A Report on the Situation of Indigenous and Tribal Peoples in Suriname and Comments on Suriname's 11th and 12th Periodic Reports (CERD/C/SUR/12)

Submitted to the Committee on the Elimination of Racial Discrimination at its 74th Session (16 February – 6 March 2009)

by

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The Association of Saramaka Authorities
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The Submitting Organisations:

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:** Verl. Gemenelandsweg 18d, Paramaribo, Suriname tel. (597) 520130 fax. (597) 520131, e-mail: vids@sr.net

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**: Johannesweg 2, Livorno, Paramaribo, (597) 486380 e-mail: tooka@sr.net

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 Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK Tel: (44) 1608 652893 fax: (44) 1608 652878 email*:*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 situation of indigenous and tribal peoples in the Republic of Suriname ("Suriname" or "the State"). On this occasion, the submitting organisations respectfully offer comments on Suriname's eleventh and twelfth periodic reports (CERD/C/SUR/12) ("the State Party report") and provide additional information. Specific requests are set out in paragraphs 75-6 below.

2. The submitting organisations have previously submitted four reports on the situation of indigenous and tribal peoples' in Suriname, three of which requested that the Committee's considers this situation under it early warning and urgent action procedures.[1] In addition to its 2004 concluding observations, which detail serious violations of indigenous and tribal peoples' rights,[2] the Committee also adopted decisions under its urgent action and early warning procedures in 2003, 2005 and 2006,[3] and a decision under its follow up procedure in 2005.[4] In 2003, the Committee decided that the "problems faced by the indigenous communities call for immediate attention…."[5] 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…."[6]

3. Other than a few mentions, the State Party report fails to provide any meaningful information about the measures Suriname has taken to give effect to the Committee's recommendations and nor does it otherwise provide substantive comments on those recommendations. Suriname has not only disregarded the Committee's urgent and critical recommendations, it has proceeded to actively contravene their letter and spirit. The "alarming situation" in Suriname is no better, and in some respects worse, today than it was when the Committee decided that urgent action was needed in 2003, 2004, 2005 and 2006.

4. Lacking any domestic recourse, indigenous and tribal peoples have turned to the organs of the inter-American human rights system. As discussed below, the Inter-American Court of Human Rights issued judgments in 2005 and 2007. While the State has complied with all but two of the Court's orders in the 2005 *Moiwana Village* case, the two outstanding orders concern the most crucial aspects of the judgment. In relation to the 2007 *Saramaka People* judgment, Suriname has publicly declared that it will fully implement the judgment, but nonetheless has failed to comply with all but one of the Court's orders to date. It should be noted in this respect that some of the Court's orders are tied to a 2010 deadline and thus the State has additional time to comply. In common with the Committee's observations, these judgments found that Suriname was responsible for serious, institutionalised, and long-standing violations of indigenous and tribal peoples' rights. Another case was submitted by indigenous peoples in February 2007. It was declared admissible by the Inter-American

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[1] *See* http://www.forestpeoples.org/documents/s_c_america/bases/suriname.shtml.
[2] *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004
[3] *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; and *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006.
[4] *Decision 3(66), Suriname*. UN Doc. CERD/C/66/SUR/Dec.3, 09 March 2005
[5] *Decision 3(62), Suriname*. UN Doc. CERD/C/62/Dec/3, 03 June 2003, at para. 4.
[6] *Decision 1(69), Suriname*. UN Doc. CERD/C/DEC/SUR/3, 18 August 2006, at para. 4.

Commission on Human Rights in October 2007 and a decision on the merits is presently pending.[7]

5. To date, Suriname has failed to adopt any legislative or other measures to recognise and guarantee indigenous and tribal peoples' rights. Nor has it adopted any effective environmental laws and it continues to authorise resource exploitation concessions with little or no regard for indigenous and tribal peoples' rights. Mercury pollution continues and has increased without any serious attempt by the State to regulate its use or its effects on human health and the ecosystems that indigenous and tribal peoples depend upon. Discrimination against indigenous and tribal peoples with regard to the provision of health and education services – indeed, in most aspects of economic, social and cultural life – is persistent and institutionalised, and the State has not taken any meaningful remedial action.

II. Indigenous and Tribal Peoples in Suriname: Basic Information

6. Indigenous peoples comprise approximately 3-4 percent of the Surinamese population – around 18,000 persons – and are organized as four distinct peoples: Kaliña, Lokono, Wayana, and Trio and associated peoples, e.g., Wai Wai and Akuriyo.[8] In total there are around 47 indigenous villages in Suriname, some of them on the coast and some in the interior of the country. Suriname's rainforests, savannahs and coastal seas have sustained them since time immemorial and for the most part remain they most important source of subsistence resources.

7. Suriname is also home to non-indigenous tribal peoples known as Maroons. They are organized as six peoples comprising approximately 73,000 persons: Saramaka, N'djuka, Matawai, Kwinti, Aluku, and Paramaka.[9] Maroons are the descendants of African slaves who fought themselves free from slavery, established autonomous communities along the major rivers of Suriname's rainforest interior in the 17th and 18th centuries, and have maintained distinct cultures ever since. Their freedom from slavery and rights to lands and territory, and the autonomous administration thereof, were recognized in treaties concluded with the Dutch colonial government in the 1760s and the 1830s.

8. Indigenous and tribal peoples in Suriname together comprise around 20 percent of the national population.[10] They fall at the bottom of all economic and social indices and are the most disadvantaged and impoverished sectors of Surinamese society. Indigenous and tribal peoples receive fewer services than non-indigenous and tribal persons, both quantitatively and qualitatively, and indigenous and tribal women and children suffer disproportionately.

III. Comments on Suriname's Eleventh and Twelfth Periodic Reports

9. Suriname's State Party report is most notable for what it does not say rather than for the information it provides. In particular, this report largely fails to comment on or provide any information on the steps taken by the State to give effect to the Committee's 2004 concluding observations and the three decisions adopted by the Committee under its follow up and early warning and urgent action procedures.[11] Where this information is provided the State Party report indicates either that it may not comprehend the Committee's recommendations or that the State is not inclined to give effect to them. This is deeply troubling given the depth and extent of the Committee's concern for indigenous and tribal

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[7] *Report No. 76/07*, Admissibility, The Kaliña and Lokono Peoples (Suriname), 15 October 2007. Available at: http://www.cidh.oas.org/annualrep/2007eng/Suriname198.07eng.htm.

[8] *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) ("IADB 2006"). Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=917350.

