



## Concluding observations

### The Kaliña and Lokono peoples v. Suriname

#### I. Introduction

1. The Kaliña and Lokono peoples are constituted by eight indigenous communities that have ancestrally occupied and used their lands, territories and natural resources. Despite Suriname's obligation to protect and ensure indigenous peoples' right to collective property under the American Convention – adhered to by Suriname on November 12, 1987- the State has continuously disregarded its obligations in this area.

2. In this context, which has been recognized by the Inter-American Court in the Saramaka People's judgment of November 28, 2007, the Kaliña and Lokono peoples have suffered multiple violations of their right to collective property. In addition, due to Suriname's legal framework, the Kaliña and Lokono peoples are not able to obtain legal recognition of their status as a people nor can they have access to effective remedies in order to claim their territory and corresponding rights.

3. On the basis of these considerations, the Commission's concluding observations will focus on the following aspects: i) preliminary considerations on some of the general arguments on the part of the State related to the Kaliña and Lokono peoples; ii) Suriname's failure to respect and protect the Kaliña and Lokono peoples' collective right to property through different actions and omissions; iii) the lack of judicial remedies within the domestic system to seek justice for such violations; and iv) considerations on reparations.

#### II. Preliminary considerations

4. The State of Suriname contends that the Kaliña and Lokono peoples are not a homogenous group because not all of their members have the same relationship with the land, and that some of them have been "integrated" into the non-indigenous population. In response, the Commission underlines that, as the Court itself has recognized, the protection of the rights of indigenous peoples does not rely on those same peoples remaining static and unchanging, but rather recognizes that they and their members are in processes of development and change<sup>1</sup>.

5. The IACHR recalls that the State's arguments were brought up in the Saramaka case with respect to the Maroon peoples of Suriname. In dismissing the argument in its judgment of 2007, the Court indicated that the fact that some individual members of the Saramaka people may live outside of the traditional territory and in a way that may differ from those who live within it

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<sup>1</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 164.

and in accordance with Saramaka customs, does not affect the distinctiveness of the group or its right to the communal use and enjoyment of its property<sup>2</sup>.

6. Further, the Commission considers that it is often precisely as a result of the non-recognition of collective land rights and the consequences thereof that some members of the community may seek alternative ways to earn a living that further diminish the possibility to preserve the culture and traditional practices. Therefore, the consequences of the non-recognition of their collective rights can hardly be used as a justification for that non-recognition.

7. In conclusion, from the evidence presented throughout this process, supported by the declarations of Captains Pané and Gunther at the hearing before the Court, there is no debate that the Kaliña and Lokono self-identify as indigenous peoples, that they have an ancestral relationship with their lands, territories and natural resources, and that their cultural and material survival depends on that relationship.

### **III. Suriname's failure to respect and protect the Kaliña and Lokono peoples' collective right to property**

#### **A. Lack of adoption of a legal framework that recognizes indigenous peoples as collectivities with rights, including to collective property**

8. In 2007, in its judgment on the Saramaka Case, the Court confirmed that Suriname's legal framework does not recognize indigenous peoples as juridical entities, nor does it recognize or guarantee their right to effectively own and control their traditional territories free from external interference<sup>3</sup>. These same structural deficiencies have been raised repeatedly by UN bodies, including the Committee on the Elimination of Racial Discrimination<sup>4</sup> and the former Special Rapporteur on the rights of indigenous peoples<sup>5</sup>.

9. Notwithstanding that the Inter-American Court ordered Suriname to take the measures necessary to recognize indigenous peoples as juridical entities with rights, including the right to hold collective title to their ancestral territories, the State has not adopted concrete measures to comply and the situation remains unchanged to this day.

10. The State, for its part, has maintained before the Commission and the Court that the legislative recognition of such rights is complex, a matter of sovereignty, and would effectively discriminate against the non-indigenous population by giving favorable treatment to the indigenous population.

11. As the Court has indicated, basic principles of treaty law clearly establish that the

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<sup>2</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 164.

