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Request for Consideration of the Situation of the Saramaka People of Suriname under the UN Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures

I. Summary

1. This request is submitted by the Association of Saramaka Authorities, an association representing the traditional authorities of the Saramaka people, and the Forest Peoples Programme, an international NGO ("the submitting organizations). It seeks the Committee on the Elimination of Racial Discrimination's ("the Committee") urgent assistance to avoid grave and irreparable harm to the Saramaka people caused by Suriname's ("the State" or "Suriname") imminent granting of new and massive mining rights (Section II below) as well as its further construction of a substantial hydropower project to provide power for these mining operations, both in Saramaka territory (Section III below). The human rights situation of the Saramaka has previously been extensively addressed by the Inter-American Commission on Human Rights[1] and the Inter-American Court of Human Rights in its landmark 2007 *Saramaka People v. Suriname* judgment.[2] These new mining rights and the hydropower project both directly contravene the orders of the Court as well as the recommendations, including urgent action decisions, adopted by the Committee with regard to the situation in Suriname.[3]

2. The most crucial orders of the Court in *Saramaka People* have been completely disregarded by Suriname and the Saramaka remain some five and one-half years after

[1] *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans (Suriname)* (2 March 2006).

[2] *Saramaka People v. Suriname, Merits and Reparations,* Judgment, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172 (28 November 2007); and *Saramaka People, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*. Judgment, 2008, Inter-Am. Ct. H.R. (ser. C) No. 185 (12 August 2008).

[3] *See* UNCERD Urgent Action Procedures: 2003 (Decision 3/62), 2005 (Decision 1/67) and 2006 (Decision 1/69), all requesting the State party to "ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources." *See also* note 6 *infra* and *Concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/64/CO/9/Rev.2 (12 March 2004).

the judgment of the Court without any meaningful recognition of their rights in domestic law and any effective remedies with which to seek protection for their rights before domestic tribunals. This was confirmed by the Court in its November 2011 'compliance orders' and by the Committee in 2012, and nothing has changed that could alter this conclusion since that time.[4] Suriname has also failed, as the Court ordered, to submit any further information about implementation of the judgment since 2010.[5]

3. The State's intransigence with regard to implementing the Court's judgment has not escaped the attention of United Nations human rights mechanisms: the Committee, for instance, has twice highlighted the urgent need for Suriname to implement the Court's judgment (in 2009 and 2012),[6] as has the UN Special Rapporteur on the Rights of Indigenous Peoples (in 2011).[7] The latter states unambiguously that it "is imperative that Suriname take steps to fully implement the judgment of the Court, in order to avoid a prolonged condition of international illegality."[8] Yet, for the (racially discriminatory) reasons explained in paragraphs 11-12 below, Suriname continues to refuse to implement the Court's judgment, even to the point of rejecting recommendations that it do so made by other states during the Human Rights Council's Universal Peer Review in 2011,[9] and the prolonged condition of "international illegality"

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4 *Saramaka People (Monitoring Compliance),* Orders of the Inter-American Court, 23 November 2011, p. 16-7.

5 *Id*. p. 17, Decides 2, (where the Court decides to "require the Republic of Suriname to submit, by March 30, 2012, at the latest, a detailed report on the measures it is undertaking to comply with the reparations that remain pending, as well as the timelines requested in this Order, in accordance with Considering clauses 7 to 51 thereof. In its report, the State must refer to the position set out before the United Nations Human Rights Council during its Universal Periodic Review with respect to its compliance with the Judgment issued in this case. Subsequently, the Republic of Suriname must submit reports on its compliance with the Judgment every three months"). *See also CDH-12.338/227*, 23 November 2012 (explaining that "on October 19, 2012 (communication REF.: CDH-12.338/288) this Secretariat reiterated the above [23 November 2011] request for information. However, given that as of today this Secretariat has not received the detailed report ordered, following instructions from the Plenary of the Court, I hereby inform you that the State was requested to submit said report as soon as possible").

6 *See Concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/SUR/CO/12 (13 March 2009), at para. 18 ("reiterates its recommendation, with urgency, that the State party initiate steps towards the full implementation of the Court's orders according to the set implementation timeline"); and Communication of the UNCERD to Suriname (Early Warning and Urgent Action procedures) (9 March 2012) (reiterating its concern, in paragraph 18 of its 2009 concluding observations, about the "'ongoing delays in compliance of the most crucial aspects of the of the court judgment, in particular, concerning the recognition of communal and self-determination rights of the Saramaka people'"). Available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD_Suriname.pdf. .

7 Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum, *Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname*, A/HRC/18/35/Add.7 (18 August 2011). Available at: http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7_en.pdf.

8 *Id*. at para. 11.

9 *See* UN Doc. A/HRC/18/12/Add.1, at para. 13 (recording Suriname's explicit statement that the specific recommendations calling on it to comply with and execute the judgment of the Court in *Saramaka People* "cannot be supported," referring to recommendations 73.11, 73.52-73.57). See also UN Doc. A/HRC/WG.6/11/SUR/1, 16 February 2011 para. 67 (stating with regard to the judgment of the Court that "Suriname needed to find a Surinamese solution, and that was why Suriname would ask for some time to deal with this matter").

identified by the Special Rapporteur endures and increases with each passing day. Not only has Suriname failed to give effect to the orders of the Court in *Saramaka People*, it has also actively violated those orders, a fact confirmed by the Court in November 2011, as well as the Committee's corresponding recommendations.[10]

4. The subject of this request for consideration under the Committee's early warning and urgent action procedures concerns the most recent acts of the State that violate the judgment of the Court and disregard the recommendations of the Committee and, in this instance, threaten grave, imminent and irreparable harm to the Saramaka. In particular, this request seeks the Committee's assistance to avoid imminent and irreparable harm to the Saramaka caused by Suriname's active and persistent violations of the orders of the Court and its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (as detailed on many occasions previously by the Committee), this time by a massive expansion of large-scale industrial gold mining activities and hydropower generation in Saramaka territory. The Saramaka have not participated in any of these decisions and have explicitly objected to the hydropower project. Suriname's National Assembly is scheduled to complete the process of authorizing these new mining rights in the last weeks of February 2013 while Suriname has already commenced construction of the infrastructure related to the hydropower project despite the objections of the Saramaka.

5. The Committee's attention is therefore warranted and urgently needed and this request fully conforms to the criteria for invoking its urgent action and early warning procedures based on the following summarized facts (which are elaborated on the subsequent sections of this request).[11]

6. On 26 November 2012, Suriname concluded negotiations and agreed on a second amendment and supplemental agreement to the 7 April 1994 *Mineral Agreement* (as first amended on 13 March 2003) ("the Mineral Agreement").[12] The parties to this new agreement are the State and the state-owned mining company, GRASSALCO, and the locally incorporated subsidiary of the Canadian mining company, IAMGOLD (Rosebel

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See also Saramaka People (Monitoring Compliance), para. 6, 50 and Decides 1 (the latter requiring the State to report on its stated position before the Human Rights Council no later than 30 March 2012).

[10] *Saramaka People (Monitoring Compliance),* at para. 25 (in relation to logging concessions and upgrading of a road through Saramaka territory).

[11] *Guidelines for the Use of the Early Warning and Urgent Action Procedure,* August 2007, at p. 3, para. 12 ("Encroachment on the traditional lands of indigenous peoples … [including] for the purpose of exploitation of natural resources"); and *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 (concerning 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).

[12] *See* 'IAMGOLD and Government of Suriname reach definitive agreement', *IAMGOLD Press Release*, 26 November 2012 (stating that "IAMGOLD Corporation … announced today that it has reached a definitive agreement (the "Agreement") with the Government of the Republic of Suriname addressing future resource development and related power costs"). Available at: http://www.iamgold.com/English/News/News-Releases/News-Release-Details/2012/IAMGOLD-and-Government-of-Suriname-reach-definitive-agreement1132088/default.aspx.

Gold Mines N.V.).[13] The Mineral Agreement makes the State a 'joint venture partner' in this mining operation, and thus part owner.[14] As this new agreement in various ways contradicts extant law,[15] it must be enacted by Suriname's legislative body, the National Assembly, and thus becomes a law in its own right.[16] The new Mineral Agreement (see Annex A hereto) is scheduled for enactment in the last two weeks of February 2013.[17]

7. The new Mineral Agreement, which has been consented to by Suriname's Council of Ministers and the Council of State, as is required by the Constitution, will enlarge and grant new concessional rights to IAMGOLD over some 15 percent of Saramaka territory (defined in the Mineral Agreement as the 'area of interest' (see Annex B hereto for a map of this area)), and allows the company to automatically convert rights of exploration to rights of exploitation (a permit to mine as opposed to explore for and define mineral deposits).[18] IAMGOLD has budgeted USD160 million for the expansion of its operations pursuant to the Mineral Agreement.[19] This 'area of interest' includes up to 33 Saramaka communities as well as two pre-existing concessions held by IAMGOLD (Headley's Reef and Thunder Mountain) (see maps in Annexes B and C). Both of these existing concessions were obtained in 1992 without any consultation or agreement with the Saramaka; indeed, they only became aware of their existence when company employees began operations in their lands, including in the residential areas of their villages.[20]

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[13] The 1994 Mineral Agreement, which is incorporated in its entirety into the Mineral Agreement (Section 1.2(i), Mineral Agreement, Annex A hereto) contains a derogation clause in which the government warrants that there are no pre-existing rights to the concession area. This is the case despite the fact that both the State and the companies involved were and are well aware that the concession lies within – and is in fact inhabited by more than one village – traditional Saramaka territory. As the Commission and the Court observed in *Saramaka People*, the basis for this assertion is the complete absence of any recognition of indigenous and tribal peoples' collective or other form of territorial rights in Suriname law, which treats them as merely permissive occupants of State owned lands. *See e.g.,* Saramaka People, *supra*, at para. 99.

[14] See Mineral Agreement, Annex A hereto, Section 3 *et seq.*

[15] *See for instance id*. Section 13.4 (providing that the conversion of exploration to exploitation rights shall be governed exclusively by the Mineral Agreement (because the manner in which such conversion takes place is contrary to the 1986 *Mining Decree*).