[9] *Id.*

[10] *Id.*

[11] *Supra* notes 3 and 4.

peoples in Suriname since 2003, the date of its first decision under the early warning and urgent action procedures.[12]

A. The draft Revised Mining Act 2004

10. Suriname's draft revised Mining Act of 2004 was highlighted by the Committee in its 2004 concluding observations[13] and is the subject, wholly or partially, of two of its decisions.[14] However, rather than address the Committee's recommendations, the State Party report merely explains that this draft law is "is in Parliament" and that no provision of the current 1986 Mining Decree, which contains provisions that are largely the same as those in the draft law, "is contrary to the Convention."[15]

11. The State then provides an extended explanation of the process for issuing concessions without addressing any of the points raised by the Committee other than to say that if a "concession is granted to a third party without consultation of the people living in the surroundings an appeal can be lodged within the Administration."[16] It does not specify the legal basis for such appeals nor to whom they should be directed; indeed, it cannot as no such procedure exists. Indigenous and tribal peoples also may not seek judicial protection should their rights be violated in this context. The Committee reached this same conclusion in its 2004 concluding observations.[17]

12. That remedies are unavailable is also verified in a 2006 decision of the Inter-American Commission on Human Rights[18] and in a 2007 judgment of the Inter-American Court of Human Rights.[19] Both focused on the rights of indigenous and tribal peoples in the context of logging and mining concessions and found that there are no available and effective remedies in Suriname law. In relation to the 1986 *Mining Decree*, for instance, the Inter-American Court dismissed Suriname's arguments and found that "the purported remedy established under the Mining Decree is inadequate and ineffective."[20] The Court observed that its finding was consistent with the testimony of the State's own expert witness who explained that the *Mining Decree* "does not offer legal protection to 'inhabitants of the interior living in tribal communities'."[21]

13. The Court's judgment also directly contradicts the claim in the State Party report that "Indigenous and tribal peoples can reach an agreement through the Government with regard to compensation with concession holders."[22] The Court found in this respect that "rather than

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12 *Decision 3(62), Suriname*. UN Doc. CERD/C/62/Dec/3, 03 June 2003.

13 *Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 14 (stating that "under the draft Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached the matter will be settled by the executive, and not the judiciary").

14 *Supra* notes 3 and 4.

15 *Report of the Republic of Suriname*, 19 July 2007. UN Doc. CERD/C/SUR/12, at p. 22 ("Report of the Republic of Suriname").

16 *Id* at p. 24.

17 *Suriname*, 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").

18 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, para. 6 & 14. Available at: http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_12_saramaka_clans_mar06_eng.pdf.

19 *Saramaka People v. Suriname*. Judgment of 28 November 2007. Series C No. 172, at para. 194-96 ("Saramaka People v Suriname"). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf. See also *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185 (hereinafter "Interpretation Judgment"). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf.

20 *Saramaka People v Suriname*, at para. 183.

21 *Id.*

22 Report of the Republic of Suriname, at p. 25.

give effect to the property rights of the members of the Saramaka people in conformity with their communal property system, [the *Mining Decree*] emphasizes the need for them to obtain title to their traditionally owned territory in order to be able to pursue a claim for compensation…."[23] No indigenous or tribal people or community presently holds title or any other form of property right under national law to its lands or territory.

14. Although the revised draft Mining Act of 2004 improves on the 1986 *Mining Decree* insofar as it establishes a procedure by which indigenous and tribal peoples can negotiate compensation for damages caused by mining, it nonetheless denies them access to judicial remedies should they be unable to agree with miners on the terms of compensation.[24] While non-indigenous/tribal persons may seek a judicial determination if agreement cannot be reached,[25] indigenous and tribal peoples' remedies are limited to an appeal to the executive, which will issue a "binding decision."[26] According to the explanatory note, this overt discrimination against indigenous and tribal peoples is warranted "because traditional rights do not lend themselves to the normal court procedure as individual rights are not involved."[27] In addition to this, the draft Act also fails to include guarantees for indigenous and tribal peoples' rights to be consulted about and consent to mining on their traditional lands, a right not otherwise guaranteed in Suriname law.

15. Last but not least, and as explained at length in the submitting organisations reports of 06 January 2005 and 08 July 2005, the revised draft Mining Act discriminates against indigenous and tribal peoples in multiple other ways beyond the discriminatory provisions previously identified by the Committee.[28] The Committee recommended that Suriname "ensure[s] the compliance of the revised draft Mining Act with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's March 2004 recommendations".[29] Suriname, however, simply states that the draft Act is before parliament, presumably to be enacted without regard to the Committee's urgent recommendations.

B. Education

16. In 2004, the Committee observed that it was "disturbed at the continuing lack of health and education facilities" available to indigenous and tribal peoples.[30] It also regretted that "no special measures have been taken to secure their advancement on the grounds that

[23] *Saramaka People v. Suriname,* at para. 111 (stating that the Mining Decree referred to by the State also fails to give domestic legal effect to the rights to property that the members of the Saramaka people have as a result of their communal property system. … [And], rather than give effect to the property rights of the members of the Saramaka people in conformity with their communal property system, emphasizes the need for them to obtain title to their traditionally owned territory in order to be able to pursue a claim for compensation…").

[24] Similar language is contained in the Forest Management Act of 1992. Article 41(1)(b) reads: "In case of violations of the customary law rights as mentioned under a, an appeal in writing may be made to the President, which appeal is to be drawn up by the relevant traditional authority of the tribal inhabitants of the interior stating the reasons for the appeal. The President will appoint a committee to advise him on the matter."

[25] *Draft Revised Mining Act*, article 68(3): "(2) The holder of a mining right is obligated to compensate all damage inflicted to the claimants and third parties, whether or not caused by his negligence as a result of his activities. (3) If the parties involved cannot reach agreement concerning the nature and the extent of the damage mentioned in subsection 2 of this article, the Cantonal Judge within whose jurisdiction the terrain is located which is the basis of this conflict, will determine, upon the request of any interested party, the amount of compensation.

[26] *Id.* at art. 76(2) and Explanatory Note to article 76. Article 76(2) provides that "If there has been no agreement on the compensation as provided in subsection 1 under b, after negotiations between the parties involved, the State will make a proposal that is binding to the parties. The State will ensure that the interests of all parties involved will reasonably be taken into account." The Explanatory note explains that "If parties cannot agree [on the amount of compensation], the executive will provide a binding decision."

[27] *Id.* at Explanatory Note to article 76.

[28] *Request for the Initiation of an Urgent Action and a Follow Up Procedure in Relation to the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Suriname*, 06 January 2005, paras. 7-28.

[29] *See for instance Decision 3(66), Suriname*. UN Doc. CERD/C/66/SUR/Dec.3, 9 March 2005, at para. 5-6.

[30] *Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 19.

there are no available data suggesting that they need special protection."[31] It recommended that the State exert greater efforts to address the significant disparities in services enjoyed by indigenous and tribal peoples. The Committee also observed that it was "disturbed at the lack of plans to preserve the native languages of the country's indigenous and tribal peoples," and invited the State "to encourage the learning of mother tongues."[32]

17. At the outset, it is important to note that a 2006 Inter-American Development Bank ("IADB") study unambiguously states that it "is well documented that the education of indigenous and maroon children in Suriname is characterized by serious quantitative and qualitative disparities compared to the education offered to children living in urban and rural areas."[33] This conclusion remains valid in 2009. According to the IADB, these disparities translate into significantly lower performance standards. For example, only 64.5 percent of indigenous and maroon children entering the first grade reach grade 5, compared to 82.5 percent of children in rural areas and 92.8 percent of urban children; and, in 2004, 56.2 percent of all children passed the exam to gain access to secondary school whereas the rate was only 31 percent in interior schools.[34]

18. The State Party report also demonstrates that indigenous and tribal peoples continue to suffer serious disadvantage and disparate treatment with respect to education, and that this differential treatment translates into lower performance standards. The data cited by the State, for example, show illiteracy rates almost double the national average for indigenous and tribal peoples, and significantly more than double the national average if the lowest figure provided is used.[35] These statistics also do not account for the fact that large numbers of indigenous and tribal peoples responded that they "did not know" if they were illiterate (over 15,000 maroons and more than 4000 indigenous persons).[36]

19. One of the main reasons that indigenous and tribal children do not perform well in primary school, which in turn directly relates to drop out rates, is because they speak their mother tongue at home, rather than Dutch, the language used in all schools. While the Committee has called upon Suriname to correct this discriminatory treatment of indigenous and tribal languages, and indigenous and tribal peoples have called for bilingual education for many years, the State Party report bluntly states that there "are no special measures taken to preserve the native languages of the country's indigenous and tribal people in education. The formal language is Dutch, which is the official language in schools."[37]

20. The State Party report further explains that school fees are "somewhat higher at schools of the different denominational organizations."[38] These fees are in fact at least three times higher. Since 2006, parents pay SR$35 (US$12.75) per child annually for public schools, while the denominational schools have increased their fees each year and currently request SR$100 (US$36.36).[39] The State Party report fails to mention that the majority of schools in indigenous and maroon communities are denominational schools and, unlike parents living elsewhere, indigenous and maroon parents cannot choose between a public or denominational school as only the latter exist in their areas.

