as 'commencing' a "national effort for a just and balanced solution" to the long overdue need to recognise and secure indigenous and tribal peoples' rights. As noted above, this conference was held on 21-22 October 2011. It was organised with minimal participation by indigenous and tribal peoples.

21. However, this conference was prematurely and unilaterally cancelled by the President early on the second day after a statement was read on behalf of indigenous and tribal peoples. This occurred because the President angrily objected to their use of the terms 'self-determination' and 'property rights'. It also happened despite the fact that the State had been in possession of this statement for over three months prior to the conference and despite that fact that both self-determination and property rights, including natural resource rights, are upheld in the *Saramaka People* judgment.<sup>22</sup> These rights are also restated in the UN *Declaration on the Rights of Indigenous Peoples*, endorsed by Suriname on 13 September 2007. The submitting organisations further observe that the Committee

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<sup>21</sup> See 'Human Rights Council adopts outcomes of Universal Periodic Review on Suriname, Greece and Samoa', UN Press Release, 22 September 2011. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11419&LangID=E>.

<sup>22</sup> See *Saramaka People v. Suriname*. Judgment of 28 November 2007. Series C No. 172, at para. 122 (holding that "the right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land;" 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").

itself made specific reference to property rights and to the “self-determination rights of the Saramaka people” in its 2009 concluding observations.<sup>23</sup>

22. According to reports of a press conference held by the President on 23 October 2011, the President cancelled the conference because he believes that the mention of the right to self-determination and property rights in the indigenous and tribal leaders’ statement is “contrary to the Constitution.”<sup>24</sup> It was further reported that the President would refer the matter to the National Assembly (which has yet to occur) and he was quoted as saying that, “And I can tell you now that when this document reaches Parliament, it will never be accepted. And then we will fall behind another fifteen years.”<sup>25</sup> The President’s assessment of the acceptance of the National Assembly – where his government holds a majority – is confirmed in interviews with members of that body, although some members did criticize the President’s unilateral decision to prematurely terminate the conference.<sup>26</sup>

23. For their part, indigenous and tribal leaders publicly explained that their statement had been presented to the State in June 2011 and that there was no reason for the State to have been surprised by its contents, and no reason that any issues of concern could not have been discussed prior to the conference commencing (see Annex B for this statement). They further explained that their statement was consistent with international standards, particularly the judgment of the Inter-American Court of Human Rights in *Saramaka People*. Nonetheless, prominent members of the government and others made a series of derogatory statements in the press, among other things, calling indigenous and tribal leaders “stupid” and “uncivilized”, and this has led to a climate of ethnic tension and the State has done nothing to alleviate or address this situation to date.

24. In sum, the national land rights conference, the State’s proclaimed focal point for addressing indigenous and tribal peoples’ rights, and the justification before the Human Rights Council for its lack of action to implement the *Saramaka People* judgment, was both ineffectual and, to make matters worse, arbitrarily and abruptly terminated by one person on specious grounds. Among other things, the State may not invoke its domestic law (in this case its constitution) to escape compliance with its international obligations, in this instance as expressed authoritatively in a binding judgment of the Inter-American Court of Human Rights. That judgment, and the State’s international obligations more generally, upholds indigenous and tribal peoples’ property rights and the right to self-determination, and requires that the State secure these rights in its domestic law and practice. The Court’s judgment is also entirely consistent with the prior, reiterated and urgent recommendations of the Committee (a number of which were cited as authority by the Court in the judgment itself), including those made in 2009, which directly refer to both property rights and to the right of the Saramaka people to self-determination.

25. In the view of the submitting organisations, the State’s response, as expressed by the President, is simply another attempt to delay implementation of the judgment and to yet

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<sup>23</sup> CERD/C/SUR/CO/12, 13 March 2009, at para. 18.

<sup>24</sup> See ‘Bouterse livid over “manipulation” of land rights conference, *Stabroek News*, 24 October 2011. Available at: <http://www.stabroeknews.com/2011/news/breaking-news/10/24/bouterse-livid-over-manipulation%E2%80%9999-of-land-rights-conference/>.

<sup>25</sup> *Id.*

<sup>26</sup> See ‘Suriname Parliament also against self-determination tribal peoples’, *Stabroek News*, 27 October 2011. Available at: <http://www.stabroeknews.com/2011/news/breaking-news/10/27/suriname-parliament-also-against-self-determination-tribal-peoples/>.

again frustrate action to recognize and secure the rights of indigenous and tribal peoples more generally. This protracted refusal to recognize and secure indigenous and tribal peoples' rights constitutes pervasive and systematic racial discrimination against almost 20 percent of Suriname's population. As stated by the the Inter-American Commission on Human Rights in 2006, indigenous and tribal peoples 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>27</sup> Moreover, the State's reaction has not only delayed serious action to secure these rights, it has created a climate in which prominent members of society feel empowered to publicly denigrate and malign indigenous and tribal leaders for seeking nothing more than respect for their rights.