<sup>3</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 98.

<sup>4</sup> CERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Suriname, April 28, 2004, para. 11.

<sup>5</sup> UN 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. August 18, 2011. Available in: [http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7\\_en.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7_en.pdf)

complexities or deficiencies of the internal legal system cannot be used to justify noncompliance with international obligations<sup>6</sup>. Even more fundamentally, the Commission wishes to emphasize that what is at issue in the present case is not more favorable treatment for the Kaliña and Lokono peoples, but rather the most basic recognition of their identity as a people and their right as a people to hold collective title to their traditional territory.

12. The Commission and Court have established that the recognition of collective identity and rights for indigenous peoples is necessary to ensure that they are entitled to equal protection of and before the law as collectivities<sup>7</sup>. Therefore, the IACHR considers that it is not a form of discrimination against non-indigenous individuals but a form of recognition and protection for the rights of a people with a distinct culture and distinct needs.

13. In order to support this argument, the Commission wishes to recall the considerations of the Court in the Saramaka case regarding the dismissal of this allegation:

(...) the State's argument that it would be discriminatory to pass legislation that recognizes communal forms of land ownership is also without merit. It is a well established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. Legislation that recognizes said differences is therefore not necessarily discriminatory. 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<sup>8</sup>.

14. Given the foregoing considerations, the Commission concludes that there is no real controversy in this case regarding the continued violation by the State of Suriname of the rights to juridical personality and collective property of the Kaliña and Lokono peoples. In fact, the IACHR considers that it is this persistent failure to provide legal recognition for indigenous peoples and their collective rights that is the root of the human rights violations presented in this case, as explained as follows.

**B. Lack of consultation on the granting of mining concessions within the Kaliña and Lokono peoples' territory**

15. The Court's jurisprudence on indigenous peoples' rights has established that, if the State decides to consider granting a mining concession in part of an indigenous territory, it has the obligation to i) carry out prior consultations about the project with the affected communities, in a free and informed manner, aimed at obtaining their consent; ii) perform a prior environmental and social impact assessment; and iii) guarantee that the communities involved will receive a

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<sup>6</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 102.

<sup>7</sup> I/A Court H.R., *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 231; and IACHR, Case presented to the I/A Court H.R., *Yakye Axa Indigenous Community v. Paraguay*, March 17, 2003.

<sup>8</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 103.

reasonable benefit from any plan within their territory<sup>9</sup>.

16. In the instant case, focusing on the period under the Court's temporal jurisdiction, as from 1987, the State itself has recognized that it did not consult the affected communities, either when the mining concessions were being planned in the 1990's, or when the mining activities began in 1997.

17. In its written submission as well as the public hearing, the State argued that such consultations did not take place for three reasons: i) it followed the terms established in the Mining Decree of 1986; ii) the area where the mining activities took place was far away from the zone where the affected indigenous peoples have their homes; and iii) the mining activities have not generated sufficiently serious damage to the territory or environment.

18. Regarding Suriname's first argument, the Court has already had the opportunity to analyze the 1986 Mining Decree in the Saramaka Case. The Court concluded that the Decree does not include any safeguards for indigenous peoples, including the right to prior consultation<sup>10</sup>. On the contrary, the Mining Decree only recognizes a right to compensation for claimants who have title to the property<sup>11</sup>. The Commission considers that given the structural deficiencies in the internal legal system, which does not recognize collective title, the Kaliña and Lokono peoples have no possibility of obtaining title to their lands.

19. In relation to the State's second argument concerning the location of the concessions within their territories, and as is well established in international human rights law, the Commission has consistently indicated that the occupation of a territory by an indigenous people is not restricted to the nucleus of houses where its members live<sup>12</sup>. On the contrary, the relationship between indigenous peoples and their lands goes beyond the mere physical occupation in any given moment, and includes uses for agriculture, hunting, fishing, gathering, transportation, cultural activities, religious traditions and sacred places, among others<sup>13</sup>.