[16] The prior Mineral Agreements of 1994 and its amendments in 2003 were also enacted in this way, as have been agreements for bauxite mining.

[17] *See* The National Assembly of Suriname, available at: http://www.dna.sr/, at: http://www.dna.sr/documentatie/wetgeving/ontwerpwet-behandeling/ontwerpwet-rosebel-gold-mines-nv (explaining that the Mineral Agreement is presently before the National Assembly for enactment).

[18] Mineral Agreement, Annex A hereto, Section 6.2(ii) and 13.

[19] *Suriname Politics and Security*, Menas Associates UK, 21 May 2012, at p. 8 (stating that "In anticipation of a final agreement with the government, Canada's IAMGOLD mining company - the largest gold miner in Suriname - has earmarked US$160 million for the expansion of its mining activities in the Brokopondo district"). Available at: http://www.menas.co.uk/pubsamples/Suriname%20Politics%20&%20Security%20-%2021.05.12.pdf.

[20] *See inter alia* note 30 *infra* and *Affidavit of Fiscali and Head Captain Eddie Fonki*, Case 12.338, para. 36-9 (testifying, at para. 36, that "All the villages in my area are in a concession given to this company. The concession is called Headley's Reef and there is another one called Thunder Mountain The same company also started a big mine near the village of Nieuw Koffiekamp, which has been a big problem" and; at para. 37, stating that "[n]obody has consulted with me, even until today" and, at para. 38, explaining that "I did

8. Although not specified explicitly in the new Mineral Agreement, the State has also agreed to the concomitant development of new hydropower energy sources (known as the 'TapaJai project') to provide power for IAMGOLD's operations,[21] and this will also gravely impact on Saramaka territory and rights and cause them irreparable harm.[22] In this respect, a 2007 Inter-American Development Bank study concluded that "there is no clear rationale for these projects and the negative impacts on the locations of Jai Creek and Tapanahoni River are expected to be very significant."[23] This project was raised in the proceedings before the Court in *Saramaka People* prior to its recent implementation, but the Court declined to address it as it deemed the project to be prospective and, at any rate, that Saramaka complaints about it were pending before the domestic authorities.[24] As discussed below, the State has recently begun constructing infrastructure related to this hydropower scheme in Saramaka territory and is doing so over the explicit objections of the Saramaka (see paragraph 28-33 below).[25] The existing Afobaka dam in Saramaka territory – which will be expanded under the TapaJai project – was also raised before the Court, which declined to address it on procedural grounds,[26] and is the source of substantial and ongoing suffering and poverty for the Saramaka.[27] Both TapaJai and the new and concomitant expansion of the Afobaka dam will further exacerbate this poverty and suffering and substantially and negatively affect the rights of the Saramaka. The World Wildlife Fund, for instance, observes that construction of the roads required for the TapaJai project alone "will have significant impact on the territory and its inhabitants, who have been living

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not know anything about the concessions until we started to see people putting small flags in the ground in my village. They were from Canada. Later I saw a map and it showed that all of my villages are in a concession. We had to talk a lot with the Nieuw Koffiekamp people when they blocked the road to the mining camp between 1995 and 1997 and again later when the there was another dispute with the company. The army and the police were always going there and it could have been a big problem").

21 *See inter alia*, 'Gold miner Iamgold wants to switch to hydro energy', *DevSur*, 21 March 2011. Available at: http://www.devsur.com/gold-miner-iamgold-wants-to-switch-to-hydro-energy/2011/03/21/.

22 Mineral Agreement, Annex A hereto, Section 6.2(iii) and 14.

23 *Strategic Environmental Assessment (SEA) of Transport Infrastructure Initiatives (among other IIRSA) in Suriname*, Inter-American Development Bank Report 9S0230 (Washington, D.C., 2007), at p. 21.

24 Saramaka People, *supra*, at para. 14 (stating that "some of the issues raised by the representatives involve controversies, such as the State's alleged plan to increase the level of the dam, that are still pending before Surinamese domestic authorities").

25 *See* Suriname Politics and Security, *supra*, at p. 7 (stating that "The company [Staatsolie] has also invested US$190 million in the expansion of the refinery, a sugarcane bio-ethanol project in the district of Nickerie, exploration costs, and the TapaJai Hydropower Project in the interior of the country. The latter involves the diversion of river flows so that the capacity of the Van Blommenstein hydropower-reservoir will be increased. The project is controversial because some parts of the inland population will have to deal with low water levels, and inland villages are almost completely dependent on the river for food and transportation").

26 Saramaka People, *supra*, para. 11-5.

27 *See* affidavits submitted to the Court in Case 12.338 by *Fiscali* and Head Captain Eddie Fonkie, *supra*, George Leidsman, Dr. Peter Poole and Dr. Robert Goodland (all detailing substantial and on-going suffering caused by the Afobaka dam), and the oral testimony before the Court of Head Captain Wazen Eduards and Dr. Richard Price (both detailing the on-going and serious human rights impacts of the Afobaka dam on the Saramaka).

sustainably from the forests for centuries, practicing agriculture, hunting, fishing and gathering."[28]

9. At present, IAMGOLD, through its local subsidiary, Rosebel N.V., operates a gold mine within the 'Rosebel concession', which lies immediately adjacent to the N'djuka maroon community of Nieuw Koffiekamp within traditional Saramaka territory.[29] As documented in publications by the OAS Unit for the Promotion of Democracy and others, at the time the concession was granted, the rights of Nieuw Koffiekamp and the Saramaka were wholesale disregarded and violated and this continues to be the case today,[30] and this community continues to face the prospect of forcible relocation once mining operations commence in the southern portion of the concession.[31] This mining operation is also one of the concessions that the Court ordered to be reviewed to determine its compatibility with the measures required to ensure the survival of the Saramaka in its 2007 judgment.[32] This review has not taken place and the State has not given any indication that it intends to conduct a review, a fact previously confirmed by the Court in November 2011 and nothing has changed since that time.[33] To make

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[28] *LIVING GUIANAS REPORT 2012*, World Wildlife Fund (2012), p. 52-5, at p. 53 (discussing the Tapajai project and its likely substantial negative impacts on indigenous and tribal peoples and their environment). Available at: http://awsassets.panda.org/downloads/living_guianas_report_web_version.pdf.

[29] Nieuw Koffiekamp is one of the so-called 'transmigration villages' (28 mostly Saramaka communities with a population of over 6000 persons), that was forced off its traditional lands within N'djuka territory when the Afobaka dam was constructed and its reservoir filled in 1964. It is for this reason that this N'djuka village lies within traditional Saramaka territory and is under the authority of the Saramaka paramount chief (the *Gaama*) and the Saramaka Head Captain for that region of Saramaka territory (*see* Affidavit of Eddie Fonki, Case 12.338).

[30] *See* NATURAL RESOURCES, FOREIGN CONCESSIONS AND LAND RIGHTS: A REPORT ON THE VILLAGE OF NIEUW KOFFIEKAMP (Unit for Promotion of Democracy, General Secretariat: Organization of American States, 1997). *See also* F. MacKay, *Mining in Suriname: Multinationals, the State and the Maroon Community of Nieuw Koffiekamp in*, L. Zarsky (ed.), HUMAN RIGHTS AND THE ENVIRONMENT. CONFLICTS AND NORMS IN A GLOBALIZING WORLD (EarthScan Press: London, 2002). Available at: http://www.commdev.org/userfiles/files/1459_file_Mining_in_Suriname_Nautilus.pdf and; *Peace and Democracy in* Suriname: *Final Report of the Special* Mission *to Suriname (1992-2000).* Unit for Promotion of Democracy, Organization of American States 2001 (OEA/Ser. D/XXSG/UPD/32), p. 93-8.

[31] *See* Cambior Inc., *Rosebel Project Technical Report*, September 2002, at p. 23 Available at: http://www.iamgold.com/Theme/IAmGold/files/operations/43-101%20Technical%20Report%20Rosebel,%20Cambior%20Sept%202002.pdf (stating that "While the project envisaged in the 1997 Feasibility Study involved the relocation of the village, this is not the case with the current Rosebel project. The relocation issue would need to be addressed once more, if and when the mining of hard rock in the south zones will be contemplated again").

[32] Saramaka People, *supra*, at para. 194(a) (ordering, in pertinent part, that "With regards to the concessions already granted within traditional Saramaka territory, the State must review them, in light of the present Judgment and the Court's jurisprudence, in order to evaluate whether a modification of the rights of the concessionaires is necessary in order to preserve the survival of the Saramaka people").

[33] Saramaka People (Monitoring Compliance), *supra,* para. 17 (stating that the "Court notes that despite its repeated requests … the State has not adequately reported on the measures taken to review concessions existing in Saramaka territory prior to the issuance of the Judgment"); and para. 20 (stating that "the Court finds that the State must provide detailed information on whether it has reviewed concessions existing in Saramaka territory prior to

matters worse, the State is now in the advanced stages of granting new rights to this company to further expand its operations into Saramaka territory and which will cause them grave, irreparable and substantial harm.

II. Suriname has agreed and will imminently enact a gold mining agreement into law that will encompass some 15 percent of Saramaka territory, has disregarded their rights in the process, and threatens grave, imminent and irreparable harm to the Saramaka

A. The Mineral Agreement threatens the survival of 33 Saramaka communities and was concluded without their effective participation and without regard for their territorial and related rights and basic standards of conduct to which Suriname has subscribed

10. In its 2007 judgment, the Inter-American Court ordered that until the

> delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people.[34]

11. Ignoring this and other related orders of the Court, the State has repeatedly asserted in meetings with the Saramaka and elsewhere that it is "impossible" for it to recognize and title Saramaka lands because, by "privileging the Saramaka," this would discriminate against other ethnic groups in violation of Article 8 of its 1987 Constitution,[35] and thus jeopardize peaceful ethnic relations.[36] These other groups, significantly, all have land titles or access to procedures to obtain them; indigenous and tribal peoples are the only ethnic groups that have neither. The State's position also does not stand up to scrutiny under human rights law – or indeed in relation to general principles of non-discrimination and equal protection law employed in domestic legal systems throughout the world – and was explicitly rejected by the Court in *Saramaka People* as well as when raised by the State during the compliance hearing held on 2 September 2010.[37]

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the issuance of the Judgment. For each of these concessions, the State must report on: whether it has consulted with the Saramaka and ensured their effective participation in those reviews; how it is guaranteeing that the Saramaka will receive reasonable benefits from those concessions; and whether environmental and social impact assessments have been carried out"). This information requested by the Court has not been submitted by the State.

