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REPORT No. 79/13
CASE 12.639
MERITS
THE KALIÑA AND LOKONO PEOPLES
SURINAME

Approved by the Commission at its session N° 1958
held on July 18, 2013

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I. SUMMARY

1. This report concerns the merits of a petition received by the Inter-American Commission on Human Rights ("IACHR" or "Inter-American Commission") on February 16, 2007, filed on behalf of the Kaliña and Lokono Indigenous Peoples of the Lower Marowijne River (hereinafter referred to as "the alleged victims" or "the Kaliña and Lokono Peoples"[1] or "the Lower Marowijne Peoples") against the Republic of Suriname ("Suriname" or "the State"). The petition was jointly filed by the following petitioners: a) The village leaders of each of the eight Kaliña and Lokono villages of the Lower Marowijne River: Richard Pané of the village of Christiaankondre, Ramses Kajoeramari of the village of Langamankondre, Henry Zaalman of the village of Wan Shi Sha, Romeo Pierre of the village of Pierrekondre, Harold Galgren of the village of Alfonsdorp, Leo Maipio of the village of Bigiston, Jona Gunther of the village of Erowarte, and Frans Pierre of the village of Tapuku; b) The *Vererniging van Inheese Dorpshoofden in Suriname* (Association of Indigenous Village Leaders in Suriname), an association of indigenous leaders from the 46 indigenous villages in Suriname; and c) The *Commissie Landrechten Inheemsen Beneden-Marowijne* (Lower Marowijne Indigenous Land Rights Commission). Petitioners' counsels are Fergus MacKay, David Padilla (co-counsel) and Jacqueline Jubithana (co-counsel).

2. The petition alleges that the State of Suriname has violated the rights protected in Articles 3 (right to judicial personality), 21 (right to property) and 25 (right to judicial protection) of the American Convention on Human Rights ("American Convention") in connection with Articles 1 and 2 thereof to the prejudice of the Kaliña and Lokono Peoples. The petitioners claim that the alleged victims have inhabited their territories in the lower Marowijne River, in northeastern Suriname, for thousands of years, and that they have ancestral rights over their lands, territories and natural resources under international law. They argue that Suriname has violated their protected rights primarily by (i) failing to recognize their judicial personality in its domestic laws; (ii) issuing individual land titles to non-indigenous persons over their traditional lands; (iii) granting mining concessions and permits in the Lower Marowijne territories; (iv) establishing three Nature Reserves in their territories; and (v) failing to provide adequate and effective judicial protection to seek redress for the violations of their human rights.

[1] In some of the documents filed in this case, the Kaliña people are occasionally referred to as Carib, and the Lokono as Arawak. *See, e.g.*, Petition Submitted to the Inter-American Commission on Human Rights by Eight Indigenous Village leaders on behalf of the Kalliña and Lokono Indigenous Peoples of the Lower Marowijne River and the Members thereof, the Lower Marowijne Indigenous Land Rights Commission, and the Association of Indigenous village Leaders in Suriname (Suriname), received by the IACHR on February 16, 2007 (hereinafter "Petition"), Annex E, The historical use and occupation by Indigenous Peoples and communities of the Lower Marowijne River region of Suriname, p. 1; Submission of Suriname, March 22, 2008, p. 2, n. 2. For ease of reference and for reasons of self-identification, this Report refers to them as Kaliña and Lokono.

3. Suriname responds that it has not violated the alleged victims' human rights and that the petitioners are not entitled to any of the relief they seek. It argues that the Lower Marowijne Peoples are not a homogenous group of people, that their relationship with the lands they claim to use is highly varied, and that they do not constitute recognized indigenous groups that can exert rights over lands and territories. The State adds that the granting of private titles and mining concession does not interfere with any indigenous rights the Kaliña and Lokono Peoples might have, and that these are consistent with Inter-American jurisprudence regarding permissible interferences with the right to property. Suriname also claims that it cannot be held liable for alleged violations of the American Convention for acts that pre-dated its ratification of that instrument in 1987, such as establishment of the Nature Reserves, one of which dates back to 1966. It also argues that the establishment of the Nature Reserves is also consistent with inter-American case law regarding permissible interferences with the rights to property protected by Article 21.