20. With respect to Suriname's third argument related to the consequences of the concessions, strong evidence before the Court -including Captain Watamaleo's affidavit, and Captain Gunther's testimony- clearly demonstrate the significant negative impact of mining activities in the traditional territory of the Kaliña and Lokono peoples, in particular, for the flora and fauna of the region, including contamination of natural resources and the reduction of game to hunt. Furthermore, it has caused deforestation and destruction of the habitat, increased erosion of soil and turbidity of water, water pollution, threats to the aquatic biodiversity and acid drainage in coastal areas.

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<sup>9</sup> I/A Court H.R., *Case of the Saramaka People. v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 129.

<sup>10</sup> I/A Court H.R., *Case of the Saramaka People. v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 111.

<sup>11</sup> I/A Court H.R., *Case of the Saramaka People. v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 111.

<sup>12</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources*. December 30, 2009, para. 40.

<sup>13</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources*. December 30, 2009, para. 40.

21. In sum, the Commission concludes that the planning and carrying out of mining activities within the Kaliña and Lokono peoples' territory, without a free, prior and informed consultation aimed at obtaining their consent, violated their right to collective property, and caused a negative impact on the lands and natural resources on which the communities depend. In addition, the State did not comply with the other two safeguards: i) the carrying out of a prior environmental and social impact assessment; and ii) the guarantee that the communities involved would receive a reasonable benefit from any such plan within their territory.

**C. Granting of individual property titles and leasing contracts in part of the Kaliña and Lokono peoples' territory**

22. The consistent case-law of the Inter-American Court related to indigenous peoples' rights has established that States have the obligation to guarantee their right to effectively control their lands, territory and natural habitat free of interference from third parties<sup>14</sup>. Furthermore, the Commission has consistently maintained that indigenous peoples "have a right to have their territory reserved for them, and to be free from settlements or presence of third parties or non-indigenous colonizers within their territories"<sup>15</sup>.

23. In the instant case the State has failed to comply with these fundamental safeguards. The evidence presented before the Court shows that, from 1975 until at least 2013, the State has issued various titles of ownership, long term leases and lease holds to non-indigenous persons in parts of the victims' territory, especially "holiday citizens" who have used their parcels to build vacation homes. Captain Gunther mentioned during the hearing that the State granted a title for the construction of a casino in part of the victims' claimed territory, which is currently being built. In addition, as Captain Watamaleo's affidavit indicates, the State has issued new titles in 2006 for the construction of a hotel and even more recently, in 2013, to other private parties. As he indicated, "we feel that at any time people can show up saying that they have a title and then take our lands away".

24. The Commission considers that despite its full awareness of this situation, and several requests by the communities, the State of Suriname has refused to provide them with copies of the property titles issued to non-indigenous persons. The IACHR highlights that this situation adds a further element of uncertainty as to the full extent of the problem. Therefore, the Commission reiterates, as indicated in its oral observations during the hearing, that it would be important for the Court to request that the State provide this information so as to be able to fully take this dimension into account in its findings and eventual reparations.

25. The Commission observes that State also justified the issuance of individual titles under a so called "restriction test," that is, i) that the land titles were issued by law; ii) that they are proportional, since these are only "holiday citizens"; and iii) that they are necessary to achieve the goal of protecting private and individual property rights.

26. Regarding this argument, the Commission considers that in light of the State's failure to even recognize the right of indigenous peoples to recognition under the law, and to hold

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<sup>14</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awás Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, paras. 148-153; and *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 146.

<sup>15</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources*. December 30, 2009, para. 114.

collective title, these kinds of arguments based on the balancing of competing rights are misplaced and inadmissible. Moreover, as expert Gilbert indicated at the hearing, when balancing indigenous and nonindigenous rights concerning property, due consideration must be given to the fact that indigenous peoples' material and cultural subsistence depends on their relationship with their lands, territories and natural resources, in contrast to other kinds of interests in individual property that are susceptible to reparation through compensation.