[34] Saramaka People, *supra*, at para. 194(a) and 214(5).

[35] Article 8 provides that "(1) All who are within the territory of Suriname have an equal claim to protection of person and property. (2) No one may be discriminated against on the grounds of birth, sex, race, language, religious origin, education, political beliefs, economic position or any other status." Suriname Constitution 1987 (as amended in 1992), available at: http://www.constitution.org/cons/suriname.htm.

[36] *See in this respect* Saramaka People (Monitoring Compliance), *supra,* at para. 50 (observing that "States cannot invoke their domestic laws to escape pre-established international responsibility (*supra* Considering clauses 3 and 4)").

[37] *Id*. and; Saramaka People, *supra*, at para. 103 (stating that "the State's argument that it would be discriminatory to pass legislation that recognizes communal forms of land

12. The Inter-American Commission also found in its 2006 merits report that the Saramaka have endured racial discrimination precisely because Suriname has failed to recognize and regularize their customary tenure.[38] Suriname's persistent failure to secure Saramaka territorial rights – and the rights of all other indigenous and tribal peoples that live within its borders (around 20 percent of the national population) – therefore perpetuates this systematic and long-standing pattern of racial discrimination, a factor that weighs heavily when considering the proportionality and legitimacy of its acts and omissions[39] that may affect Saramaka territory or purport to subordinate Saramaka property rights.[40] Its bare, self-serving and manifestly erroneous argument that recognizing Saramaka property rights somehow 'discriminates against other ethnic groups' aggravates its international responsibility in

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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. In the context of members of indigenous and tribal peoples, this Court has already stated that special measures are necessary in order to ensure their survival in accordance with their traditions and customs…. Thus, the State's arguments regarding its inability to create legislation in this area due to … the possible discriminatory nature of such legislation are without merit").

[38] *Report No. 09/06, Case of the Twelve Saramaka Clans*, *supra*, at para. 235 (finding that "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"); and at para. 237, (concluding that "[t]he Commission considers that the lack of constitutional and legislative recognition or protection of the collective rights of the Saramaka communities reflects unequal treatment in the law, which is not compatible with the guarantees of the American Convention").

[39] *See inter alia Asmundsson v. Iceland*, European Ct. H.R., at para. 40 (12 October 2004) (ruling that unfounded "differential treatment in itself" strongly indicates that restrictive measures are unjustified, "which consideration must carry great weight in the assessment of the proportionality issue…"). Such considerations are also incorporated into domestic legal regimes where regard to equality is frequently constitutionally required when assessing the 'necessity' and proportionality of measures limiting rights (for example, Section 36 of the South African Constitution). *See also Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica,* Inter-Am. Ct. H.R., OC-4/84, (ser. A) No.4, at para. 54 (January 19, 1984) (stating that the prohibition "extends to the domestic law of the States Parties, permitting the conclusion that in these provisions the States Parties, by acceding to the Convention, have undertaken to maintain their laws free of discriminatory regulations").

[40] The petitioners stress that subordination of property rights in the absence of a prior recognition of those rights – as the State is now *de facto* doing with the Mineral Agreement and the TapaJai project - 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. This point was also highlighted by the Commission: *see id*. at para. 188 (observing that "the subordination of collective property rights (by the State) to the public interest is indeed permissible, subject to just compensation. However, this premise presupposes, firstly, the recognition of such collective property rights, and secondly, the balancing of such rights against the public interest imperative of the State. In the absence of any such regime, where the State does exercise its prerogative to subordinate Saramaka lands and territories, it can do so without compensating the Saramaka people"); and, at para. 190 (explaining that "the State has not explicated how this general interest is balanced, if at all, with these customary indigenous and tribal 'privileges' or rights, particularly in respect to the grant of logging and mining concessions exercisable by third parties over lands and territories used and occupied by the Saramaka people").

this respect. The imminent adoption of the new Mineral Agreement and Suriname's recent initiation of the TapaJai project in Saramaka territory must, respectfully, be viewed in this light; they are fundamentally tainted by racial discrimination, disproportionate and deeply offensive to the dignity and survival of the Saramaka, and this further bolsters the need to consider this to be an urgent and grave situation.

13. Observing that Suriname has failed to comply with the above-quoted order, including as it pertains to the delimitation, demarcation and titling of Saramaka territory (which was required to have been completed no later than December 2010),[41] in November 2011, the Court added that "the granting of any new concessions without prior environmental and social impact assessments would constitute a direct contravention of the Court's decision, and, accordingly, of the State's international treaty obligations…."[42] Without first obtaining the consent of the Saramaka, any new concessions in Saramaka territory are thus strictly prohibited by the orders of the Court and constitute direct contravention the State's international obligations.

14. The massive expansion of the concessional rights of IAMGOLD into Saramaka territory provided for by the new Mineral Agreement, which has been endorsed by the executive branch of the State and will be imminently enacted by its legislature, directly contravenes the Court's orders and is undeniably tainted by racial discrimination against the Saramaka. The Mineral Agreement presently makes no mention of the fact that the 'area of interest' is almost entirely within traditional Saramaka territory, no mention of the judgment of the Court and the requirements set forth therein, nor otherwise contains any safeguards for the rights of the Saramaka.[43] Indeed, it does not even use the word 'Saramaka' anywhere in its 74 pages. If this were not bad enough, up to 33 Saramaka communities (in District Brokopondo) are situated within this 'area of interest' and it is state policy to forcibly relocate indigenous and tribal communities when they may be situated on exploitable mineral deposits (in the past it has used armed police and military units in this respect).[44]

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41 Saramaka territory has not be delimited, demarcation or titled to date and, moreover, Suriname still has not adopted the legislative and other measures required to provide the legal basis for doing so, nor is it in the process of doing so despite the offer of technical assistance by the UN Special Rapporteur on the Rights of Indigenous Peoples, which expressly includes an offer of support to draft these laws as well as endorses a draft 'organic law' submitted to the State by indigenous and tribal peoples. *See* 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, *supra*.

42 Saramaka People (Monitoring Compliance), *supra,* at para. 25.

43 Section 12.1 of the Mineral Agreement does mention the rights of 'third parties', a term used in the *Mining Decree*, but, as found by the Court, indigenous and tribal peoples are not considered 'third parties' pursuant to the *Mining Decree*. *See* Saramaka People, *supra*, para. 183.

44 *See* note 30 *supra* (documenting how the former Minister of Justice and Police threatened to attack community members and Saramaka small-scale miners "from the ground and air" if they did not immediately vacate the area (a detachment of police and the paramilitary Police Support Group were permanently stationed at the mining camp at that time and armed company security was increased); and how community members formally complained that they were surrounded by armed guards and were being denied access to hunting, fishing and agricultural areas as well as areas used for small scale mining, seriously impacting their economic well-being). *See also* Moiwana '86 Human Rights Organization Suriname, *Press Release of 18 September 1995* (reporting that "company security guards and the police working with them are using live ammunition to intimidate and frighten community members away from areas in which the company was conducting or planned to conduct

15. The Saramaka consider in this respect that they are back in the situation they experienced prior to the judgment of the Court and that the State is again acting without any regard for their rights and well-being. This is deeply offensive to their sense of dignity, their autonomy, their land tenure and social system, and their profound relationships with their ancestors and the spirits that inhabit their territory and which require that they protect it for future generations.[45] As they stated numerous times before the Commission and the Court, according to Saramaka belief systems, any perceived failure to comply with their obligations to their ancestors and future generations may involve severe retaliation from the spirit world and this is a deeply troubling prospect for them in the situation described herein.[46]

16. Further disregarding the rights of the Saramaka, as well as additional orders of the Court, the new Mineral Agreement was negotiated and concluded by the State without the effective participation of the Saramaka,[47] and without regard to the other considerations deemed by the Court to be necessary to "ensure the survival" of the Saramaka.[48] These requirements must be adhered to whenever the State is

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exploration activities by shooting at them" and; that, in its opinion, at least eight separate violations of the American Convention on Human Rights had occurred and were on-going due to company action and government inaction).

[45] *See in this respect* Saramaka People, *supra*, at para. 200 (where the Court found that Suriname's protracted failure to recognize the rights of the Saramaka and its active disregard for their rights "constitutes a denigration of their basic cultural and spiritual values").

[46] *See e.g., Affidavit of Fiscali and Head Captain Eddie Fonki*, Case 12.338, para. 25-6 (stating, at para. 26, that "We are very worried today that the spirits are angry with us and are punishing us for what happened with the dam. Every year we have a special ceremony to appease the spirits as well as the regular offering we make. People get afflictions because of the spirits are angry. It is also possible that are farms will not be fertile and that vi11age life will be damaged. We have to be very careful with the spirits because of what has happened with the dam and future generations will also have to be careful").

[47] *See also Kichwa Indigenous People of Sarayaku. Merits and reparations*, Judgment, 2012 Inter-Am. Ct. H.R. (ser. C) No. 245, at para. 167 (June 27, 2012) (where the Court explains that "Given that the State must guarantee the rights to consultation and participation in all phases of planning and implementation of a project that may affect the territory on which an indigenous or tribal community is settled, or other rights essential to their survival, these processes of dialogue and consensus-building should take place from the first stages of planning or preparation of the proposed measures, so that the indigenous peoples can truly participate in and influence the decision-making process, in accordance with the relevant international standards. To that effect, the State must ensure that the rights of indigenous peoples are not disregarded in any other activity or agreement reached with private or third parties, or in the context of public sector decisions that would affect their rights and interests").