#### **IV. Suspended and Inconclusive Engagement with the UN Special Rapporteur on the Rights of Indigenous Peoples**

26. While Suriname rejected recommendations made during the UPR that it recognise and respect the rights of indigenous and tribal peoples, including through implementation of the judgment of the Inter-American Court in *Saramaka People*, the State did accept a recommendation<sup>28</sup> that it continues to seek and receive technical support from the UN Special Rapporteur on the Rights of Indigenous Peoples (the Committee made the same recommendation in 2009).<sup>29</sup> This recommendation was made in relation to an on-site visit conducted by the Special Rapporteur in March 2011 that resulted in a set of recommendations made to the State.<sup>30</sup> This visit was in large part intended to assist the State with implementation of *Saramaka People*, and in particular to support the development of the legislation required to implement that judgment.<sup>31</sup>

27. That Suriname has failed to implement the *Saramaka People* judgment is confirmed by the Special Rapporteur. His August 2011 report states unambiguously that

... 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. In its judgment the Court required that the State must begin the process of delimitation, demarcation and titling of traditional Saramaka territory within three months from the notification of the judgment, and must complete this process within three years from such date, which lapsed in December 2010. It is imperative that Suriname take steps to fully implement the

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<sup>27</sup> Inter-American Commission on Human Rights, *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006, at para. 235. Available at: [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>28</sup> *Report of the Working Group on the Universal Periodic Review: Suriname*. UN Doc. A/HRC/18/12, 11 July 2011, para. 72.8.

<sup>29</sup> See CERD/C/SUR/CO/12, para. 8.

<sup>30</sup> *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname*. UN Doc. A/HRC/18/35/Add.7, 18 August 2011. Available at: [www.ohchr.org/documents/issues/Ipeoples/SR/A-HRC-18-37-Add7\\_en.pdf](http://www.ohchr.org/documents/issues/Ipeoples/SR/A-HRC-18-37-Add7_en.pdf).

<sup>31</sup> *Id.* at para. 1 (stating that "The Special Rapporteur hopes that the observations below are useful to Suriname as it advances measures to implement its international legal obligations concerning indigenous and tribal peoples, especially in light of binding decisions rendered by the Inter-American Court of Human Rights").

judgment of the Court, in order to avoid a prolonged condition of international illegality.<sup>32</sup>

28. The Special Rapporteur additionally notes that at least two proposed laws on indigenous and tribal peoples' rights, drafted by indigenous and tribal peoples and their organisations, have been submitted to the State for its consideration. One draft law, endorsed by the Special Rapporteur in 2011 and by all indigenous and tribal leaders in 2006, is annexed to his report. He observes that the State has yet to react to any of these proposals and that there continues to be no legislative basis for recognising and securing indigenous and tribal rights in Suriname. He makes a number of concrete recommendations in this respect as well as with regard to other pertinent issues. However, to date, Suriname has not reacted in any way to these recommendations, nor has it provided any official indication that it intends to implement them or to further discuss them with the Special Rapporteur.

## **V. Violations of the *Saramaka People* Judgment and the November 2011 Orders of Inter-American Court of Human Rights**

29. In addition to its failure to implement the *Saramaka People* judgment, as recommended as a matter of urgency by the Committee in 2009 and during the UPR in May 2011, Suriname has also permitted or implemented a number of initiatives that directly contravene the orders of the Court as set forth in the judgment.

30. These initiatives include the granting of a stone mining concession in Saramaka territory; the issuance of a number of logging concessions therein; the granting of a permit to run a tourism resort in the residential area of a Saramaka village; and the upgrading of a road through Saramaka territory without first conducting an environmental and social impact assessment. All of these activities were done without informing the Saramaka, let alone seeking their consent, as is required by the orders of the Inter-American Court.<sup>33</sup> Additionally the stone mining concession is operating to the extreme detriment of Saramaka families who live within the concession. There are no available remedies in domestic law that would allow the Saramaka to challenge these violations of these rights or the flagrant violations of the judgment in *Saramaka People* that they represent.

31. That the preceding is true was verified by the Inter-American Court of Human Rights as part of its jurisdiction to monitor compliance with its judgments and is recorded in the order adopted by the Court in November 2011 (see Annex A).<sup>34</sup> These determinations were made after reviewing substantial evidence submitted by both the State and the Saramaka people over a period of two years. In the new order, the Court finds that Suriname has failed to comply with all of its substantive orders. It also holds, in relation to the above mentioned initiatives and the State's failure to conduct impact assessments, that

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<sup>32</sup> *Id.* at para. 11.

<sup>33</sup> See *Order of the Inter-American Court of Human Rights of 23 November 2011. Case of the Saramaka People: Monitoring Compliance with the Judgment*, at para. 18 (explaining that the Court ordered that the State must refrain from activities within or that may affect the territory of the Saramaka people without first obtaining their free, prior and informed consent at least until the demarcation of said territory has been completed).

<sup>34</sup> *Id.* para. 17.