27. Furthermore, the Commission notes that the State has based the issuance of individual titles on the terms of the Constitution of 1987 and the L-1 Decrees of 1982. The IACHR recalls that the Court analyzed those norms in the *Saramaka* case and considered that Suriname's legal framework merely grants the members of indigenous peoples a privilege to use land but not the right to effectively control their territory free from outside interference<sup>16</sup>.

28. In addition to the incompatibility of this legal framework with the American Convention, the Commission has also emphasized that in the face of the incursion of third parties in traditional indigenous territories, States should carry out the necessary actions to relocate those non-indigenous inhabitants who have settled there<sup>17</sup>. No such initiatives have been undertaken in the present situation. Not only do the rights of the Kaliña and Lokono peoples remain unprotected, but some of the non-indigenous titleholders have obtained judicial decisions in favor of their property rights to the exclusion of those of the Kaliña and Lokono.

29. For the reasons mentioned above, the Commission concludes that the State of Suriname violated the Kaliña and Lokono peoples' right to collective property under the American Convention when it issued individual property titles in different parts of their territory after it ratified that treaty in 1987. Regarding the titles granted before that date, the Commission considers that the State's failure to revoke those or take other measures to protect the Kaliña and Lokono lands gives rise to an ongoing violation, and an ongoing obligation to adopt the measures necessary to restore those lands to the Kaliña and Lokono.

#### **D. Establishment and maintenance of nature reserves without consultation**

30. As both parties indicate, three nature reserves have been established in different parts of the Kaliña and Lokono territory: i) Wia Wia in 1966; ii) Galibi in 1969; and iii) Wane Kreek in 1986. The first two were created by the colonial administration and the last after Surinamese independence.

31. During the process before the Commission, the State recognized that the reserves were created with no prior consultation with the Kaliña and Lokono peoples. Regarding Suriname's argument that there was a consultation with the local communities after the Galibi reserve was created, the Commission concluded in its merits report that the consultation commission created did not meet the minimum standards required for a valid consultation.

32. In addition, the IACHR observes that during the hearing before the Court, the State of Suriname indicated that prior to the creation of the Wane Kreek Reserve, the communities were consulted through an organization named KANO that allegedly represented them. The Commission

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<sup>16</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, paras. 107-110.

<sup>17</sup> IACHR, *Indigenous and tribal peoples' rights over their ancestral lands and natural resources*. December 30, 2009, para. 114.

considers that the State's argument is unsustainable for two reasons. First, the State has not presented any evidence that said organization represented the Kaliña and Lokono peoples in any matter. Second, the IACHR notes that, according to the representatives and the testimony of Captain Gunther, this organization did not represent the interests of the Kaliña and Lokono peoples. As they explained, the Kaliña and Lokono peoples have their own ancestral practices for taking decisions, which are established by the "captain" or "chief" of each village. Given these considerations, the Commission concludes that the State of Suriname did not carry out a prior consultation process with the communities before the creation of the reserves.

33. Concerning Suriname's duties to the Kaliña and Lokono peoples, the Commission considers that, while the creation of the three reserves predated Suriname's acceptance of the Court's jurisdiction, once it adhered to the Convention in 1987, it assumed obligations under Article 21 concerning respect for and protection of their right to property. Those obligations have specific characteristics in the case of indigenous peoples, in light of their distinct relationship to their ancestral lands.

34. Given these obligations, the IACHR considers that the State failed to respect and protect the Kaliña and Lokono peoples' collective property due to lack of consultation with the communities, as from 1987 to date, regarding the maintenance of the nature reserves within their territory. The Commission highlights that this situation gives rise to an ongoing violation and ongoing obligation of reparation including restoring lands, and/or establishing mechanisms of participation and prior consultation regarding the reserves, their continuing existence, administration and other relevant issues.