[48] Saramaka People, *supra*, para. 127-29. *See also* Saramaka People, Interpretation of the Judgment, *supra*, at para. 37 (where the Court defined the term 'survival' to mean indigenous peoples' "ability to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'"). *See also* Kichwa Indigenous People of Sarayaku*, supra,* at para. 171 (stating that, given the "intrinsic connection that indigenous and tribal peoples have with their territory, the protection of property rights and the use and enjoyment thereof is necessary to ensure their survival"); and, in general, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources,* Inter-Am. Com. H.R., OEA/Ser.L/V/II. Doc. 56/09 (30 December 2009).

considering restricting their property rights in relation to a strictly necessary and proportional activity, provided for by prior law,[49] and which is in furtherance of a compelling public interest, including gold mining.[50] In *Sarayaku*, the Court was clear that the obligation to consult applies also to the adoption of legislative measures,[51] such as the new Mineral Agreement, and that said consultations must be undertaken from the first stages of planning[52] and with full respect for the traditional decision making processes of the affected indigenous or tribal people(s).[53] As noted above, in the case of the Saramaka, given that the State has yet to demarcate and title their territory, the Court explicitly ordered that the appropriate standard of effective participation is the free, prior and informed consent of the Saramaka in accordance with their customs and traditions and through their freely identified representatives.[54] Yet, Suriname has completely ignored the Saramaka to date and made no attempt to seek their effective participation.

B. There is no effective requirement that participatory impact assessments be undertaken in relation to the expansion of mining under the Mineral Agreement

17. The new Mineral Agreement requires that environmental and social impact assessments ("ESIA") shall be conducted in accordance with Suriname law[55] in relation

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[49] Since the Mineral Agreement is essentially a new law, it may be concluded that the expansion of IAMGold's activities further into Saramaka territory is not authorised by a *prior* law, although this may turn on the extent and details of its variance from the existing 1986 *Mining Decree* (a law that was found by the Court in *Saramaka People*, at para. 183, to contain no protections or remedies for indigenous and tribal peoples).

[50] Saramaka People, *supra*, at para. 155 (holding that "because any gold mining activity within Saramaka territory will necessarily affect other natural resources necessary for the survival of the Saramakas, such as waterways, the State has a duty to consult with them, in conformity with their traditions and customs, regarding any proposed mining concession within Saramaka territory, as well as allow the members of the community to reasonably participate in the benefits derived from any such possible concession, and perform or supervise an assessment on the environmental and social impact prior to the commencement of the project").

[51] Kichwa Indigenous People of Sarayaku*, supra,* at para. 181 (stating that "the requirement of prior consultation implies that this process should take place before undertaking an action or implementing a project that is likely to affect the communities, including legislative measures, and that the affected communities must be involved as early as possible in the process. When the prior consultation concerns the adoption of legislative measures, indigenous peoples must be consulted in advance during all stages of the process of drafting legislation, and these consultations should not be restricted to proposals"); and para. 164 (ruling that "the obligation to consult, in addition to being a conventional standard, is also a general principle of International Law").

[52] *Id*. para. 180

[53] *Id*. at para. 165 (stating that "nowadays the obligation of States to carry out special and differentiated consultation processes when certain interests of indigenous peoples and communities are to be affected is an obligation that has been clearly recognized. Such processes must respect the specific consultation system of each people or community, so that the consultation may be understood as an appropriate and effective interaction with other State authorities, political and social actors and other third parties concerned").

[54] Saramaka People, *supra*, at para. 194(a).

[55] This requirement stands out because, as the Court confirmed and the State admitted in *Saramaka People* (in fact, it claimed that it uses World Bank standards instead, a claim expressly denied by its own expert witness, Rene Ali Somopawiro), Suriname has no laws requiring ESIAs, nor any laws relating to their conduct and content. Nothing has changed

to any conversion of exploration rights to exploitation rights.[56] There seems to be no requirement therein that such assessments be undertaken with respect to the exploration activities that will be undertaken in the area of interest and which will almost certainly have a significant impact on Saramaka subsistence practices and the peaceful enjoyment of their lands more generally. Nor is there a requirement that ESIAs assess the rights of the Saramaka in relation to the proposed activity[57] – indeed, as the Commission and Court both confirmed (and as the State admitted),[58] under extant Suriname law, the Saramaka have no rights.[59] The Mineral Agreement further provides that the State shall within 60 days of receiving a request provide the

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since this finding by the Court and admission by the State and it is, therefore, difficult to understand what the legal requirements referred to may be in reality. For an example of how the National Institute for Environmental Development (NIMOS) reviews an ESIA for an industrial gold mine in the territory of the Paramaka maroons (which is also taking place without regard for their rights), and lacks any legal standards or in-house capacity in this respect, *see Review of the SURGOLD Merian Project Draft Environmental and Social Impact Assessment,* NIMOS: Office of Environmental and Social Assessments, 19 July 2012 (failing anywhere to mention the rights of the affected tribal people). Available at: http://www.newmont.com/sites/default/files/u110/22.%20NIMOS%20review%20report.pdf.

56 Mineral Agreement, Annex A, Section 13.2(ii).

57 *See in this respect* Indigenous and Tribal Peoples' Rights over their Ancestral Lands*, supra,* at para. 245 (explaining that "Environmental and social impact assessments are not only project planning instruments that must be taken into account to minimize the negative impacts of development or investment projects in indigenous territories –and, in given cases, for the identification of alternatives-, but they also serve to identify which communal property rights will be affected, and how, by the proposed project. Indeed, the ultimate objective of the process of impact assessments is no other than to identify which are the potential negative impacts of the plan or project in question over indigenous peoples' capacity to use and enjoy their lands and other resources present in their territories which they have traditionally used for economic, social, cultural or spiritual purposes; in other words: the possible impact upon their right to communal property. From this perspective, an additional objective of impact assessments is precisely the identification of the rights that correspond, or that might correspond, to indigenous peoples over the lands and natural resources that will be directly or indirectly affected by the investment or development projects at hand").

58 Saramaka People, *supra*, at para. 99 (explaining that the "State also acknowledged that its domestic legal framework does not recognize the right of the members of the Saramaka people to the use and enjoyment of property in accordance with their system of communal property, but rather a privilege to use land").

59 *See e.g., id*. at para. 106-14 (observing, at para. 106, "that an alleged recognition and respect in practice of 'legitimate interests' of the members of the Saramaka people cannot be understood to satisfy the State's obligations under Article 2 of the Convention with regards to Article 21 of such instrument"); and (concluding, at para. 115 that "the State's legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference. The Court has previously held that, rather than a privilege to use the land, which can be taken away by the State or trumped by real property rights of third parties, members of indigenous and tribal peoples must obtain title to their territory in order to guarantee its permanent use and enjoyment"). *See also Report of the Republic of Suriname*, 19 July 2007. UN Doc. CERD/C/SUR/12, at p. 29 (where Suriname reported to the UN Committee on the Elimination of Racial Discrimination its position, which is consistent with extant domestic law, that indigenous and tribal peoples' property rights are ultimately dependent on and subservient to an omnipotent title vested in the State, and that their territories form part of the 'free domain', meaning lands "which the State can dispose of freely"). Available at: http://www2.ohchr.org/english/bodies/cerd/cerds74.htm.

parameters for ESIA's[60] and shall within 90 days of the submission of an ESIA approve said ESIA "on the assumption that the conditions provided for in the law are met."[61] Additionally, once the ESIA is approved, the State guarantees that a right of exploitation (mining permit) shall be granted.[62]

18. In *Saramaka People*, the Court stressed that the conduct of an independent and participatory ESIA, that fully addresses the cumulative impact of other current and proposed activities (e.g., the Afobaka dam and rampant and unregulated small-scale mining), is one of the conditions precedent to ensuring the survival of the Saramaka.[63] Yet, it is difficult to see how, and nor is any mechanism specified requiring that, the Saramaka will be able to participate in ESIAs in accordance with their customs and forms of organization, and the time limits for their design and approval *de facto* exclude effective participation by the Saramaka.[64] Saramaka traditional decision making processes, especially when as many as 33 villages are directly affected, - and international best practices, for example, as set forth in the *Akwé:Kon Guidelines* – require significantly more time than 60 days for the design and 90 days for review and approval of ESIAs.[65] Additionally, according to Saramaka customary law and as confirmed by the Court, large-scale exploration and mining affecting a substantial area of their territory would require the agreement of all Saramaka (more than 120 communities) given the impact on Saramaka territory as a whole.[66]

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60 Mineral Agreement, Annex A, Section 13.2 (iii).

61 *Id*. Section 13.2(iv).

62 *Id*. Section 13.2(v).

63 Saramaka People, Interpretation of the Judgment, *supra*, at para. 41. *See also* Kichwa Indigenous People of Sarayaku*, supra,* at para. 206 (affirming the Court's jurisprudence in Saramaka and explaining that "the Court has established that Environmental Impact Studies must be carried out in conformity with international standards and best practices, must respect the indigenous peoples´ traditions and culture and must be completed prior to the granting of the concession, given that one of the purposes for requiring such studies is to guarantee the right of indigenous people to be informed about all proposed projects in their territory. Therefore, the State's obligation to supervise the Environmental Impact Assessment is consistent with its duty to guarantee the effective participation of indigenous people in the process of granting concessions. Furthermore, the Court considers that one of the points that should be addressed by the environmental and social impact assessment is the cumulative impact of existing and proposed projects") (footnotes omitted).

64 *Id*.

65 Saramaka People, Interpretation of the Judgment, *supra*, at para. 41, note 23 (stating that "One of the most comprehensive and used standards for ESIAs in the context of indigenous and tribal peoples is known as the *Akwé:Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities*…").

66 Saramaka People, *supra*, at para. 100 (where the Court found that "Pursuant to this customary law, the Captains or members of a *lö* may not alienate or otherwise encumber the communal property of their *lö*, and a *lö* may not encumber or alienate their lands from the collectively held corpus of Saramaka territory. On this last point, Head Captain and *Fiscali* Eddie Fonkie explained that '[i]f a *lö* tried to sell its land, the other *lö* would have the right to object and to stop [such transaction] because it would affect the rights and life of all Saramaka people. The *lö* are very autonomous and […] do not interfere in each other's affairs unless it affects the interests of all Saramaka people.' This is because the territory 'belongs to the Saramakas, ultimately. [That is,] it belongs to the Saramakas as a people'") (footnotes omitted).

