Comments on Suriname RPP (23 February 2013)

For addressing grievances and conflicts a temporary three-tier approach will be set up, starting with the REDD+ Steering Committee. If issues cannot be resolved at this level, they can be submitted to the Bureau for Contact with the People in the Cabinet of the President and as an ultimate solution to the Parliamentary Commission on Climate Change. (Executive Summary)

Considering that Suriname law provides no remedies for indigenous and tribal peoples as collectivities, there is no judicial recourse if the above mentioned 'remedies' fail to uphold their rights.

The Forest Dependent Communities (FDC) will participate in decision-making. The principles of free, prior and informed consent will be applied at all stages of future project and all relevant aspects of REDD+ program design (e.g. grievance mechanism and benefit sharing). (p. 14)

FPIC has to start at the initial design phase and this hasn't occurred to date, nor does there seem to be any capacity to adequately implement FPIC processes at the governmental level. Specific FPIC procedures need to be articulated in law.

Civil Society (CS) will be involved to guide the protection of rights of forest-dependent communities, specifically land rights, and to ensure that implementation of R-PP and REDD+ are in line with the results of the Consultation and Participation activities. (p. 15)

What do they mean by civil society? If they mean NGOs in Paramaribo, it is difficult to see how those would happen as none of them have any expertise in IP rights – some of them have acted in direct contravention of those rights in the recent past (CI, ACT for instance), and the term 'land rights' has no meaning in current Suriname law as it relates to indigenous and tribal peoples.

The RSC will be composed of representatives from governmental institutions, the private sector, indigenous, Maroon and other forest-dependent communities, civil society and academia. The RSC is envisaged to have a rotating Chairmanship and to adhere to the principles of self-selection and fair representation. (p. 18)

Need to ensure that IP and Maroon representatives are self-selected through transparent processes and in accordance with the custom and traditional of the peoples themselves. Who are the other 'forest dependent communities'?

the NIMOS guidelines have been based also on the AKWE KON guidelines Voluntary 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. As appropriate for the further REDD+ program the AKWE KON guidelines will be consulted and more fully implemented where required. (p. 22)

I have read the NIMOS Guidelines and they nowhere mention the Akwe:kon Guidelines and I see no relationship between the two either. My feeling is that this was added to try to show compatibility between RPP and Saramaka judgment when in reality there is very little relationship between the two.

The stakeholder engagement processes adhere to the FCPF and UN-REDD+ joint 'Guidelines on Stakeholder Engagement for REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities'. (p. 26)

Erm, really? And IPs and Maroon are not stakeholders, but rights-holders. (see p. 28 where it says that "Because indigenous and Maroon groups were excluded from the earlier process of REDD+ development in 2009-2010, there may be feelings of discontent about the effort").

The two largest indigenous groups in South Suriname are the Trio and Wayana, who live in the far south. (p. 27)

Not true and sounds like they will try to manipulate these two to negate the rest.

In Suriname, the *granman* (chief) has supreme authority over all members of the tribe within the tribal territory. ... With this mandate, the tribal leaders are legally considered the formal representatives of their tribes; as such, they will be among those participating most directly in the REDD+ planning process. (p. 27-8)

This is not how Saramaka make decisions, nor how others make decisions, and the Gaama is king ('take me to your leader') idea was explicitly rejected by the Inter-American Court in Saramaka People which held that the Saramaka have the right to choose their own representatives in accordance with their custom and tradition. Since the lo own land, it is their authorities together with Gaama that have the right to make decisions about what happens with the land, not the Gaama alone.

Existing relevant policies and laws will be revised based on the REDD+ strategy and its options. For example, legislation and policies on mining and logging concessions are not coherent. Also, the Forest Management Act refers mainly to production forest, while there is a need for revision of the national definition of forests in order to establish a Forest Reference Level. Existing policies and legislation, such as the Mining Decree and the Forest Management Act will be assessed based on selected REDD+ strategy options to identify gaps where adjustment might be necessary. (p. 60)

No mention of lack of laws about land rights.