4. In Report N° 76/07, approved on October 15, 2007 during its 130 Period of Sessions, the IACHR declared the petition admissible with respect to the alleged violations of Articles 3, 21 and 25 of the American Convention (in connection with Articles 1 and 2 thereof), and proceeded to examine the merits of the petition.

5. In this Report, after analyzing the evidence and arguments submitted by the petitioners and the State, the Inter-American Commission finds that Suriname has violated Articles 3, 21, and 25, in connection with Articles 1 and 2, of the American Convention, to the detriment of the Kaliña and Lokono Peoples.

II. PROCEEDINGS BEFORE THE IACHR

6. As mentioned above, in Admissibility Report No. 76/07 the IACHR found that the petition in this case was admissible, as it alleged facts that could constitute violations of rights protected by the American Convention. Subsequent to the admissibility report, the petitioners submitted information to the IACHR on January 11, 2008, May 28, 2008, October 29, 2008, December 22, 2010, March 27, 2012 and February 1, 2013. Suriname also provided information to the IACHR on March 22, 2008 and September 12, 2008, May 16, 2011 and March 27, 2012. These Communications were duly transmitted to the other party.

7. On March 27, 2012, during its 144 Period of Sessions, the IACHR held a hearing regarding this case. The Inter-American Commission received information from petitioner Richard Pané, petitioners' counsel Fergus MacKay, and Kenneth J. Amoksi, representative of the State of Suriname. The petitioners also presented and provided copies of maps of the Lower Marowijne River area.

III. POSITION OF THE PARTIES

A. Position of the petitioners

8. The petitioners allege human rights violations associated with the State's failure to recognize the property rights of the Kaliña and Lokono indigenous peoples over their ancestral territories along and near the Lower Marowijne River. They assert that the Kaliña and Lokono Peoples are the indigenous inhabitants of the Lower Marowijne River area, and that they have ancestral rights over their lands, territories and resources recognized under international law and the standards set by the Inter-American Court of Human Rights ("Inter-American Court").

9. The petitioners submit that the State is responsible for violations of Articles 3, 21 and 25 of the American Convention, in connection with its Articles 1 and 2, to the detriment of the Lower Marowijne Peoples. In addition to their lack of recognition under Surinamese law, petitioners principally allege that under Surinamese law the State owns and controls indigenous lands and has refused to recognize indigenous land rights. The petition contends that the State has encroached upon the traditional territory of the Kaliña and Lokono Peoples by establishing three Nature Reserves, issuing land titles to non-indigenous persons in Kaliña and Lokono ancestral lands, and by authorizing mining activities in their territories.

10. The petitioners argue that the State has violated Article 3 of the American Convention by failing to recognize the Kaliña and Lokono Peoples and their communities as legal persons under Surinamese law. Specifically, Surinamese law does not recognize indigenous peoples and their communities as legal persons for purposes of applying for and holding land titles.

11. Additionally, the petitioners argue that Suriname has violated the Kaliña and Lokono Peoples' right to property protected by Article 21 of the American Convention. They allege that the Kaliña and Lokono have traditionally used and occupied their lands, territories, and natural resources according to their uses and customs. They contend that these traditional methods of occupation and use are a property regime protected by Article 21 of the American Convention, and that Article 21, read in conjunction with Articles 1 and 2 thereof, requires that Suriname adopt special measures to guarantee the individual and collective rights of the Lower Marowijne indigenous peoples to own and control of their traditional lands, territories, and resources. The petitioners maintain that Suriname's laws do not recognize Kaliña and Lokono property rights and that there is no legislative, administrative or other mechanism that serves to secure their collective rights in law or practice. Therefore, the petitioners argue that the State has failed to recognize, secure, and protect the Kaliña and Lokono Peoples' property rights in law and practice and thus violated Article 21 in conjunction with Articles 1 and 2 of the American Convention.