19. Moreover, the language quoted above concerning 'the assumption that the conditions in the law are met', would appear to provide that any ESIA becomes *de facto* approved upon the expiration of the 90 day period. This is all the more worrying given that there are only two persons within the Government that are responsible for ESIA review and also because this would seem to preclude independent reviews of the ESIA, including those that the Saramaka themselves may wish to conduct, given the short amount of time allocated for their approval.[67]

C. There is no requirement that the Saramaka will directly benefit from the restrictions to their property rights set forth in the Mineral Agreement

20. In *Saramaka People*, the Court held that reasonable benefit sharing shall be considered compensation for any necessary and "exceptional"[68] restrictions to indigenous and tribal peoples' property rights,[69] "with the community itself determining and deciding who the beneficiaries of such compensation should be, according to its customs and traditions."[70] The Mineral Agreement, however, makes no mention of any benefit sharing with the Saramaka. The State has publicly stated that a percentage of the revenues from any new mining operations that take place pursuant to the Mineral Agreement will be deposited in a 'social fund', which the State will use to fund 'social activities'. It has not been stated that any of these funds will be used for the benefit of the Saramaka. Irrespective, the Court's jurisprudence requires that the Saramaka directly and reasonably benefit from any restrictions to their property rights and that they themselves decide who the beneficiaries will be, and presumably how any benefits will be used.

21. Moreover, as noted above, IAMGOLD has had an operational gold mine in Saramaka territory since the early 2000s and this mine is in one of the concessions that the Court ordered to be reviewed to ensure its compatibility with the conditions necessary to ensure the survival of the Saramaka. One of those conditions is benefit sharing, yet, in direct contravention of the Court's order the State has neither undertaken a review of this concession nor given any indication that it intends to do so. IAMGOLD and the State continue to derive benefits from exploiting Saramaka lands, while the Saramaka suffer the negative consequences.

III. The 'TapaJai project': the extreme disregard for the rights of the Saramaka and their decision making institutions and procedures

22. As noted above, the further and new expansion of gold mining activities into Saramaka territory provided for by the Mineral Agreement is to be accompanied by a

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[67] For an example of an independent review of an ESIA conducted by indigenous peoples of the proposed operations of a multinational mining company and which found numerous problems with the ESIA (but was rejected by the State nevertheless), *see Suriname's Bakhuis Mine. An Independent Review of SRKs Impact Assessment*. Association of Indigenous Village Leaders in Suriname, 2009. Available at: http://derianga.files.wordpress.com/2008/11/suriname-bakhuis-bauxite-mine-impact-assessment-sep-2009.pdf.

[68] Saramaka People, Interpretation of the Judgment, *supra,* at para. 49 (stating that "the right to property is not absolute, and thus may be restricted by the State under very specific, exceptional circumstances, particularly when indigenous or tribal land rights are involved").

[69] Saramaka People, *supra*, para. 129, 138-40; Saramaka People, Interpretation of the Judgment, *id*. para. 26-7.

[70] Kichwa Indigenous People of Sarayaku*, supra,* at para. 157.

project that intends to raise the storage capacity of the reservoir created by the Afobaka dam so as to provide power for IAMGOLD's new mining operations.[71] This project is known as the TapaJai project and involves building a number of dams along the Tapanahoni River (outside of Saramaka territory) and construction of a canal to divert waters into the Afobaka dam's reservoir (both within Saramaka territory). As noted previously, this issue was raised before the Court in *Saramaka People*, but the Court declined to address it on procedural grounds, observing, *inter alia*, that it was prospective and Saramaka complaints about the project were pending before the domestic authorities at that time.[72]

23. Consistent with its constant practice, Suriname has ignored the complaints and concerns of the Saramaka about the TapaJai project and there remain no judicial remedies by which they may otherwise seek protection for their rights.[73] Consequently, it is no longer pending before the domestic authorities. To make matters worse, it is also no longer prospective and, as discussed further below, the State has already and recently (in the past few months) commenced the construction of related infrastructure – a 45 kilometer-long road – in Saramaka territory over the Saramaka's explicit objections and without any form of ESIA. It did so also in direct contravention of the jurisprudence and orders of the Court by seeking the consent of the *Gaama* (paramount leader of the Saramaka) and then proceeding to commence construction of the road on this basis after its proposal was unanimously rejected by the Saramaka Captains in plenary in November 2012.

24. The Saramaka have not been provided with any information about the current design of the TapaJai project and their requests for said information have been ignored by the State. They therefore must refer to the most recent publicly available information on this project to gauge its impact and extent: a study by an engineering firm completed in 2000.

25. The TapaJai project was first officially announced in the Surinamese Parliament by the former President on 23 November 2005 as part of the 'Government Declaration 2005-2010'. This plan states that by 2010 the Government intends to increase electricity production, including by exploring "the expansion of hydropower from the Brokopondo reservoir."[74] What was not mentioned, however, was that this project, if completed as planned, would involve the forced displacement of numerous indigenous and N'djuka Maroon communities living along the Tapanahony River; as stated in the feasibility study done in 2000 by an engineering consultancy retained by the State:

> The issue that is potentially most sensitive is that of physical and economic displacement of residents in both the reservoir area and downstream communities. … The impacts of the filling and operation of the reservoir will adversely affect both the upstream Amerindian Trio peoples (Palemeu, Tepoe and their hinterlands) but also downstream Wayana people in the area of

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71 *See* notes 12 and 21 *supra*.
72 Saramaka People, *supra*, para. 14.
73 *Id*. para. 159-85
74 *Government Declaration 2005-2010,* Presented by President R.R. Venetiaan to the National Assembly of Suriname, 23 November 2005.

> Apetina and numerous downstream Ndjuka Maroon peoples and their communities[75]

26. Expansion of the reservoir also will almost certainly directly affect five Saramaka villages with a population of around 1000 persons.[76] These villages are located on the Upper Suriname River at the southern edge of the reservoir and many of their inhabitants were previously forcibly displaced by the Afobaka dam. According to the feasibility study of 2000, water levels in the reservoir will be increased by one to two meters,[77] and will "result in a zone around the edge of the reservoir that would be periodically flooded and provide poor habitat for the inhabitants of either terrestrial or aquatic environments."[78] The study continues that the "effects could include flooding of homes and productive or infrastructure assets as well as disruption of economic activities."[79] The same observation was made in a 2009 study, which states that the Saramaka villages of "*Pada* 1 and 2, *Baykutu*, *Banafow*, *Bekeyo* and *Duwatra* will be flooded by the increased water levels in the reservoir" in connection with the TapaJai project.[80] The 2000 study concludes by observing that

> … the impacts of the project on the directly affected people of the region in which the project is located could also be significant and are likely to be negative on balance unless vigorous pro-active impact mitigation actions are taken. Even if mitigation measures that would be consistent with international best practice were implemented … the project is likely to be very controversial, especially among residents of the impact region, and will be highly scrutinized by environmentalists. This is true not only because the project location is currently isolated and relatively undisturbed primary tropical forest, but also because it will affect indigenous people, their rights, land, culture and livelihood.[81]

27. These observations were further confirmed in a 2006 report by Dr. Robert Goodland, the former Chief Environmental Advisor to the World Bank.[82] In addition to observing generally that increasing the capacity of the reservoir through the TapaJai project "looks likely to provoke major involuntary displacement of Indigenous Peoples," he also states that "[r]aising the water level of Afobaka reservoir itself may impact lake-side Saramaka maroon communities, including those that previously lost their lands when the Afobaka dam was constructed in the 1960s."[83]

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75 *Tapanahoni River Diversion Project, Phase 1 Study Report.* Alcoa-Kvaener Alliance, August 2000, at 157.

76 *The villages are: Baikutu, Pada 1 and 2, Banafookondee, Bekijookondee and Duwata.*

77 Tapanahoni River Diversion Project, Phase 1 Study Report*, supra,* at p. 149.

78 *Id.* at p. 153.

79 *Id.* at p. 161.

80 L. Boksteen, *Deelstudie Impact Vergroting Beschikbare Hoeveelheid Water in het Bestaande Brokopondostuwmeer* [Monograph on the Impact of the Enlargement of Available and Existing Amount of Water in the Brokopondo Reservoir], July 2009, at p. 27. Available (only in Dutch) at: http://parbode.com/images/stories/bijlage/Dossier/Lothar-Boksteen.pdf.

81 Tapanahoni River Diversion Project, Phase 1 Study Report, *supra,* at p. 163.

82 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. Available at: http://www.nsi-ins.ca/english/pdf/Robert_Goodland_Suriname_ESA_Report.pdf

83 *Id.* at 22-3.

28. As noted above, the State has very recently commenced constructing a 45 kilometer-long road related to the TapaJai project and is doing so in traditional Saramaka territory immediately adjacent to the Saramaka village of Semosi.[84] This is being done by Staatsolie, the State-owned oil company,[85] as part of a larger network of roads related to the TapaJai project.[86] Construction was started following a meeting of Saramaka Captains, during which they were (for the first time and in stark contrast to Suriname's usual practice) asked for their views on the TapaJai project. The Captains unanimously stated that they were opposed to this project because they had not been provided with enough information to make a decision and because the proposed activity is within traditional Saramaka territory that the State is required to regularize in accordance with the judgment of the Court, but has failed to do so to date. After the Captains refused to consent to their proposed activities, representatives of Staatsolie and the Government held a separate meeting with the *Gaama* and obtained his consent to proceed. The Captains *en masse* complained to the *Gaama*, but he refused to alter his decision.

29. The State's (self-serving) insistence that the *Gaama* has full authority to speak for and make decisions on behalf of the Saramaka – even without consulting the other traditional Saramaka authorities – was the subject of much discussion before the Court.[87] The Saramaka explained that in accordance with their customary laws and political structures, the *Gaama* owns no land as such and has no authority to make

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[84] *See* P. van Dijk, *The IIRSA Guyana Shield Hub: The Case of Suriname*, n.d., (chapter in, now published, book, TOWARDS A STRATEGIC ASSESSMENT OF IIRSA ROAD INFRASTRUCTURE IN SOUTH AMERICA), at p. 9 (confirming that this road is part of the Tapajai project: "To construct the upstream dams, extension of the road network south of Pokigron/Adjorni [sic: Atjoni] will be required: 60 kilometres of road between Pokigron and Semoysi along the left bank of the Suriname river; 45 kilometres between Semoysi and Jai Kreek; and 75 kilometres more between Jai Creek and the Tapanahoni dam). Available at: http://www.cedla.uva.nl/20_research/pdf/vDijck/suriname_project/IIRSA.pdf.