The Constitution of the Republic of Suriname stipulates that the social goal of the State is to create and stimulate circumstances that are necessary for the protection of nature and maintenance of ecological balance. It also states that all forests,

except private owned land, belong to the State. Forests on private land do not cover more than a total area of 50,000 ha. (p. 60, and 77)

Constitution says 'all natural resources belong to state' rather than forests and there is no need to interpret natural resources to include all aspects of forest. Irrespective, Saramaka People clear says that forests within Saramaka territory belong to the Saramaka – and there is no reason to think that the same doesn't apply to all IP and Maroon territories, in fact there is every reason to think it does apply. Also, allowing private ownership but denying IP and Maroon ownership on the basis of exclusive state ownership is discriminatory. This fundamental problem isn't addressed STILL in the RPP and is one of the main reasons to object to this process. How the State even know what forests can be included in a REDD+ scheme if it doesn't first delimit and demarcate tribal territories. Same goes for benefit sharing etc.

Note that Table 12 on p. 62 includes 25,000USD each for the years 2014 and 2015 to do an "Analysis of Land Tenure Status and Rights". What does this mean in practice and who will do it?

Any policies that would be considered for deployment within forest areas belonging to tribal communities that are subject to FPIC according to the UN-REDD/WB guidelines will be treated as such. In other words, any activity for which FPIC is required under the program will only be introduced and enforced if the local communities that would be impacted provide their FPIC. Additionally, during the design phase of the policies, the indigenous and tribal communities will be heavily involved, in order to share their knowledge and insights, as well as to determine feasibility. (p. 65).

Ok, but FPIC process needs to be adopted into law with remedies for enforcement and delimitation and demarcation need to take place in order to determine the areas to which FPIC applies as well as where FPIC applies to the development of policy and legislative measures. See p. 80-1 where they say they understand FPIC in line with UNREDD/UNDP Guidelines and have a table saying when they think FPIC is required and when not – this needs analyzing to see if you agree.

The physical and geographic make up of Surinamese society brings with it an array of complex issues related to land rights. For decades, especially after gaining independence, efforts have been made by various Governments to solve land right issues. (p. 79)

The dictionary defines 'efforts' as a "vigorous or determined attempt." I defy them to come up with anything that meets this definition.

The conference concluded with consensus on the following issues, which have been included in Presidential Decree PB 28/2000, also known as the "Buskondreman dey protocol". ... For implementation of the Presidential Decree, the Government of Suriname has initiated several activities, often with support of organizations working directly with indigenous peoples and maroons The Presidential Decree

upholds the very same principles that are taken up as safeguards in the Saramaka Judgement (sic), namely: Consultation and consensus building, The right to compensation and benefit sharing, and that any activities in those areas would only take place after a clear process has been followed after consensus has been reached. The third safeguard is also taken up in the draft environmental framework law in the form of social and environmental assessments. This law is expected to be ratified within two years. (p. 80)

This entire section – added at the last minute – is disingenuous (dishonest)!!!! The Presidential Decree has never been the basis for any government action on land rights and all the examples they cite had nothing to do with it (making map of Trio territory, in 2009-10, ministry of regional development spearheaded mapping of 90% of IP and Maroon territories (I assume they mean the ACT project), for instance). In fact, the government never mentions this decree while at the same time saying that IPs and Maroons have no rights in domestic law (I can show sections of the Saramaka judgment where they say this) - now all of a sudden it is a source of rights when it comes to REDD?! Additionally, the Decree is only valid to the extent that it doesn't conflict with higher sources of law, which it does in numerous places. Its compatibility with Saramaka is a joke and only is examined in relation to the measures required where the state seeks to RESTRICT rights - are they saying that REDD+ will be a restriction on IP and Maroon rights?! Let's not forget that Saramaka says that the Saramaka own the forests in their territory and that they have a right to control and manage their territory without outside interference through their own institutions and in accordance with their customary land tenure system. Where does it say this in any applicable Suriname law - it doesn't.