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[31] *Id.*
[32] *Id.* at para. 21.
[33] IADB 2006, *supra* note 8, at p. 19.
[34] *Id.* at p. 20.
[35] Report of the Republic of Suriname, at p. 6 (citing the literacy rates by district and showing that Sipilawini, the district almost exclusively inhabited by indigenous and tribal peoples, has a literacy rate of 47.6% at best and 35.9% at worst compared to the national average of 88.1%).
[36] *Id.*
[37] *Id.*
[38] *Id.* at p. 8.
[39] IADB 2006, *supra* note 8, at p.20.

21. Given that indigenous and maroon families are normally much larger than the families of other ethnic groups, they must pay disproportionately large amounts for their children to obtain education. This burden is a symptom of the State abrogating its responsibility for education in the interior to religious institutions. As discussed below, the same is also the case with regard to health care for the vast majority of indigenous and tribal persons.

22. Last but not least, the State Party report explains that there is now a 'special education policy plan' for the interior. According to the State, this document was developed in "close cooperation with the stakeholders in the education sector with special attention for the interior."[40] While this plan may have been developed with input from persons in the education sector, there was no attempt to consult with or involve indigenous and tribal peoples or their organisations. Indeed, the national indigenous organisation and the various maroon organisations were not even sent a summary of the plan at any time before or after the one-off 'stakeholder meeting' and neither were they invited to attend the meeting. There is also no extant evidence that the State has taken any steps to implement this plan. As with the majority of policies adopted by the State, this plan was developed *for* indigenous and tribal peoples without their informed participation and, in this case, without even their presence.[41] Indigenous peoples' written objections to this process were not acknowledged let alone given a response by the State.

23. The IADB provides an accurate assessment of the state of Suriname's attention to education in the interior. It explains that although the IADB and the State's Education Sector Plan

> recognize that the Interior deserves "special attention" and "clearly lags behind education in the coastal areas," plans to address education in the Interior are, with few exceptions, limited to the construction and rehabilitation of school buildings and 'nucleus centers'. Whereas many schools in the Interior are indeed in need of rehabilitation, if the goal is to improve indigenous and maroon education, this requires far more than just building schools and should include a comprehensive education strategy developed with the full participation of indigenous peoples and maroons and addressing issues such as bi-lingual education, long-distance and life-long learning.[42]

24. In sum, indigenous and tribal peoples continue to receive less and worse education services than those enjoyed by all other sectors of Suriname society. The State has not adopted any meaningful measures, special or otherwise, to address this discriminatory treatment. It also refuses to allow the use of indigenous and tribal languages in schools, in particular through bilingual education programmes. It similarly refuses to institute inter-cultural education programmes in interior and coastal schools. The results are predictable; indigenous and tribal people continue to fall at the very bottom of all performance indices in education and continue to suffer extreme disadvantage in relation to other sectors of society.

C. Health

25. The situation with regard to health is no better than it is with education. Indigenous and tribal peoples receive worse and less services than all others in Suriname. The IADB confirms this, explaining that only those indigenous communities located close to urban areas (approximately 15 communities) "have access to health care at the same level as other

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[40] Report of the Republic of Suriname, at p. 7.

[41] IADB 2006, *supra* note 8, at p.27 (observing that "it is clear that with few exceptions, indigenous peoples and maroons have not been involved in the design, preparation and often neither in the execution of projects that have a significant impact on them").

[42] *Id.* at p.21 (footnotes omitted).

Surinamers."[43] Indeed, the State has transferred all responsibility for health to an NGO (the Medical Mission) in Sipilawini, Brokopondo and parts of Para districts, which contain 85 percent of indigenous and tribal communities.

26. The State provides around 85 percent of the Medical Mission's total budget, which was around US$2.5 million in 2006.[44] The State Party report explains that the State's national budget for health in 2000 was US$79 million.[45] Therefore, the State's budget for around 85 percent of indigenous and tribal communities is approximately three percent of national budget (most likely less today given that national health expenditure has increased considerably since 2000).

27. According to the State's own figures, the Medical Mission services 57,086 persons in the interior. [46] This amounts to around 12 percent of the national population yet it is allocated less than three percent of the national health budget. Also, while per capita expenditure on health is cited by the State as US$108 per person, in the areas serviced by the Medical Mission it is US$43.79 per person, around 60 percent less than the national expenditure.[47] In 2006, the Medical Mission employed five doctors, one dentist, eight clinic heads, 84 health assistants, 39 clinic aids, 31 malaria microscopists and 73 administrators.[48] Using the State's population estimate for the area in question, this amounts to one doctor per every 11,417 persons and one dentist for 57,086 persons. Also, the ratio of medical personnel, almost all of whom are assistants, aids and microscopists, to (Paramaribo-based) administrators stands at almost 2 to 1. A significant percentage of the reported expenditure for health care in the interior therefore stays in Paramaribo.

28. The Ministry of Health does provide services to a few indigenous and tribal communities through its Regional Health Service ("RHS"). These clinics have a resident doctor, a nurse, a lab assistant and a pharmacy assistant. However, with a few exceptions, only the 20 communities close to urban areas can access these services. There are also a few communities where the RHS has established community health clinics (for example, Galibi and Bigi Ston in District Marowijne). These are staffed with a nurse only (doctors visit irregularly), and often lack sufficient medicines for common illnesses. In Bigi Ston, for instance, the RHS health clinic is not staffed, contains no furniture, and the community has been told by the RHS that a doctor will visit only if the community provides a boat and fuel (a substantial cost in fuel alone).[49] This community is a short distance from Albina, the major urban centre in the region.

D. Land Tenure

29. The Committee devoted considerable attention to the rights of indigenous and tribal peoples to own their traditional lands, territories and resources in its 2004 concluding observations and its subsequent decisions.[50] The Committee observed, *inter alia*, that Suriname has yet to adopt a law recognising and guaranteeing indigenous and tribal peoples' right to own and control their traditional lands, territories and resources, and that this right is routinely violated with impunity. Five years later, and despite two judgments of the Inter-American Court of Human Rights ordering Suriname to adopt and implement the necessary legislation, these observations remain equally valid.

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43 *Id.* at p. 22.
44 *Id.*
45 Report of the Republic of Suriname, at p. 21.
46 *Id. p. 19.*
47 *Id.* p. 21.
48 *Id.* p. 19.
49 IADB 2006, *supra* note 8, at p.22.
50 *See inter alia Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 11-5, 17-8.