[85] *See Staatsolie Nieuws*, (No. 1) March 2012, at p. 5 (stating that "The TapaJai Hydro-energy project is aimed at producing more energy by diverting water from the Tapanahony River via the Jai Creek to the Brokopondo reservoir. The government has designated Staatsolie the initiator of this very complex project with its scores of stakeholders, including the local population. A study conducted in 2011 has provided proof that the project is feasible. In the period ahead, field inspections will have to support evidence of feasibility. Currently, the company is negotiating with local communities in order to reach an agreement for the start. If all goes as planned civil works could be started in 2013"). Available at: http://www.staatsolie.com/newsletter/maart_2012.pdf.

[86] This road network will have substantial effects on the Saramaka in general: *see* L. Boksteen, *supra*, at p. 10 (explaining that "along this stretch of the road [Pokigron to Semosi] the following 30 [Saramaka] villages along the Suriname river will be directly affected: Gengeston, Pamboko 1 and 2, Abenaston, Amakakondre, Kayapati, Yawyaw, Lespaansi 1 and 2, Adaway, Gunsi, Laduani, Tyaikondre, Nieuw Awrora, Guyaba, Gantatay, Bendikway, Pikinsley, Futunakaba, Debike, Botopasi, Kambalua, Dan, Konoy, Pada, Malobi, Masiakriki, Heykununu, Tumaripa, Semoysi. Indirectly affected are eight villages upstream of Semoysi up to Dyumu along the Suriname River, five villages along the *Pikin Rio*, and nine villages along the *Gran Rio* [all of them Saramaka villages]").

[87] *See* Saramaka People, *supra*, at para. 170 (observing that "the State has constantly objected to whether the twelve captains of the twelve Saramaka clans (*lös*) truly represent the will of the community as a whole (*supra* paras. 19-24). The State additionally asserted that the true representative of the community should be the *Gaa'man*, and not others"). The State persisted with this line of argument in the proceedings related to the interpretation of the judgment (*see* Saramaka People, Interpretation of the Judgment, *supra*, para. 11), in the compliance hearing before the Court, and in domestic discussions.

unilateral decisions about the use of Saramaka lands or territory.[88] They further explained the modalities of the exercise of these powers under various circumstances pursuant to Saramaka customary law and – as the Court concurred – that this power is vested in the Saramaka land owning clans and their traditional authorities (specifically, the Head Captains and the Captains in consultation with their communities).[89]

30. After weighing the evidence before it, the Court held unambiguously that "By declaring that the consultation must take place 'in conformity with their customs and tradition', the Court recognized that it is the Saramaka people, not the State, who must decide which person or group of persons will represent the Saramaka people in each consultation process ordered by the Tribunal."[90] It further explained that "the Tribunal reiterates that all issues related to the consultation process with the Saramaka people, as well as those concerning the beneficiaries of the 'just compensation' that must be shared, must be determined and resolved by the Saramaka people in accordance with their traditional customs and norms…."[91] To be sure, it explained these same points in four separate paragraphs, stating that "it reiterates that the State has a duty to consult with the Saramaka people … and that the Saramaka must determine, in accordance with their customs and traditions, which tribe members are to be involved in such consultations."[92]

31. The petitioners' observe in this regard that the Saramaka have clearly indicated to the State which body and persons shall represent them with respect to matters related to the implementation of the judgment of the Court. This was done in a formal letter to the State (also submitted to the Court), signed by the *Gaama* and *Fiscali* and Head

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88 *See e.g., Affidavit of Fiscali and Head Captain Eddie Fonki*, Case 12.338, para. 11-4 (stating, at para. 15, that "If the *Gaama* gives permission for someone to work on Matjau land, that is one thing, and the Captain for the affected area must still agree, but the *Gaama* cannot give permission for people to work on the land of another *lö,* He cannot do this. If someone asks his permission, he must talk with and get the permission of the Captains of the first. If he does not do this, there will be a big problem. This happened before when *Gaama* Songo asked for a concession on the land of the Dombi, Nasi and Awana *lös.* The Captains were very angry about it because this is against Saramaka law").

89 Saramaka People, *supra*, at para. 100 (where the Court concurred, finding that "From the evidence and testimonies submitted before the Court, it is clear that the *lös,* or clans, are the primary land-owning entities within Saramaka society. Each *lö* is highly autonomous and allocates land and resource rights among their constituent *bëë* (extended family groups) and their individual members in accordance with Saramaka customary law").

90 Saramaka People, Interpretation of the Judgment, *supra*, at para. 18.

91 *Id*. at para. 27 (stating that ""as to who can benefit from development projects, the Court observes that … in the event that any internal conflict arises between members of the Saramaka community regarding this issue, it 'must be resolved by the Saramaka people in accordance with their own traditional customs and norms, not by the State or this Court in this particular case'"). This reasoning applies *mutatis mutandis* to (perceived) disputes about who may represent the Saramaka in any particular instance with regard to granting consent.

92 *Id*. at para. 15 (*see also*, at para. 19, explaining that "the Saramaka people must inform the State which person or group of persons will represent them in each of the aforementioned consultation processes. The State must then consult with those Saramaka representatives to comply with the Court's orders. Once such consultation has taken place, the Saramaka people will inform the State of the decisions taken, as well as their basis;" and, at para 22, that "the decision as to whom should be consulted regarding each of the various issues mentioned above … must be made by the Saramaka people, pursuant to their customs and traditions. The Saramaka people will then communicate to the State who must be consulted, depending on the issue that requires consultation").

Captain, Wazen Eduards, who is also the chairperson of the Association of Saramaka Authorities, an entity that represents the traditional authorities of the Saramaka land owning clans.[93] The State however persists in ignoring the formally stated wishes of the Saramaka and has proceeded to implement a project in Saramaka lands on the basis of an agreement with the *Gaama*, an agreement that is null and void pursuant to Saramaka law.

32. Given the Court's ruling and the formally stated wishes of the Saramaka with respect to their representatives, the State may not (opportunistically and in bad faith, as it has done in this instance) seek the consent of the *Gaama* when consent has been denied first by the assembled authorities of the land owning clans, the very persons who have the right to make such decisions under Saramaka law and custom.[94] Moreover, the Court explained that such situations may arise due to the failure of the State to acknowledge the right of the Saramaka *people* to collective juridical capacity – and ordered that it do so in consultation with the Saramaka and in accordance with their customs and traditions[95] - in violation of Article 3 of the American Convention, an on-going omission for which the State bears sole responsibility.[96]

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[93] *See Comments of the Victims' Representatives on the First Report of the Illustrious State of Suriname in the Case of the Saramaka People,* 12 September 2009, Annex A (containing the letter dated 13 March 2008, signed by the Gaama and the Chairperson of the Association of Saramaka Authorities and explaining who the Saramaka have designated at their representative, at least initially, with regard to implementation of the judgment).

[94] *See in this respect* Kichwa Indigenous People of Sarayaku*, supra,* at para. 202-3 (finding that Ecuador violated indigenous peoples' rights be it was "proven that the oil company tried to negotiate directly with some members of the Sarayaku People, without respecting their forms of political organization. … Accordingly, the Court considers that the actions carried out by the company in order to obtain the consent of the Sarayaku People cannot be construed as an appropriate and accessible consultation") (footnote omitted); *Yatama v. Nicaragua, Merits and Reparations*, Judgment 2005, Inter-Am. Ct. H.R. (ser. C) No. 127, para. 229 (23 June 2005) (finding that states parties to the American Convention must guarantee that indigenous peoples "can participate, in conditions of equality, in decision-making on matters that affect or could affect their rights and the development of their communities … and that they are able to do so through their own institutions and in accordance with their values, uses, customs and forms of organization…"); and *Chitay Nech et al. v. Guatemala*, *Merits, Reparations and Costs*, Judgment, 2010 Inter-Am. Ct. H.R. (ser. C) No. 212, at para. 115 (25 May 2010) (where the Court held that indigenous and tribal peoples' leaders "exercise their charge by mandate or designation and in representation of a community. This duality is both the right of the individual to exercise the mandate or designation (direct participation) as well as the right of the community to be represented. In this sense, the violation of the first reverberates in the damage of the other right") and; at para. 113 (finding that the direct representation of indigenous and tribal peoples, through their mandated representatives and/or institutions, is "a necessary prerequisite" for the exercise of their right to self-determination and, by extension, their right to freely pursue their economic, social and cultural development "within a plural and democratic State").

[95] Saramaka People, *supra*, para. 194(b) (ordering that the State must "grant the members of the Saramaka people legal recognition of their collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions").

[96] *Id*. at para. 169 (observing "a recognition of the right to juridical personality of the Saramaka people as a whole would help prevent such situations, as the true representatives of the juridical personality would be chosen in accordance with their own traditions, and the decisions affecting the Saramaka territory will be the responsibility of those representatives, not of the individual members.

33. As detailed above, the TapaJai project is taking place without regard for the rights of the Saramaka, without regard for the orders of the Court and over the formal objections of their traditional authorities who have jurisdiction over decisions of this kind. Moreover, the nature of the expected impacts is extremely deleterious to the well-being and rights of the Saramaka, including their access to numerous sacred sites, and threatens them with irreparable harm, all the more so if the State persists with its unilateral approach to this project. The Court has previously noted the extreme effects of dams on the rights and integrity of indigenous and tribal peoples and the same is also the case for the Saramaka, both in relation to the on-going effects of the Afobaka dam and the TapaJai project.[97] It should further be noted that this project is intended to benefit the same gold mining company – not the Saramaka – that has been involved with serious violations of the rights of the Saramaka for almost a decade and which now imminently intends to substantially increase its operations in Saramaka territory pursuant to the new rights it has been granted in the Mineral Agreement (again without regard for their rights).