35. Furthermore, the Commission considers that the State has not only failed to adopt such measures, but has instead taken measures to reinforce the limitations on the access of the affected communities to their territories and natural resources within the reserves. The specific impacts of the reserves are reflected in the fact that up to now the affected communities are not allowed to enter the three nature reserves, and are thus unable to pursue their traditional hunting and fishing activities there, as well as other cultural and religious traditions.

36. Regarding the Galibi Reserve, in 2005 the State built a guard post inside this reserve, staffed by armed forest guards, who on at least one occasion fired a shot in the air in the direction of indigenous persons who were close to the reserve. Also, as indicated earlier, mining activities were carried out in the Wane Kreek Reserve from 1997 until 2008; and in addition, as indicated by Captains Pané, Gunther and Watamaleo, the current logging and other mining activities have restricted their access to this area and left it severely damaged.

37. Therefore, and taking into account what the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, indicated at the hearing, the lack of proper consultation with the Kaliña and Lokono peoples regarding the continuing existence of the nature reserves in parts of their territories, combined with the actions adopted by the State to restrict the use and enjoyment of their lands and natural resources, as well as their subsistence activities such as hunting and fishing, is a violation of the right to collective property. This aspect has been fully developed by the African Commission of Human and People's Rights in the case of *Endorois community v. Kenya* of 2010, which shares certain factual similarities with the present case<sup>18</sup>.

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<sup>18</sup> African Commission on Human and People's Rights. *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*. Application No. 276/03. Available in: <http://caselaw.ihrrda.org/doc/276.03/view/>

38. The Commission notes that the State defended the ongoing restrictions on the Kaliña and Lokono peoples' right to property as necessary to maintain the three nature reserves given that: i) it considers that the presence of indigenous peoples is harmful to the goal of protecting the environment; and ii) that there are no other less restrictive means to ensure the protection of the environment.

39. Regarding Suriname's position, taking into account principles of environmental law and international human rights law -and as developed by experts Tauli-Corpuz and Gilbert in their declarations at the hearing- there is no rational connection between the protection of the environment and restrictions on the use and enjoyment of indigenous peoples' use of their territories and resources. On the contrary, as the UN Special Rapporteur on the rights of indigenous peoples Victoria Tauli-Corpuz stated, the most recent environmental evidence clearly shows that indigenous peoples contribute to the protection of the environment.

40. Additionally, the States have the obligation to allow indigenous peoples to control and enjoy their lands as owners, which is the single most important incentive to sustained community-based conservation. Once that is established, a methodology can be considered in consultation with indigenous peoples for the establishment of nature reserves with a co-management model.

41. In conclusion, the Commission considers that there is no basis for a State to broadly claim that environmental protection requires forced displacement of indigenous peoples or limitations on their access to or enjoyment of their territories. On the contrary, the State has the duty to ensure that indigenous peoples are full participants in the effort to protect natural resources. Because of the establishment and maintenance of three nature reserves in parts of the Kaliña and Lokono peoples traditional territories, as well as the restrictions imposed on their access to and enjoyment of their resources within those reserves, the Commission concludes that the State violated the Kaliña and Lokono peoples' right to collective property.

#### **IV. Access to justice, a fundamental protection, is absent in the internal system**

42. The Commission recalls that, as the Court has indicated with regard to indigenous peoples, it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs.<sup>19</sup> The Court has also held that, in order to guarantee members of indigenous peoples their right to communal property, States must establish an effective means for them to claim traditional lands with judicial protection.<sup>20</sup>

43. In the instant case, the State has not complied with those obligations. As recognized by both parties during the hearing, Suriname's domestic law does not provide any remedy that could allow indigenous peoples, including the Kaliña and Lokono, access to justice to defend their right to their collective territory. In explaining the functioning of domestic remedies, the State submitted to the Court the same normative framework it presented in the Saramaka case, namely

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<sup>19</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, para. 178 (citing *Case of Saramaka Case of the Indigenous Community Yakye Axa*, para. 63.).

<sup>20</sup> I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 113.



the Civil Code, the Mining Decree of 1986 and the Forest Management Act of 1992.