30. The State Party report essentially rejects the Committee's recommendations and sets forth a series of justifications for Suriname's lack of action to recognise and secure indigenous and tribal peoples' rights to own and control their traditional territories. These justifications all lack merit and have all been roundly rejected by, *inter alia*, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Inter-American Commission, for instance, observes that 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."[51]

31. First, the State opines that indigenous and tribal peoples' property rights are ultimately dependent on and subservient to an underlying title vested in the State, and that their territories form part of the 'free domain', meaning lands "which the State can dispose of freely."[52] As the Committee and other international human rights bodies have acknowledged on numerous occasions, it is a general principle of 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.

32. Second, the State argues that indigenous and tribal peoples' "*sui generis* land rights" have never and do not now include rights to natural resources, both as they pertain to the surface and the subsoil of their traditional territories.[53] Even if such right do vest, the State contends that they would be "limited to resources traditionally used for their subsistence and cultural and religious activities."[54] The Committee has rejected the view that indigenous peoples' rights cannot include rights over natural resources, including subsoil resources,[55] as does the 2007 UN Declaration on the Right of Indigenous Peoples ("UNDRIP").[56] The Committee has also rejected the assertion that indigenous peoples' rights are limited to the pursuit of traditional activities,[57] as does the UNDRIP.[58] Similarly, the Inter-American Court explicitly found that the Saramaka are the owners of natural resources within their territory.[59]

33. Third, the State argues that its existing legislative framework provides adequate guarantees for the rights of indigenous and tribal peoples and that there are effective judicial remedies available should they need to seek judicial protection.[60] Each of the laws cited by the State was deemed to be inadequate and ineffective by both the Inter-American Commission and the Inter-American Court.[61] The specific remedy identified by the State, Article 1386 of the Civil Code, was also deemed to be ineffective by both bodies, not the least because

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[51] *Report No. 09/06, Case of the Twelve Saramaka Clans*, *supra* note 18, at para. 235.
[52] Report of the Republic of Suriname, at p. 29.
[53] *Id.* at 29-30.
[54] *Id.* at p. 30
[55] *See* Committee on the Elimination of Racial Discrimination, *Concluding observations: Guyana, 04/04/2006*, CERD/C/GUY/CO/14, at para. 16 (recommending that the state "recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources…").
[56] Art. 26(1) provides that "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."
[57] *See inter alia* Decision 2 (54) on Australia: Australia. 18/03/99, at para. 7. UN Doc A/54/18, para.21(2) (stating various provisions of a law discriminate against indigenous title holders, including "restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses").
[58] Art. 20(1) provides that "Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities."
[59] Saramaka People v Suriname, 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").
[60] Report of the Republic of Suriname, p. 30-1.
[61] *See for example* Saramaka People v Suriname, paras. 106-14 (analysing each of the laws cited by the State).

Suriname law does not recognise indigenous and tribal peoples or their communities as legal persons.[62] They reached these conclusions after reviewing a substantial amount of documentary and testimonial evidence over a period of seven years.

34. Finally, the State concludes by explaining that the "reason why a comprehensive codification is still absent is not a lack of commitment at government level," but, rather, because such a codification is complex, particularly "in a highly sensitive national social and political environment."[63] Additionally, establishing legislative protection for indigenous and tribal peoples' rights "is a very complicated, delicate and time consuming process."[64] These statements are difficult to understand, particularly in light of the progress made throughout the Americas and elsewhere in establishing legislative, and in many cases constitutional, guarantees for indigenous and tribal rights. Suriname has failed to explain why its situation is any more complicated, delicate or sensitive than any other country. Irrespective, the Inter-American Court has dismissed Suriname oft repeated contention that recognition of indigenous and tribal land rights is 'too complex', observing that the alleged complexity does not excuse the State from complying with its international obligations.[65]

35. Suriname's statements are also difficult to understand given that resolution of land tenure issues has been an ever present national issue since it was made a condition of the Lelydorp Accord (also known as the Peace Accord), which ended six years of armed conflict in 1992. In fact, it has been an issue at least since the time of Suriname's independence in 1975. This issue has not escaped international attention either; three urgent action decisions have been adopted by the Committee since 2003 and the Inter-American Court of Human Rights has issued two judgments since 2005, both ordering the State to adopt legislative and other measures to recognise and protect indigenous and tribal peoples' rights. In the meantime, 20 percent of Suriname's population continue to be denied the exercise and enjoyment of their property and associated rights, often with devastating consequences for their well-being caused by State-authorised resource extraction operations.

E. Ratification of ILO 169

36. The State Party report explains in response to a question from the Committee that Suriname is considering ratification of International Labour Organisation Convention No. 169 Concerning Indigenous and Tribal Peoples.[66] The State observes that this convention was submitted to the legislature in 1991 (as is required by the ILO Constitution), but it was not ratified because the Convention was considered "a sensitive subject in which extensive research was necessary."[67] It adds that 12 years later a workshop was held to discuss the Convention. At the conclusion of this workshop, the State Party report explains that the Government emphasised "the fact that research and consultations were necessary" and that further discussion was required about differences of opinion between the State and indigenous and tribal peoples in relations to various aspects of the Convention, including land rights and education.[68]

37. The submitting observations observe, first, that the State has not explained why ratification of ILO 169 is such a sensitive matter. Second, the State has to date had almost 18 years to research the implications of ratification of ILO 169 yet cannot point to one single

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62 *See for example* Saramaka People v Suriname, at paras. 179-82 (concluding that "the provisions under Suriname's Civil Code do not provide adequate and effective recourse against acts that violate the Saramakas' rights to communal property").
63 Report of the Republic of Suriname, at p. 31.
64 *Id.*
65 Saramaka People v Suriname, at para. 102 (observing that "the State may not abstain from complying with its international obligations ... merely because of the alleged difficulty to do so").
66 Report of the Republic of Suriname, at p. 15.
67 *Id.*
68 *Id.*

document which could show that it has in fact done any research or reached any conclusion on this point. In reality, the State has not invested any energy in considering the ratification of ILO 169 and, despite its claims to the contrary, there is no evidence that it has any intention of ratifying that instrument.

F. Council for the Development of the Interior

38. The Council for the Development of the Interior ("CDI"), established pursuant to the Lelydorp Accord, is a non-functioning entity within the Ministry of Regional Development. Its main task since 1995, when it was installed, has been to make an inventory of indigenous and maroon land tenure issues and to proffer recommendations on how to address those issues. The State Party report explains that in 2003 the CDI began to look into land rights issues. However, according to the State, this "issue is so complex that the Council is still in the process of gathering information, by participating in workshops, attending presentations, studying literature, etc."[69]

39. In reality, the CDI has done little, if anything, to discharge its mandate and, after six years of "gathering information," the State cannot point to one single document to show that that the CDI has reached even one substantive conclusion about the property rights of the peoples of the Interior.[70] As a consequence, the CDI lacks legitimacy among indigenous and tribal peoples and its existence is barely acknowledged even by the Government. For instance, indigenous and tribal peoples have established their own commission to engage with the State about land rights and the State has established three separate commissions on this subject since 1995, most recently in 2006. The IADB diplomatically states that the CDI *could be* an institution through which indigenous and tribal peoples participate in official decision making "provided that important adjustments are made in its mandate and position."[71]

40. Finally, the State has failed to provide any information on the budget and staffing of the CDI despite the Committee's specific request that this information be submitted in the State Party report.[72]

IV. Additional Information

A. The *Saramaka People* and *Moiwana Village* Cases

41. As noted above, the Inter-American Court of Human Rights has issued two judgments concerning the rights of indigenous and tribal peoples 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 indigenous and tribal peoples' rights.[73] The Inter-American Commission reached the same conclusion in each

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69 *Id.* at p. 18.