IV. The Mineral Agreement and TapaJai threaten the Saramaka with gross and imminent irreparable harm, threaten their survival as a tribal people and are disproportionate, and the Saramaka are defenceless and in urgent need of international protection

34. The Committee, the Inter-American Court and numerous other international human rights bodies have confirmed that there are no effective domestic remedies available to the Saramaka to seek protection for their rights in relation to the activities authorized by the new Mineral Agreement and the TapaJai project.[98] Indeed, the situation is so bad that the Saramaka even lack legal personality and are therefore invisible in the legal system and incapable of holding or seeking protection for their rights.[99] To make matters worse, once enacted the Mineral Agreement will further

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[97] *See Río Negro Massacres v. Guatemala Merits, Reparations and Costs*, Judgment, 2012 Inter-Am. Ct. H.R. (ser. C) No. 250, at para. 160 (4 Sept. 2012) (where the Court observed that "they cannot perform any other type of rites, because the sacred locations they used to visit have been flooded owing to the construction of the Chixoy hydroelectric plant. This Court has already indicated that the special relationship of the indigenous peoples with their ancestral lands is not merely because they constitute their main means of subsistence, but also because they are an integral part of their cosmovision, religious beliefs and, consequently, their cultural identity or integrity, which is a fundamental and collect right of the indigenous communities that must be respected in a multicultural, pluralist, and democratic society…") and; at para. 181 (finding that "the Court has established that … the Chixoy dam on the ancestral land of the Río Negro community … made the return of the Río Negro community to part of their ancestral lands physically and permanently impossible. Therefore, the Court finds that, in this case, the freedom of movement and residence of the members of the Río Negro community resettled in Pacux has been limited to date by a *de facto* restriction").

[98] *See inter alia* Saramaka People, *supra*, para. 174 (concluding that "the Saramaka people form a distinct tribal community in a situation of vulnerability, both as regards the State as well as private third parties, insofar as they lack the juridical capacity to collectively enjoy the right to property and to challenge before domestic courts alleged violations of such right"); and *Concluding observations of the Human Rights Committee: Suriname,* 04/05/2004. UN Doc. CCPR/CO/80/SUR., at para 21.

[99] *See inter alia* Saramaka People, *supra*, para. 166-85 (concluding, at para. 185, that "the State has violated the right to judicial protection … to the detriment of the members of the Saramaka people, as the aforementioned domestic provisions do not provide adequate and

privilege and concretize the new rights of IAMGOLD over those over the Saramaka. This is the case because pursuant to 1986 *Mining Decree*, which contains no protections at all for the Saramaka,[100] a mining concession is considered a registered property right *in rem* and as such will, according to settled law in Suriname,[101] supplant any right or interest that the Saramaka may assert, even including any right to seek compensation for damages caused by mining.[102] The Saramaka are thus defenceless in domestic law and venues, a conclusion made all the more apparent and alarming in light of the State's routine disregard for their rights in projects that it seeks to benefit from, such as the new mining operations authorised by the Mineral Agreement and highly prejudicial TapaJai project.

35. As the Commission and the Court found in *Saramaka People*, the Saramaka's traditional economy and means of subsistence are based on and derived from the natural resources and forests[103] in their territory.[104] These lands and forests are also

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effective legal recourses to protect them against acts that violate their right to property"); *Moiwana Village v. Suriname*, Inter-Am. Ct. H.R., (ser. C) No. 124, at para. 86(5) (15 June 2005) (finding, as "proven facts" and a "[f]act recognized by the State," that, "[a]lthough individual members of indigenous and tribal communities are considered natural persons by Suriname's Constitution, the State's legal framework does not recognize such communities as legal entities. Similarly, national legislation does not provide for collective property rights") (footnotes omitted); and *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2 (12 March 2004), at para. 14 (expressing concern 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").

[100] Saramaka People, *supra*, para. 183 (concluding that "the purported remedy established under the Mining Decree is inadequate and ineffective" and this "position is consistent with the expert opinion of Dr. Hoever-Venoaks, who declared that the 'Mining Decree […] does not offer legal protection to 'inhabitants of the interior living in tribal communities'"). The *Mining Decree* mentions indigenous and tribal peoples only once, *see*, Article 25(1)(b) (providing that applications for exploration permits must include a list of all tribal communities located in or near the area to be explored).

[101] *See e.g., Tjang A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, 21 May 1998 (holding that real title to land will void any interest claimed by indigenous peoples on the basis of traditional occupation and use); and, *Celientje Martina Joeroeja-Koewie et al v. Suriname & Suriname Stone & Industries N.V.*, A.R. no. 025350, Cantonal Court, First Canton, Paramaribo, 24 July 2003 (holding that an indigenous community lacked "competence" to challenge the grant of a sand mining concession (constituting a real property right under the Mining Decree) even though it was within the confines of the village itself).

[102] Saramaka People, *supra,* 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 [for damages caused by mining]…").

[103] *See e.g.,* Affidavit of Dr Robert Goodland, Case 12.338, at para. 30 (explaining that "the Saramaka are using practically all the forest at various levels of intensity, and for specific and different purposes, and have been using the forest for a long period. My visits to half a dozen Saramaka villages showed me that the Saramaka depend almost totally on the forest for much of their livelihood").

[104] Saramaka People, *supra*, at para. 83 (finding that "their economy can also be characterized as tribal. According to the expert testimony of Dr. Richard Price, for example, 'the very great bulk of food that Saramaka eat comes from […] farms [and] gardens' traditionally

inextricably related to Saramaka spirituality and cultural integrity and provide much of the foundation for their religion, cultural practices, social and political structures, and their cosmovision more generally.[105] The up to 33 Saramaka communities that are directly affected by the Mineral Agreement – as noted above, in fact, all Saramaka communities are affected – are primarily those communities that were displaced by the Afobaka dam in 1964. As such, they are already living in a dire situation with substantially reduced subsistence options due to their forcible relocation to infertile land as well as due to the impacts of rampant and unregulated small-scale mining in their lands.[106] The latter especially has drastically reduced their available lands for farming and for hunting and gathering due to deforestation as well as their ability to fish due to turbidity and mercury contamination in their rivers and other water sources.[107]

36. These communities are therefore already in a state of extreme vulnerability and their ability to sustain themselves from what remains of their traditional lands will be stretched to the breaking point by the massive incursion of IAMGOLD's new mining activities pursuant to the Mineral Agreement. This will also drastically affect their social cohesion and integrity as well as, according to Saramaka tradition, invite severe and potentially devastating retaliation from the spirit world. That the Saramaka have been rendered powerless to do anything about this situation by Suriname's long-standing refusal to recognize and guarantee their rights makes the situation all the more compelling and urgent, and this is made even more alarming by the complete lack of regard for their rights to date by IAMGOLD, as evidenced by its past practices in the

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cultivated by Saramaka women. The men, according to Dr. Price, fish and 'hunt wild pig, deer, tapir, all sorts of monkeys, different kinds of birds, everything that Saramakas eat'. Furthermore, the women gather various fruits, plants and minerals, which they use in a variety of ways, including making baskets, cooking oil, and roofs for their dwellings").

[105] *See e.g., Affidavit of Peter Poole*, Case 12.338, at para. 18 (explaining that "there are numerous sacred sites in Saramaka territory, most of which the Saramaka chose not to record on their map for religious and privacy-related reasons. In fact, there are so many of these sites that it would have been difficult to record them all on the map. I would say that the Saramaka see their entire territory as a sacred space in one way or another and they are deeply spiritual"); and Testimony of Expert Witness, Dr. Richard Price, Case 12.338.

[106] *See inter alia* Affidavits submitted to the Inter-American Court of Fiscali and Head Captain Eddie Fonkie, Dr. Peter Poole, George Leidsman, and Dr. Robert Goodland, Case 12.338. Dr. Poole explains, at para. 26, that "The simple fact that the Saramaka people's territory was almost halved by the flooding is one of the most severe impacts. This severely disrupted their traditional land tenure and resource management systems and in some ways I would say that they have not yet recovered from this. This loss of land is also a direct cause of their present, insufficient land and resource base and the reason that the Saramaka are extremely worried about and discussing how to access additional farming and other lands. They are rightly concerned that their ability to subsist from what remains of their traditional lands and resources as it is becoming more and more fragile and uncertain."

[107] *See e.g., Affidavit of Dr. Peter Poole*, at para. 25 (stating that "Dr. Poole states, at para. 25 that "Most of the displaced Saramaka villages to the north of the reservoir are … impacted in one way or another by the mining operations. There is extreme damage to water quality in the creeks almost all of which appeared discoloured and potentially unusable. There is also a very high probability that traditional game animals are very scarce in this area because of the ecological damage and also because the miners themselves are undoubtedly consuming bushmeat. Studies on mercury contamination in this area show that environmental mercury levels are thousands of times higher than the limits prescribed by the World Health Organization and this is a major health hazard, especially for the people living in the immediate vicinity").

Rosebel concession and the various Saramaka communities where it has conducted exploration activities to date.[108]

37. The same is also the case with respect to the TapaJai project, which will not only consume a large area traditionally owned and used by the Saramaka for their subsistence, as well as numerous sacred sites, it will also inundate and forcibly displace at least five Saramaka communities due to the increased water level in the Afobaka dam's reservoir. Experience from past displacements of the Saramaka in Suriname amply illustrate that the Saramaka will be substantially worse off after their displacement.[109] Many of the residents of these affected communities were previously forcibly displaced when the Afobaka dam was constructed and their relocation to and conglomeration with other Saramaka communities has already severely strained the productive capacity of their lands and caused severe shortages of subsistence resources. Moreover, 44 Saramaka communities will be affected by just two sections of the roads related to TapaJai – and construction has already commenced despite their unanimous objections in relation to one part thereof – and there has been no systematic assessment of what these impacts will be nor any attempt so far to mitigate them.[110]

38. What is known is that roads built in tropical forests have severe negative impacts on indigenous and tribal peoples who depend on those forests, and there is no reason to expect that the same will also not be the case for the roads built in the TapaJai project.[111] Indeed, considering Suriname's persistent disrespect for the rights of the Saramaka, it is expected that the negative impacts will be substantially worse. Moreover, Suriname has already upgraded the Afobaka road in 2009 without first conducting an ESIA and without obtaining the consent of the Saramaka, and in violation of the orders of the Court, and this has increased access by hunters, loggers and miners to Saramaka territory.[112] Also, the roads built in Saramaka territory in the

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[108] *See supra* note 30.