They also say that:

In 2009-2010, spearheaded by the Ministry of Regional Development, similar participatory mapping processes for indigenous peoples and maroons were completed for more than 90% of the living areas, covering more than 40% of Suriname's land area11. Today only small patches of indigenous/maroon land remain to be mapped in the coastal region. (p. 79)

The Government has completed several studies on developing a legal framework for indigenous and maroon land rights. Topics include the technical/legal aspects of demarcation, the actual collective rights framework, and the role of traditional authorities in a collective rights framework. (p. 79)

The advice of the one-year commission [Presidential Commission on Land Rights] was to amend several national laws, such as the constitution, forestry, mining and nature conservation laws, and prepare a draft framework law on the rights of Indigenous and Maroons. Before this can take effect the state has to identify and demarcate indigenous and maroons (current process). Further actions are to issue and register titles on land.

On the first, these are land use maps - some of which are very incomplete and are not accompanied by land tenure studies that would show the full nature of customary tenure systems - and do not identify boundaries that would allow for delimitation and demarcation. On the second, this is the ACT project that was rejected by the VIDS and Saramaka. It is substandard in its methodology and analysis, doesn't present any real recommendations for solutions other than saying that more study is needed (guess who wants funding for a second project) and was so bad that the Saramaka complained to the Inter-American Court about it and the IADB (who funded it) refused to fund a follow up and actually apologized to the Saramaka about how the project had been done. On the last, they have done nothing to implement its recommendations and why exactly do they have to identify and demarcate territories before adopting a law (and how is this a current process?) and how can they issue titles when there is no legal basis for doing so. Also why is the government telling the UN that it can't implement Saramaka and the Inter-American Commission that implementing Saramaka would discriminate against other Surinamese if they are in the process of doing all these things.

In short, this section is just absolute nonsense that they stuck in at the last minute in response to concerns raised by UNDP and others and is only in there in a cynical attempt to get RPP approved.

In future consultation efforts in REDD+, it is necessary to have an indicative process for respecting the rights of communities to Free and Prior Informed Consent (FPIC). FPIC is necessary for REDD+ decision making with indigenous peoples or other local communities having customary rights to the area. The process should be developed with the tribes and include the following elements 13:

- 1. Identify the indigenous peoples representatives through the recognized tribal leadership. In case the tribal leadership does not want to represent themselves, they shall appoint a organization for representation.
- 2. Identify the land use information and socio-economic information on potential positive and negative impact on the livelihood of the indigenous peoples (preferably through participatory processes). This information should be disseminated in the communities in the appropriate language.
- 3. Based on the information, communities may wish to enter in a negotiation process in which they discuss the benefit sharing, compensation, financial and legal arrangement, dispute resolution, monitoring process and redress mechanism. A draft agreement is the outcome of the negotiations, which need sufficient time to be discussed with the community.
- 4. Based on the outcomes of the negotiations, tribal structures will give consent or not for the REDD+ project with a final agreement. (p. 81-2)

This is broadly ok, except FPIC doesn't just apply to activities that have a "significant impact" on customary lands – it also applies to relevant policy etc measures – and no 2 is problematic as it is based on land use data rather than territorial boundaries and only expresses a 'preference' for doing so in a participatory way. Again, FPIC process needs to be enshrined in law.

Apart from the International Association for Impact Assessment (IAIA) Guidelines for Environmental and Social Impact Assessments (ESIA), the NIMOS guidelines have been based also on the AKWE KON guidelines Voluntary 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. The NIMOS guidelines also consider the non-carbon and non-economic values of forests. (p. 89)

Not true as far as I can tell and certainly not legally enforceable if not followed. There is also nothing useful about indigenous and tribal participation in ESIA or SESA processes that I can see.