70 *See* IADB 2006, *supra* note 8, at p.28 (stating that "The only indication on its mandate provided by the Peace Accord is to conduct a study on land rights. This has not been initiated despite the existence of the ROB for over 10 years"); and *Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 12.

71 *Id.* (explaining that for the CDI to function adequately "the procedures by which members are nominated and appointed need to be reviewed, rules of procedure need to be developed and it should be removed from under the Ministry of Regional Development and operate from a position (most likely the Office of the President) where it can effectively interact with and coordinate initiatives across the line ministries and Government agencies as well as advise the National Assembly on matters affecting indigenous and maroon peoples. Another option would be to elevate the [CDI] or a similar body to the level of a Constitutional commission with a mandate defined by Constitutional amendment").

72 *Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 12 (requesting "detailed information on the membership, terms of reference, modes of operation and financial and human resources at the disposal of the Council for the Development of the Interior…").

73 *See for instance* Saramaka People v Suriname, 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

of these cases prior to taking the decision to transmit them to the Inter-American Court. *Moiwana Village* concerns a 1986 massacre of N'djuka maroons, while *Saramaka People* deals with Suriname's failure to legally recognize and secure the Saramaka people's communal ownership rights to its traditional territory and grants of logging and mining concessions therein.

42. The 2007 *Saramaka People* judgment was preceded by a lengthy decision adopted by the Inter-American Commission on Human Rights, which found, *inter alia*, 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."[74] According to the Commission, this absence of legal protection for "the collective rights of the Saramaka communities reflects unequal treatment in the law, which is not compatible with the guarantees of the American Convention."[75] The Commission ultimately recommended that Suriname should:

1. Remove the legal provisions that impede protection of the right to property of the Saramaka people and adopt, in its domestic legislation, and through effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Saramaka people exercises its right to communal property, in accordance with its customary land use practices, without prejudice to other tribal and indigenous communities.
2. Refrain from acts that might give rise to agents of the State itself or third parties, acting with the State's acquiescence or tolerance, affecting the right to property or integrity of the territory of the Saramaka people as established in this report.
3. Repair the environmental damage caused by the logging concessions awarded by the State in the territory traditionally occupied and used by the Saramaka people, and make reparation and due compensation to the Saramaka people for the damage done by the violations established in this report.
4. Take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Saramaka people in relation to the territory it has traditional occupied and used.[76]

43. Suriname failed to comply with the Commission's recommendations and the case was transmitted to the Inter-American Court for a binding judgment. The Court's "landmark" judgment held Suriname responsible for violations of five separate provisions of the American Convention on Human Rights, including the rights to property, to judicial protection, and to juridical capacity.[77] The Court, *inter alia*, ordered that Suriname: [78]

- shall delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and … without

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").

74 *Report No. 09/06, Twelve Saramaka Clans*, *supra* note 18, at para. 190.

75 *Id.* at para. 236.

76 *Id.* at para. 260.

77 *See* YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW *2007*, Oxford University Press, 2008 (case note by Professor Dinah Shelton). Available at: http://www.jus.uio.no/forskning/grupper/intrel/YBIEL/Reports--2Asst-Editor/01-01--HR%20&%20Environment.doc; L. Brunner, The Rise of Peoples' Rights in the Americas: The *Saramaka People* Decision of the Inter-American Court of Human Rights, 7 CHINESE JOURNAL OF INTERNATIONAL LAW 2008; J. Harrison, International Law – Significant Environmental Cases 2007-08, 10 JOURNAL OF ENVIRONMENTAL LAW 2008; and A. Raisz, Indigenous Communities before the Inter-American Court of Human Rights – New Century, New Era*?* 5 *Miskolc Journal of International Law* 35-51 2008. Available at: http://www.uni-miskolc.hu/~wwwdrint/20082raisz1.htm.

78 *Saramaka People v. Suriname*, at para. 194-96.

prejudice to other tribal and indigenous communities. This must start by 19 March 2008 and conclude no later than 19 December 2010;

- shall remove or amend laws that impede protection of the Saramaka people's territorial rights;
- shall adopt laws and other measures to recognize, protect, guarantee and give legal effect to the right of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system;
- shall adopt laws and other measures to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, prior and informed consent, with regards to development or investment projects that may affect their territory, and to reasonably share the benefits of such projects with the members of the Saramaka people, should these be ultimately carried out;
- shall adopt laws and other measures to provide the Saramaka people with adequate and effective judicial and other recourses against acts that violate their right to use and enjoy their territory;
- shall allocate US$675,000 to a community development fund created and established for the benefit of the Saramaka in their traditional territory. An implementation committee composed of three members will be responsible for deciding how the projects will be implemented; and,
- shall recognize the Saramaka people as a people with collective juridical capacity in order to ensure the full exercise and enjoyment of its right to communal property, as well as collective access to justice.

44. The analysis underlying the Court's orders breaks new ground in many respects. This includes the affirmation that indigenous and tribal peoples hold the right to self-determination which cannot be restricted when interpreting the property rights guaranteed under the American Convention on Human Rights. According to the Court, this recognizes that indigenous and tribal peoples have the right "to freely determine and enjoy their own social, cultural and economic development" which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied."[79] Accordingly, the Court ordered that recognition of the Saramaka people's territorial rights must include recognition of "their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system."[80] This order was reiterated and emphasized in the Court's August 2008 judgment which interpreted the first judgment at Suriname's request.[81]

45. The Court also held that indigenous and tribal peoples have a right to consent to activities that may affect the integrity of their territories. It explains that

> depending on the level of impact of the proposed activity, the state may additionally be required to obtain consent from the Saramaka people. The tribunal has emphasized that when large-scale development or investment projects could affect the integrity of the Saramaka people's lands and natural resources, the state has a duty not only to consult with the Saramaka's, but also to obtain their free, prior and informed consent in accordance with their customs and traditions.[82]

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79 *Id.* at para. 95.
80 *Id.* at para. 194.
81 *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of 12 August 2008. Series C No. 185. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.pdf.
82 *Id.* at para. 17.

46. In a statement that could apply to each of the indigenous and tribal peoples in Suirname, the Court decided that an award of moral damages was required 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.[83]

47. The Court's judgment and specific rulings in the *Saramaka People* case contain the blueprint for a long-overdue and comprehensive resolution of land and other rights issues in Suriname. The judgment requires, *inter alia*, that Suriname legally recognizes and demarcates the territory of the Saramaka people and issues them with collective ownership title no later than 20 December 2010. In order to do this, the State must first adopt the necessarily legislative and administrative measures as there is presently no legal mechanism available by which it could issue communal title to indigenous and tribal peoples. This legislation will need to be national in scope and permit all other indigenous and tribal to obtain title to their traditional territories.

48. Suriname has stated that it will fully comply with the judgment of the Court.[84] Yet, to date, it has complied with only one of the Court's orders – establishing an implementation committee to oversee the use of the award of monetary compensation – including those that must have been satisfied no later than 20 December 2008. This includes a failure to commence consultations with the Saramaka about delimitation and demarcation of their territory by no later than 20 March 2008. No reason has been given by the State for its non-compliance.