12. The petitioners submit that the human right to property under Article 21 encompasses the recognition of the right of indigenous peoples to self-determination, and that the indigenous peoples' right to property includes recognition of their right to freely dispose of their natural resources. They also state that, under international law, permissible restrictions on the property rights of indigenous peoples are very limited and under no circumstances should be imposed unilaterally without provisions for consultation and compensation. The petitioners argue against non-consensual subordination of indigenous peoples' property rights where doing so effectively extinguishes property rights or infringes upon the indigenous peoples' right to occupy, use and enjoy their lands and territories, and to freely dispose of their natural wealth and resources.

13. In addition, the petitioners maintain that Suriname's Constitution provides that natural resources are property of the State and does not recognize the rights of indigenous peoples or their communities over lands, territories, or resources. With respect to domestic law, petitioners allege that the primary legislation regarding State land is the L-Decrees of 1981-1982 from the military era. These decrees provide that, in allocating State-owned land, the rights of indigenous peoples shall be respected, provided this is not contrary to the general interest. The petitioners claim that the decrees distinguish the indigenous peoples' *de facto* rights from others' legal rights based on formal titles issued by the State. They take the position that any restriction on the Kaliña and Lokono Peoples is by definition a violation of Article 21, which requires that property rights be recognized in the law, which is not the case in Suriname.

14. Moreover, the petitioners allege that Suriname has violated the collective property rights of the Kaliña and Lokono Peoples by issuing titles to third parties, permitting mining operations, and establishing three Nature Reserves (Wia Wia, Galibi, and Wane Kreek[2]) in the traditional territory of the Kaliña and Lokono. The petitioners allege that Kaliña and Lokono property has been expropriated and the indigenous rights thereto extinguished under domestic laws without consultation, consent, due process or compensation. The petitioners argue that Suriname has systematically violated the legal requirement that indigenous peoples' consent be obtained in relation to activities that may affect their rights to their lands, territories, and resources. They add that the lack of recognition of their rights in the law and the authorization of these activities has affected their ability to exercise their traditional lifestyle, and many of the younger members of their communities are losing their traditions.

15. The petitioners argue that, although some of these acts and omissions took place before Suriname acceded to the American Convention in 1987, it can be held liable for the continuous effects of the establishment of the Nature Reserves, the issuance of land titles, and the granting of mining concession and authorization of mining activities. Additionally, the petitioners claim that an important part of the mining activities were authorized years after Suriname's accession to the American Convention, and that some land titles were also issued after accession.

16. The petitioners further claim that the State has violated Article 25 of the American Convention by failing to provide adequate and effective judicial remedies for violations of human rights. They assert that the IACHR and the Inter-American Court have confirmed that judicial protection and domestic remedies are unavailable in Suriname for the protection of indigenous and tribal peoples' human rights.

17. The petitioners lastly claim that the State is responsible for the violation of human rights protected under Articles 1 and 2 of the American Convention, as a result of its failure to give domestic legal effect to the Kaliña and Lokono Peoples' property rights. Regarding Article 1, the petitioners argue the State has an affirmative duty to remove impediments to the enjoyment of rights protected by the American Convention. The petitioners assert that Suriname has failed to comply with these obligations with regard to the rights of the Lower Marowijne Peoples, since Surinamese legislation pertaining to land and natural resource rights not only fails to recognize and give effect to the victims' rights, but it also places discriminatory conditions and limitations on these rights that negate their exercise and privilege the interests of the State and non-indigenous persons.

18. As for Article 2, the petitioners contend that the American Convention imposes a specific and affirmative duty on States to adopt or amend domestic legislation and other measures to give full effect to the rights recognized in the American Convention. They claim that Suriname has failed to adopt any legislative measures securing indigenous peoples' property and other rights since it acceded to the American Convention. The petitioners additionally contend that the State has similarly failed to amend existing legislation that conflicts with and negates the Kaliña and Lokono Peoples' rights. As a result, the petitioners allege that Suriname is responsible for the violation of both Articles 1 and 2 of the American Convention in relation to the Kaliña and Lokono Peoples' rights to own, use and enjoy their traditional lands, territories and natural resources, as well as their right to cultural integrity, juridical personality, respect for their members' moral and mental integrity, and access to adequate and effective judicial remedies to enforce their rights.