Suriname is “in direct contravention of the Court’s decision and, accordingly, of the State’s international treaty obligations.”<sup>35</sup>

32. The Court also ordered that Suriname review existing concessions in Saramaka territory, such as the Rosebel gold mine, operated by the Canadian company, IAMGold, in order to ensure that these concessions are operating in accordance with the judgment.<sup>36</sup> As verified by the Court, Suriname has failed to do so for any of the existing concessions in Saramaka territory to date. Moreover, it is in the advanced stages of granting permits to IAMGold to expand its mining operations into additional areas of Saramaka territory, a measure that would further violate the Court’s orders.<sup>37</sup>

33. Finally, the Court decided to convene a hearing to hear further evidence from the parties in 2012 because of Suriname’s statements before the Human Rights Council to the effect that it would not comply with the judgment; due to 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 fulfil its obligation to duly inform the Court on its implementation of the judgment.”<sup>38</sup> The Court concluded by reminding Suriname that states “cannot invoke their domestic laws to escape pre-established international responsibility.”<sup>39</sup>

## VI. Conclusion and Requests

34. In *Saramaka People*, the Inter-American Court of Human Rights decided that an award of moral damages was warranted because

there is evidence that demonstrates the suffering and distress that the members of the Saramaka people have endured as a result of the long and ongoing struggle for the legal recognition of their right to the territory they have traditionally used and occupied for centuries ... as well as their frustration with a domestic legal system that does not protect them against violations of said right ... all of which constitutes a denigration of their basic cultural and spiritual values.<sup>40</sup>

35. This determination was made in November 2007, more than four years before the date of this report. Suriname’s protracted refusal to take any meaningful action to implement the judgment perpetuates and exacerbates this suffering and the denigration of the basic cultural and spiritual values held by the Saramaka. The same may also be said for all indigenous and tribal peoples in Suriname, who are all in the same position, and who have all strived for recognition of their rights for many decades only to be rebuffed, frustrated

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<sup>35</sup> *Order of the Inter-American Court of Human Rights of 23 November 2011. Case of the Saramaka People: Monitoring Compliance with the Judgment*, at para. 19 and 25.

<sup>36</sup> *Id.* para. 13 and 17.

<sup>37</sup> See ‘Negotiations with IAMGold nearing completion’, *DevSur*, 21 December 2011. Available at: <http://www.devsur.com/negotiations-with-iamgold-nearing-completion/2011/12/21/>; and ‘IAMGold reports promising exploration results’, *DevSur*, 19 September 2011 (referring to Koemboe prospect, which lies within Saramaka territory). Available at: <http://www.devsur.com/negotiations-with-iamgold-nearing-completion/2011/12/21/>.

<sup>38</sup> *Id.* at para. 50.

<sup>39</sup> *Id.*

<sup>40</sup> *Saramaka People v. Suriname*. Judgment of 28 November 2007. Series C No. 172, at para. 200.

and denied at every opportunity by the State. This deliberate perpetuation of systematic and pervasive racial discrimination against almost 20 percent of its population is occurring despite two binding judgments of the Inter-American Court of Human Rights and numerous recommendations made by the Committee and other international human rights mechanisms and procedures. The rights of the Saramaka and other indigenous and tribal peoples continue to be disregarded and violated with impunity by Suriname.

36. In light of the preceding and the urgent, severe and grave situation faced by the Saramaka and other indigenous and tribal peoples in Suriname, the submitting organisations respectfully request that the Committee:

- a) Reiterates its recommendation that Suriname implement, with urgency, the judgment of the Inter-American Court of Human Rights in the case of the *Saramaka People v. Suriname*, and that it does so in accordance with the letter and spirit of the orders and considerations set forth therein by the Court;
- b) Recommends that Suriname, also with urgency, recognises, secures and protects the rights of all indigenous and tribal peoples in Suriname and does so with their full and effective participation and consent;
- c) Recommends that Suriname ensures that the judgment of the Court is fully respected in relation to the reviews of existing concessions in Saramaka territory ordered by the Court and with regard to the proposed expansion of the mining operations of IAMGold in Saramaka territory, including in relation to the Koemboe prospect;
- d) Continues to monitor this situation under its early warning/urgent action procedures until such time as Suriname has demonstrated meaningful progress towards implementation of the judgment and recognition of the rights of indigenous and tribal peoples more generally;
- e) Requests that Suriname submits urgent information about this situation; and,
- f) In accordance with its 2006 Decision 1(69), which drew the attention of competent UN bodies to the “alarming situation” of indigenous and tribal peoples in Suriname, that the Committee further:
  - i) recommends that Suriname continues to seek and obtain technical support from the Special Rapporteur on the Rights of Indigenous Peoples, and requests that the Special Rapporteur provides regular updates on progress in this support to the Committee and the Human Rights Council; and
  - ii) that the Committee alerts UN specialized agencies, such as UNDP, UNREDD, the World Bank (particularly its Forest Carbon Partnership Facility), and the Inter-American Development Bank to the situation in Suriname, and that it requests that these bodies take appropriate action with respect to indigenous and tribal peoples’ rights in their operations or projects in Suriname.