49. Moreover, the State has authorised the upgrading and asphalting of the *Afobakaweg* – the only road that connects Saramaka territory with Paramaribo – in direct contravention of the terms of the Court's judgment. *Inter alia*, there has been no consultation with the Saramaka, no attempt to obtain their consent, and no environmental and social impact assessment has been conducted nor even commissioned despite the fact that the upgrade will substantially increase access to Saramaka territory. The Saramaka have requested information from the State about this project and expressed their concerns about the failure to comply with the Court's judgment, but have not received any response in almost eight months.

50. In the *Moiwana Village* case, the Court found Suriname responsible for its 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.[85] It also found that Suriname had violated the right to property[86] and 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 in relation to

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[83] Saramaka People v Suriname, at para. 200.

[84] Speaking on behalf of the Government on 9 January 2008, Minister Felisi of Regional Development publicly declared that the Government will fully implement the Court's judgment and will do so in accordance with the time frame set out therein. 'Staat voert vonnis Inter-Amerikaans mensenrechtenhof uit. Gesprekken grondenrechtenvraagstuk gaan voort' *De Ware Tijd*, 09 January 2008. The President reiterated this declaration during a meeting with indigenous and tribal peoples' representatives in early February 2008.

[85] *Case of Moiwana Village v. Suriname*, Inter-American Court of Human Rights, Judgment of 15 June 2005, Ser. C, No. 124. *See also Case of Moiwana Village v. Suriname. Interpretation of the June 15, 2005 Judgment on the Preliminary Objections, Merits and Reparations*, Judgment of February 8, 2006.

[86] *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").

the traditional territories from which they were expelled, and provide for their use and enjoyment of those territories. These measures shall include the creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories.[87]

51. The creation and adoption of these legislative and administrative measures as well as the actual delimitation and demarcation of the community's traditional territories, must take place 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."[88]

52. During the public hearing before the Inter-American Court 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 because that law contains an exception for crimes against humanity.[89] The decision of the Inter-American Commission on Human Rights also expressed the view that the Moiwana massacre constituted a crime against humanity and a serious violation of international humanitarian law.[90]

53. Three Government ministers publicly declared that Suriname would fully implement the Court's judgment at a ceremony held on 29 November 2005[91] and, to date, Suriname has complied with all but two of the Court's orders.[92] However, the outstanding orders concern the two most crucial aspects of the judgment: 1) the investigation of the massacre, prosecution and punishment of the perpetrators, and compensation for the victims; and 2) delimitation, demarcation and titling of the community's lands with the participation and consent of the victims and neighbouring indigenous and maroon communities. With regard to the first, the State has done nothing – not even taken the most basic steps – to initiate an investigation. This is deeply disturbing given Suriname's (wholly appropriate) characterisation of the massacre as a crime against humanity.

54. The Committee's 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."[93] As noted above, Suriname has not undertaken even the most rudimentary steps to investigate the massacre. What is more, the Attorney General continues to publicly claim that there is little evidence available to initiate prosecutions because witnesses will not come forward.[94]

55. The Attorney General's statements, which appear to be Government policy on this point, ignore the fact that there is considerable and reliable non-testimonial evidence available. This was acknowledged by the Court, which 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

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87 *Id.* at para. 209
88 *Id.* at para. 210.
89 Audio transcript of the hearing before the Inter-American Court of Human Rights, part 5, 09 September 2004.
90 Inter-American Commission on Human Rights, *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*, Case of Moiwana Village v. Suriname, Inter-American Court of Human Rights, Judgment of 15 June 2005, *Ser. C, No. 124*, at para. 32 (stating that "The Moiwana massacre was State-planned, State-calculated and State-executed: it was a crime of State").
91 Caribbean News Net, 'Moiwana Massacre in Suriname Remembered', 1 December 2005, http://www.caribbeannetnews.com/2005/12/01/massacre.shtml
92 *See Moiwana Community v. Suriname. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 21, 2007. Available at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_21_11_07_ing.pdf.
93 *Suriname*, CERD/C/64/CO/9/Rev.2, 12 March 2004, para. 20.
94 Caribbean News Net, 'Moiwana Massacre in Suriname Remembered', 1 December 2005, supra.

the instant case."[95] 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 and explicit calls to this effect from the victims.[96]

56. In August 2005, the former Minister of Justice gave an alternative explanation for why an investigation has not been initiated – despite the Inter-American Court's order that it be initiated immediately – and why the intellectual authors have yet to be charged. Speaking to the press immediately after the Court's judgment was made public the Minister stated that "there will be an investigation as soon as the investigations and trial of the December 1982 murders is over. The Surinamese justice system doesn't have the capacity he said to do both investigations simultaneously."[97] Apart from the fact that the trial of the 1982 December murders suspects has begun, thereby freeing up investigators to focus on the Moiwana case, if this statement is true, it is deeply troubling and offers little comfort to any Surinamese citizen who has experienced or may one day experience a violation of their rights.

57. Suriname ongoing failure to investigate the massacre must be viewed in light of the Inter-American Court's observation that "Such a long-standing absence of effective remedies is typically considered by the Court as a source of suffering and anguish for victims and their family members…."[98] For this and other reasons, the Court concluded that the "Moiwana community members have endured significant emotional, psychological, spiritual and economic hardship – suffering to a such a degree as to result in the State's violation …" of their right to humane treatment.[99]

58. Finally, with regard to Suriname's failure to comply with the Court's order on the titling of the community's traditional lands, the State has failed to adopt the legislative and other means to give effect to the order. Moreover, it has failed to begin any meaningful consultations with the neighbouring indigenous and maroon communities in order to obtain their consent to delimitation and demarcation of the boundaries. On the contrary, its agents have authorised and partially completed the construction of houses next to the indigenous village of Alfonsdorp without obtaining their consent, and this has inflamed ethnic tensions in the region.

B. The Kaliña and Lokono Peoples Case

59. After some six fruitless years of petitioning the State to enter into negotiations to recognise their rights to their traditional territory, the eight indigenous communities of the Lower Marowijne River filed a petition with the Inter-American Commission on Human Rights in February 2007. In their petition, which was declared admissible in October 2007, these communities complain about the State's failure to recognise and secure their territorial rights and its active violation of those rights caused by a large-scale bauxite mining concession, the establishment of three nature reserves covering around 50 percent of their territory, and the issuance of some 20 land titles in four of the communities to wealthy non-indigenous individuals from Paramaribo.[100] These titles are used largely as vacation homes and are located in the residential areas of the villages along the Marowijne River.[101]

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95 Moiwana Village v Suriname, at para. 157.

96 *See* Moiwana Community v Suriname. Monitoring Compliance with Judgment, *supra*.

97 'Human Rights Court Orders Compensation for Suriname Massacre', *Caribbean News Net*, 17 August 2005, http://www.caribbeannetnews.com/2005/08/17/court.shtml.

98 Moiwana Village v Suriname, at para. 94.

99 *Id.* at para. 103.

100 *See Report No. 76/07*, Admissibility, The Kaliña and Lokono Peoples, Case 12.639 (Suriname), 15 October 2007, para. 4 (reciting the violations alleged by the petitioners). Available at: http://www.cidh.oas.org/annualrep/2007eng/Suriname198.07eng.htm.

101 Titles continue to be issued in these communities up until the present day and village authorities are derided and told that they have no rights when the police are called in to resolve disputes between village members and non-indigenous title holders.