44. The Court rejected those norms as being inaccessible and ineffective: i) in the case of the Civil Code, because the remedy provided is available only for individuals claiming a violation of their individual right to private property; ii) in the case of the Mining Decree of 1986, because it only provides for compensation for individual claimants who have a property title; and iii) in the case of the Forest Management Act of 1992, because an appeal to the President does not satisfy the requirement of access to a prompt effective judicial remedy under the terms of Article 25 of the Convention<sup>21</sup>.

45. Therefore, the Commission concludes that Suriname has violated the right to judicial protection of the Kaliña and Lokono peoples, given that the domestic provisions do not provide adequate and effective remedies to recognize their right to collective property, or to protect them against acts and omissions that violate their right to property.

#### V. Considerations on measures of reparation

46. The Commission considers that it has been demonstrated that the physical and cultural survival of the Kaliña and Lokono peoples depends on the free and pacific use and occupation of their lands, territories and resources. However, as recognized by the State, Suriname's domestic system does not recognize the legal personality of indigenous peoples or their collective rights, generating a range of violations and grave consequences for the continuity of their way of life. The IACHR considers that despite the fact the international obligations violated by the State are interconnected, each has its own legal content and consequences.

47. Regarding the legal framework on indigenous rights in Suriname, the IACHR considers that it is indispensable that the State be required to adopt the measures of law, policy and practice necessary to recognize the juridical personality of indigenous peoples, their right to collective property, their right to be effectively consulted with regard to development, investment or conservation projects, and their right to judicial protection in order to defend their rights vis-à-vis their traditional territories. The Commission considers that this must include reviewing the existing framework to amend provisions that are inconsistent with those rights.

48. Regarding the Kaliña and Lokono peoples' legal personality and their collective title, the Commission considers that it would be of fundamental importance for the Court to order the State to grant legal recognition to the Kaliña and Lokono indigenous peoples; and grant the Kaliña and Lokono collective title to their territory, with the corresponding measures of delimitation and demarcation.

49. In order to achieve the second obligation, the Commission considers that it would be crucial for the Court to require the State to i) take the measures necessary to restore the portions of their ancestral lands currently in the possession of non-indigenous third parties to the Kaliña and Lokono; ii) ensure that the three nature reserves will not be an obstacle for the communities to use and enjoy their traditional lands; and iii) initiate a free and informed process of consultation with the Kaliña and Lokono peoples to discuss either the lifting of the status as reserves or the maintenance of the reserves under a model such as co-management that incorporates the full participation of the communities.

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<sup>21</sup> I/A Court H.R., *Case of the Saramaka People. v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, paras. 107-110.

50. Regarding the mining concession, the Commission considers that it would be important for the Court to order the State to i) abstain from acts which might lead Suriname or private third parties to affect the enjoyment of the Kaliña and Lokono peoples' territory such as concessions, development or investment projects, without following the applicable international standards; as well as indiscriminate logging; and ii) adopt measures to rehabilitate the area where the mining activities in the Wane Creek reserve took place, in consultation with the Kaliña and Lokono peoples, such as an independent study of the actual impact on the soil, forests and rivers and a remediation plan.

51. The Commission recalls that eight years ago the Inter-American Court issued a judgment in the Saramaka case in which it found the State responsible for a legal framework that does not recognize indigenous or tribal rights, among other violations. Notwithstanding the orders of reparation established by this Tribunal, to date the State has yet to act to comply with those obligations.

52. In light of the failure to comply with the Saramaka judgment, the ongoing structural denial of protection for indigenous peoples in Suriname, and the gravity of the consequences for the Kaliña and Lokono peoples, the Commission respectfully requests that the Court, taking into account its judgment on the Xákmok Kásek case as a precedent<sup>22</sup>, consider requiring said measures within a set timeframes, with corresponding measures of compensation in the event that the time frames are not met.

Washington D.C., March 5, 2015.

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<sup>22</sup> I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community. v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214.