[109] *See* Affidavit of Dr. Robert Goodland, Case 12.338, at para. 41 (who has been extensively involved with monitoring the Afobaka dam for the World Bank for decades, observing that "All of the typical negative impacts on indigenous and tribal peoples documented in the literature about resettlement and indigenous and tribal peoples are present in the case of the Saramaka people and the Afobaka dam. Indeed, it can be cited an example of how not to build a dam on both environmental and social grounds"). *See also* Chitay Nech, *supra*, para. 147 and, *in accord*, Río Negro Massacres, *supra*, at para. 162 & 177 (stating, respectively, that "the displacement of the members of the community of Río Negro … led to the destruction of their social structure, the disintegration of the families, and the loss of their cultural and traditional practices, and the Maya Achí language" and; "in keeping with its consistent case law on indigenous matters, in which it has recognized that the relationship of the indigenous peoples with the land is essential for maintaining their cultural structures and for their ethnic and material survival, the Court considers that the forced displacement of indigenous peoples outside their community or away from its members, can place them in a situation of special vulnerability, which 'owing to its destructive effects on the ethnic and cultural fabric […], generates a clear risk of the cultural or physical extinction of the indigenous peoples'") (footnotes omitted).

[110] *See* note 86 *supra* (listing the affected communities).

[111] *See Road Infrastructure in Tropical Forests. Road to Development or Road to Destruction?*, UN FAO, 1999, Executive Summary (stating that "Road construction represents the most harmful aspect of forestry activities").

[112] *Saramaka People (Monitoring Compliance),* para. 17 (referring to the upgrading of the Afobaka road through Saramaka territory) and; at para. 25, (stating that the upgrading of

logging concessions addressed in the judgment of the Court caused severe and enduring damage to Saramaka lands and resources, including turning large areas of farming lands into unusable swamps, and this has yet to be corrected to this day.[113] Saramaka subsistence, religious and other rights were wholesale disregarded in these logging concessions and the Saramaka have no reason to believe that the same will also not occur in the new concessions now granted to IAMGOLD or in relation to the TapaJai project.[114] To the contrary, the State's treatment of the Saramaka and IAMGOLD's prior practice indicates that this experience almost certainly will be replicated with extreme negative consequences at a level that will be far above those previously suffered due to the scale of the new mining operations and TapaJai.

39. Last but by no means least, the fundamental and profound relationship that indigenous and tribal peoples have with their territories is well recognized and protected by international human rights law, as is its interrelationship with their survival as distinct cultural and territorial entities.[115] The Inter-American Court, for instance, emphasized this point in 2012, stating that, given the "intrinsic connection that indigenous and tribal peoples have with their territory, the protection of property rights and the use and enjoyment thereof is necessary to ensure their survival."[116] In *Saramaka People*, the Court defined the term 'survival' to mean indigenous peoples' "ability to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'."[117] In this respect and with this

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the Afobaka road without an ESIA "would constitute a direct contravention of the Court's decision…").

[113] Saramaka People, *supra*, para. 152.

[114] *Id*. para. 149-52 (explaining, at para. 151, that "observations of the Saramaka witnesses [concerning destruction of their forests] are corroborated by the research of expert witnesses Dr. Robert Goodland and Dr. Peter Poole, both of whom visited the concessions and surrounding areas between 2002 and 2007. In general, Dr. Goodland stated that 'the social, environmental and other impacts of the logging concessions are severe and traumatic', and that the '[l]ogging was carried out below minimum acceptable standards for logging operations.' Dr. Goodland characterized it as 'among the worst planned, most damaging and wasteful logging possible.' Dr. Poole added that it was 'immediately apparent to [him] that the logging operations in these concessions were not done to any acceptable or even minimum specifications, and sustainable management was not a factor in decision-making'") (footnotes omitted).

[115] *See* IACHR Indigenous Ancestral Lands*, supra,* at para. 57 (observing that "disregard for the rights of the members of indigenous communities over their ancestral territories can affect … other basic rights, such as the right to cultural identity, the collective right to cultural integrity, or the right to collective survival of communities and their members. The extreme living conditions borne by the members of indigenous communities that lack access to their ancestral territory cause them to suffer, and undermine the preservation of their way of life, customs and language") (footnotes omitted).

[116] Kichwa Indigenous People of Sarayaku*, supra,* at para 146 & para. 147 (stating that "Moreover, lack of access to the territories and their natural resources may prevent indigenous communities from using and enjoying the natural resources necessary to ensure their survival, through their traditional activities; or having access to their traditional medicinal systems and other socio-cultural functions, thereby exposing them to poor or inhumane living conditions, to increased vulnerability to diseases and epidemics, and subjecting them to extreme situations of vulnerability that can lead to various human rights violations, as well as causing them suffering and harming the preservation of their way of life, customs and language").

[117] Saramaka People, Interpretation of the Judgment*, supra*, at para. 37.

definition in mind, the Court held that projects that do not ensure the survival of indigenous and tribal peoples, such as the Saramaka, are impermissible and prohibited by human rights law.

40. In the current situation, and given Suriname's persistent disregard for the requirements enunciated by the Court as being necessary to ensure the survival of the Saramaka, both the new and massively expanded mining activities pursuant to the Mineral Agreement and the TapaJai project, as currently conducted, fall within the category of activities that are 'impermissible' because they fail to ensure the survival of the Saramaka.[118] These activities are also illegitimate and prohibited pursuant to the jurisprudence of the Human Rights Committee, which stated in a case involving indigenous peoples in Peru that states parties "must respect the principle of proportionality so as not to endanger the very survival of the community and its members."[119]

41. As discussed above, Suriname's current acts and omissions in relation to the Mineral Agreement and TapaJai are fundamentally tainted by its persistent pattern of racial discrimination against indigenous and tribal peoples, and are thus disproportionate. Moreover, in this context, the State and IAMGOLD will enjoy all the benefits while the Saramaka will suffer grave and irreparable harm and these activities are also disproportionate for this reason. It is imperative that the Committee acts as soon as possible to prevent this irreparable harm expanding and intensifying and that it does so at its earliest opportunity, respectfully, in accordance with the requests made below.

V. Request

42. As part of the rationale for awarding compensation to the Saramaka people for immaterial damages, the Court ruled that

> 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

[118] Saramaka People, *supra*, para. 128 (stating that "in analyzing whether restrictions on the property right of members of indigenous and tribal peoples are permissible, especially regarding the use and enjoyment of their traditionally owned lands and natural resources, another crucial factor to be considered is whether the restriction amounts to a denial of their traditions and customs in a way that endangers the very survival of the group and of its members" and, at para. 129, stating that "in order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must abide by the following three safeguards [effective participation, prior ESIA and benefit sharing] …; [t]hese safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people"); and IACHR Indigenous Lands*, supra,* at para. 232-3 (explaining, at para. 232, that "The State may not grant a concession or approve a development or investment plan or project that could affect the survival of the corresponding indigenous or tribal people, in accordance with its ancestral ways of life").

[119] *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, at para. 7.6.

violations of said right … all of which constitutes a denigration of their basic cultural and spiritual values.[120]

43. This suffering and distress is not confined to the past; it is ongoing and continuous and made worse by Suriname's enduring failure to recognize and secure the rights of the Saramaka people, in particular through implementation of the Court's orders. This constitutes no less of a denigration of the Saramaka's basic cultural and spiritual values than the State's refusal to recognize their rights prior to the judgment. In some ways it is much worse in as much as the State and the Saramaka now have confirmation from an illustrious international human rights tribunal that the Saramaka hold rights and that these rights must be respected and secured in fact and law. The new mining rights granted to IAMGOLD, which will be imminently enacted into law by Suriname's National Assembly, and the TapaJai project will further exacerbate the suffering experienced by the Saramaka and the denigration of their basic cultural and spiritual values, and cause grave and irreparable harm to their ability to survive as a distinct people.

44. In light of the preceding, the submitting organizations respectfully request that the Committee:

a) at its 82nd session considers this situation under its early warning and urgent action procedures and adopts recommendations aimed at ensuring respect for the rights of the Saramaka people and the avoidance of the grave, imminent and irreparable harm that they are threatened with due to the imminent enactment of the Mineral Agreement and the further development of the highly prejudicial TapaJai project. The submitting organizations respectfully suggest that these recommendations include the following:

    i) that the National Assembly of Suriname delays its consideration of the new mining rights granted by the Mineral Agreement until such time as the Saramaka's right of effective participation has been respected, including, as ordered for by the Court, until such time as their free, prior and informed consent has been obtained in accordance with their customs and traditions, or, alternatively, if it fails to obtain Saramaka consent, until such time as their territory has been delimited, demarcated and titled in accordance with the orders of the Court and the State has complied with the criteria established by the Court for a valid restriction of their property rights;

    ii) that the State ensures that participatory ESIAs are conducted in relation to the new exploration rights granted to IAMGOLD and any related infrastructure, including as related to the TapaJai project;

    iii) that the same considerations stated in i) be applied to the TapaJai project and that the State strictly conforms to Saramaka custom and traditions in relation to securing their effective participation in all decisions that may affect them;

[120] Saramaka People, *supra*, at para. 200.

iv) that the State fully complies with the rights of the Saramaka in relation to any proposed resettlement and, *inter alia*, secures their free, prior and informed consent in relation to any resettlement plans; and

v) that the State urgently implements the judgment of the Court and each of the orders set forth therein and that it requests technical support from the Inter-American Commission and the UN Special Rapporteur on the Rights of Indigenous Peoples to do so, and that it does so in consultation with and with the informed and effective participation of the Saramaka through their freely identified representatives.

b) Should Suriname fail to demonstrably and promptly comply with said recommendations, that the Committee, as it did in its Decision 1(69) of 18 August 2006, "draws the attention of the High Commissioner for Human Rights as well as the competent United Nations bodies, in particular the Human Rights Council, to the particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname, and invites them to take all appropriate measures in this regard."