60. In its response to the petition, Suriname's contended that the petition must be rejected due to failure to exhaust domestic remedies. The Commission, however, found that "Suriname failed to provide any remedies under domestic law for the petitioners" and that "the domestic legal system does not provide adequate, effective remedies to respond to the complaints presented…."[102]

61. Suriname's submissions on the merits of the case, all of which post-date the Inter-American Court's judgment in *Saramaka People*, are replete with racially discriminatory arguments aimed at denying that the Kaliña and Lokono peoples hold rights to their territory. For instance, the State's submission of March 2008 asserts that the four villages affected by the grants of individual title have over time somehow become "suburbs of Albina," a neighbouring town, and that the economic, social and cultural activities of the inhabitants of these villages "are not distinguishable from those of other non-indigenous inhabitants of the greater Albina area."[103] Suriname thus argues that these four villages are not indigenous villages anymore and that their members have become assimilated to such an extent that they can no longer be considered indigenous people.[104]

62. In its submission of September 2008, Suriname repeats this argument, stating that:

> … the villages were part and parcel of the 'larger Albina'. They were not characterized by traditional, but by modern features like buildings rather than huts, power and water systems, modern shops in which most of the inhabitants buy groceries and modern appliances and by an environment in which the State's regulatory framework prevails and the government guarantees 'law and order'.[105]

63. Indigenous people do not cease to be indigenous because they go shopping, have access to water and electricity, or live in 'buildings rather than huts'. International human rights instruments[106] and bodies, including the Committee,[107] have long held that indigenous identity shall be determined by objective criteria and in accordance with the fundamental criterion of self-identification.[108] The Kaliña and Lokono peoples and each of their members self-identifies as indigenous and can justify this on the basis of the relevant objective criteria.[109]

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[102] *Report No. 76/07*, Admissibility, The Kaliña and Lokono Peoples *supra,* at para. 59.

[103] *Comments of the State on the Merits in Kalina & Lokono Peoples v. Suriname (Case 12.639),* March 22, 2008, at p. 2.

[104] *Id* at p. 3 (stating that, by 1975, "these areas were suburbs of greater Albina and as such part of the geographic, social, economic and cultural identity of Albina rather than the indigenous identity which prevailed in areas further away from and less affected by the growth of Albina").

[105] *Further comments offered by the State on the Merits in the Case of the Kalina and Lokono Peoples v. Suriname (Case 12.639)*, 12 September 2008, at p. 12.

[106] Articles 9 and 33(1) of the UN Declaration on the Rights of Indigenous Peoples provide, respectively, that "Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned" and; "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions."

[107] *See* Committee on the Elimination of Racial Discrimination, *General Recommendation XXIV on Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Art. 1),*27/08/99, at para. 2-3 (observing that "a number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others," and that some states "decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such." It continues that the Committee "believes that there is an international standard concerning the specific rights of people belonging to such groups" and; "that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population").

[108] *See* Committee on the Elimination of Racial Discrimination, *General Recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention 1990* (explaining that membership in a group "shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned"); and Venezuela: 01/11/2005, CERD/C/VEN/CO/18, at para. 15 (recommending that "the identity document for indigenous persons be based upon self-identification by the individual concerned").

[109] *See for instance* International Labour Organisation Convention No. 169, Art. 1.

The State's attempt to divide the Kaliña and Lokono peoples' communities into 'real' indigenous peoples and, in its view, assimilated suburb-dwellers is racially discriminatory and otherwise contravenes applicable international legal standards.

64. Suriname also argues that it has validly subordinated the property rights of the Kaliña and Lokono peoples in the national interest when it established the nature reserves, issued individual titles for vacation homes, and granted a mining concession without consultation or consent. However, its fails to comprehend that subordination of property rights in the absence of a prior recognition of those rights constitutes a racially discriminatory measure imposed on indigenous and tribal peoples because no other ethnic group in Suriname is denied due process of the law with respect to takings of its property.

65. For non-indigenous persons, whose property rights emanate from grants made by the State, the law sets out procedures and remedies in relation to a potential or actual restriction and/or taking. However, indigenous peoples' rights are not recognised in the law and the State is lawfully free to disregard their rights at will and for any reason.[110] The lack of legislative recognition of their rights denies indigenous peoples 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/tribal people. Indigenous and tribal peoples 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 and impair the exercise and enjoyment of their rights.[111] The State's argument that seeks to justify the perpetuation of this situation must been seen in this light; it is fundamentally tainted by racial discrimination and thus contrary to a range of international human rights guarantees

C. Suriname continues to violate indigenous and tribal peoples' rights

66. Violations of indigenous and tribal peoples' rights continue to occur on a daily basis in Suriname and are particularly evident in relation to State-authorised resource extraction and related operations. The State has not changed its law, policy or practice since its last report to the Committee. Indigenous and tribal peoples remain defenceless in law and in practice and their complaints continue to be ignored and sometimes derided.

67. The members of the indigenous community of Maho, for example, staged a hunger strike in front of the Office of the President in December 2007 and January 2008 to protest against the alienation of their lands to an agricultural enterprise. Despite widespread coverage in the media and numerous written complaints, they have the same problem today and the Government is actively supporting a sand miner who has bulldozed a significant area of Maho's farming lands and is cutting and selling timber from their forest. An armed guard keeps community members away from the miner's operation.

68. The Trio and Lokono indigenous peoples of west Suriname continue to face an uncertain future as the State pushes ahead with advanced plans to develop massive bauxite mines and a hydroelectric dam in their territories.[112] Their rights have been disregarded

[110] See *Report No. 09/06, Twelve Saramaka Clans*, *supra* note 18, at para. 241-43 (explaining that "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").

[111] *See* Article 1(1) of ICERD defining the term 'racial discrimination' as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

[112] *See* 'BHP-Billiton will cease Suriname mining operations by 2010', *Caribbean Net News*, 29 October 2008. Available at: http://www.caribbeannetnews.com/suriname/suriname.php?news_id=11804&start=0&category_id=36; and 'Suriname growing impatient over bauxite negotiations', *Caribbean News Net*, 28 April 2008. Available at: http://www.caribbeannetnews.com/suriname/suriname.php?news_id=7450&start=80&category_id=36.

throughout the process of developing the mines and the hydro-dam, and Government Ministers and other officials have bluntly told community leaders that the State will not discuss their property and other rights.[113] The concession and exploration permit were both issued without any prior notification to or agreement with the affected communities and no environmental and social impact assessment was conducted for the extensive exploration work.[114] In 2005, the Committee indirectly referred to this project in an urgent action decision where it expressed its deep concern that Suriname is "authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent."[115]

69. The companies involved have since conducted an environmental and social impact assessment even though they are not required to do so under Surinamese law. However, Dr. Robert Goodland, the former head of the World Bank's Environment Department, has strongly criticized the impact assessment for failing to adequately account for indigenous peoples' issues and participation, and the overall process for failing to respect the rights of indigenous peoples.[116] In an extensive 2006 report, he states that

> The Bakhuys bauxite mine project is a classic case of asymmetric power. Rich and powerful multinationals will impose potentially severe impacts on inexperienced, weak, largely illiterate and poor Indigenous Peoples. Multinationals have great difficulty even in communicating with the affected people. Practically all the benefits will accrue to two stakeholders, namely the multinationals as they will reap a saleable commodity (bauxite) and the government as they will reap taxes and royalties. These two stakeholders will gain substantial benefits, but bear no adverse impacts. The Indigenous Peoples, on the contrary, will bear practically all the negative impacts and few, if any, of the benefits....[117]

70. With regard to the proposed hydro-dam, Dr. Goodland observes that

> Current plans suggest three reservoirs totalling 2,460sq km in area. ... Most of the area to be impounded is fairly intact Rain Forest, which is also the traditional territory of Indigenous Peoples on which they depend for their livelihoods. Loss of at least 2,460sq km of forest means that much less habitat from which the forest dwellers can harvest.[118]

71. Mercury contamination by miners of the ecosystems that indigenous and tribal peoples depend on continues unabated and has likely substantially increased since 2001 when studies

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[113] The situation in west Suriname is discussed extensively in V. Weitzner, *Interacting with Indigenous Communities in the 'Right' Way? A bottom-up examination of BHP Billiton, Alcoa and the Government of Suriname's interactions in West Suriname.* Final Synthesis Report: Suriname Pilot Project. The North-South Institute, Ottawa, Canada, January 2007. Available at: http://www.nsi-ins.ca/support/public/DRAFT_final_March_2007.zip.

[114] R. Goodland, *Environmental and Social Reconnaissance: The Bakhuys Bauxite Mine Project. A report prepared for The Association of Indigenous Village Leaders of Suriname and The North-South Institute*, 2006, p. 6 – "BHP/Billiton are to be commended for publicly apologizing in August 2005 for failing to assess the environmental and social impacts of their exploration or pre-feasibility phase which was scheduled to end in October 2005." Available at: http://www.nsi-ins.ca/english/pdf/Robert_Goodland_Suriname_ESA_Report.pdf.

[115] *Decision 1(67), Suriname*. UN Doc. CERD/C/DEC/SUR/2, 18 August 2005, at para. 3.

[116] R. Goodland, *supra*. One important criticism is found on p. 9-10, which states that "SRK's [the company contracted to conduct the ESIA] repeated but unsubstantiated claims that there are no Indigenous Peoples living in the bauxite concession, is moot, misleading and risky. ... As there are at least four distinct vulnerable ethnic minorities (Arawak, Warau, Trio, Karinya/Carib) in the indigenous communities likely to be impacted by Bakhuys, this gap in SRK's Plan of Study needs to be rectified. Affected Amerindian communities would include: downstream of the Nickerie, Tapoeripa, Post, Utrecht and Cupido; downstream of the Wayambo, Donderskamp and Corneliskondre; downstream of the Kabalebo and Corantijn, Apoera, Section, Washabo, Zandlanding and several Guyanese villages including Orealla and Siperuta."

[117] *Id.* at p. 4.

[118] *Id.* at p. 21.

record mercury levels many hundreds of times higher than WHO limits.[119] The IADB reports that the State's only response to date has been to issue an advisory (in Dutch) recommending that pregnant women do not eat fish.[120] In the interior fish comprise the vast majority of protein consumed and most communities would go hungry should fish be excluded from their diet. The IADB also notes that officials from the Ministry of Health argue that it is only the miners themselves that are affected by mercury contamination.[121] However, an increase in mercury contamination levels is demonstrated in a 2007 report by the World Wildlife Fund and the University of Suriname,[122] which also clearly states that indigenous and tribal people are directly affected:

> recent spike in gold prices has caused an increase in small and medium scale goldmining [*sic*] activities where mercury amalgamation is the preferred source of recovery. … This source is considered by many experts as one of the highest contributors to the anthropogenic levels to the environment (approximately 800-1000 metric tons per year). Persons from the interior communities and their families are exposed to the toxic forms of mercury.[123]

72. Most recently, the Ministry of Physical Planning, Land and Forest Management ("RGB") has begun to approach and pressure indigenous village leaders to sign and submit formal requests for 'community forest' permits, a type of concession issued pursuant to Article 41 of the 1992 Forest Management Act. In *Saramaka People*, the Inter-American Court observed that "community forests permits are essentially revocable forestry concessions that convey limited and restricted use rights, and are therefore an inadequate recognition of the Saramakas' property rights."[124] The Court addressed this point in connection with Suriname's argument that 'community forest' permits could be considered an effective means of recognising indigenous and tribal peoples' property rights.

73. Indigenous peoples have collectively rejected the State's attempts to pressure village leaders to request 'community forest' permits. This was done in two separate meetings: the first, the January 2009 conference of the Association of Indigenous Village Leaders; the second, the February 2009 meeting of the Organization of Cooperating Indigenous Villages of Para ("OSIP"), a body representing the nine indigenous communities of District Para. The Ministry of RGB however continues to approach village leaders to get them to request 'community forests' claiming that these permits are equivalent to the recognition of collective ownership rights.

74. In a recent press statement, the OSIP stated that its members "would never agree with limited, temporary rights that can be withdrawn unilaterally by the State at any given moment."[125] The communities also forcefully rejected "the way in which the Ministry attempts to undermine our collective rights, by approaching villages individually and by setting up our own people against us."[126] They explained that while some community leaders did sign formal requests for community forests, these requests were made without informing the leaders about the legal status of 'community forest' permits and subsequent to pressure from State officials.

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119 *See* IADB 2006, *supra* note 8, p. 24.
120 *Id.*
121 *Id.*
122 *See* P. Ouboter et al., *Final Technical Report. Mercury Pollution in the Greenbelt*, World Wildlife Fund, Guianas Regional Programme, January 2007
123 *Id.* at p. 5.
124 Saramaka People v Suriname, at para. 113.
125 'Indigenous Villages of Para: Ministry of Physical Planning Land and Forest Management (RGB) Tries to Sow Division Among Communities', Press Release, OSIP, 05 February 2009.
126 *Id.*

V. Conclusion and Request

75. Numerous other examples could be cited beyond those set out above. The situation in Suriname therefore remains in need of 'immediate attention' and is just as 'alarming' as it was when the Committee adopted its decisions under the early warning and urgent action procedures in 2003, 2005 and 2006. The submitting organisations therefore urge the Committee to:

a) ensure that indigenous and tribal peoples' rights are emphasised in detail in the Committee's 2009 concluding observations;

b) ensure that it continues to actively monitor the situation in Suriname and requires that Suriname submit additional information within one year on the measures it has taken to implement the Committee's 2009 recommendations as well as its past recommendations and decisions;

c) urge the State to fully implement the judgments of the Inter-American Court of Human Rights in *Moiwana Village* and *Saramaka People;* and,

d) in accordance with the judgement of the Court in *Saramaka People*, urge the State to conduct an environmental and social impact assessment for the upgrading of the *Afobakaweg* in Saramaka territory, and consult with and obtain the consent of the Saramaka people.

76. Finally, in line with the Committee's 2007 *Guidelines for the Use of the Early Warning and Urgent Action Procedure*,[127] the submitting organisations further request that the Committee recommends that:

a) United Nations Specialized Agencies, Programmes and Funds, including the Inter-American Development Bank, ensure that they do not support projects in Suriname that may threaten or otherwise affect indigenous peoples' rights to own and control their traditional lands, territories and resources at least until such time as their rights, including their right to give or withhold their free, prior and informed consent, are enshrined in law and effectively protected in practice; and,

b) that the Permanent Forum on Indigenous Issues initiates a dialogue with the United Nations Specialized Agencies, Programmes and Funds, including the Inter-American Development Bank, with respect to implementation of the preceding recommendation.

[127] *Guidelines for the Use of the Early Warning and Urgent Action Procedure.* Adopted by the Committee on the Elimination of Racial Discrimination, August 2007, at p. 4-5, para. 14(c).