[2] Also spelled "Creek."

19. Subsequent to the report on admissibility, the petitioners have alleged that the State's failure to provide details regarding the precise dates when titles were issued to non-indigenous persons also violates Article 13 of the American Convention, which protects the right to freedom of thought and expression.

B. Position of the State

20. Suriname acknowledges the judgment of the Inter-American Court in the *Case of the Saramaka People v. Suriname*, but argues that pending this process of recognition, restrictions of the property rights of indigenous peoples do not constitute *per se* violations of the indigenous peoples' rights under other articles of the American Convention. Such restrictions, Suriname contends, may be permissible if done in accordance with the framework laid out in Inter-American jurisprudence.

21. As a preliminary matter, Suriname argues that most of the acts the alleged victims complain of took place before November 12, 1987, when Suriname ratified the American Convention, so it cannot be liable for alleged violations derived from those acts. It argues that the Wia Wia, Galibi, and Wane Kreek Nature Reserves were all established before it ratified the American Convention, and that the procedural requirement of consultation with indigenous peoples cannot be applied retroactively. Suriname similarly submits that the individual titles and mining concessions were granted before its ratification of the American Convention, and that this instrument cannot be applied retroactively either with respect to these acts. Suriname recognizes the existence of the doctrine of "continuous effects," but it argues that whether the Kaliña and Lokono Peoples were actually consulted when the Nature Reserves were established, or when the individual titles and mining concessions were issued, is not legally relevant to determine alleged violations of the American Convention, particularly Article 21. Rather, it claims that the analysis should be whether any of the three challenged actions (i.e., issuance of individual titles, granting of mining concessions, and creation of Nature Reserves) has continuous effects on the petitioners that may amount a violation of the Convention.

22. Suriname then adds that there are no continuous effects with respect to the existence of the Nature Reserves, claiming that there is no *de jure* expropriation because they were established pursuant to the 1954 Nature Protection Act, and there is no *de facto* interference because the State's stewardship of the Reserves respects the rights of the Kaliña and Lokono in accordance with their customs and traditions. Similarly, Suriname maintains that the individual titles issued to non-resident holders of vacation homes do not impair the traditional use of the land and its resources by the alleged victims. As for the mining activities, the State denies that they have any detrimental effect on the petitioners, and to the extent they have any effect, it is minimal and does not rise to the level of a violation of the American Convention.

23. With respect to recognition of the victim's property rights, Suriname takes the position that the property rights of indigenous peoples exist independently of their recognition by the State, and that therefore certain restrictions on that right may be permissible pending formal recognition of the right under domestic law. The State considers that, pending this recognition, it can be held responsible for violations of Articles 1 and 2 of the American Convention, but that this does not necessarily mean it is also responsible for violating Article 21 thereof.

24. The State argues that the petitioners' claims related to Article 21 are unsubstantiated based upon four main grounds. First, the State argues that the Kaliña and Lokono Peoples are not a homogenous group and that their relationships with the territory are not identical among the varying

groups inhabiting the area. Secondly, the State argues that Suriname's actions of establishing Nature Reserves and issuing concessions for mining within the traditional Kaliña and Lokono territory are permissible restrictions on the alleged property rights of the Lower Marowijne Peoples. Third, the State argues that the granting of private title has not interfered with the rights of indigenous people to the land or their access to it. Lastly, Suriname argues that the petitioners have consented to the State actions in the area and have substantially benefitted from the economic development resulting from such actions.

25. The State first argues that the indigenous "groups" of the Lower Marowijne River area are not a homogenous group of people, given that the nature, scope, and intensity of their relationship with the claimed land is highly varied. It claims that the alleged victims do not live in the area, do not cultivate it, and that their economic, social and cultural activities are not distinguishable from those of other non-indigenous people living in those villages and in the area near the town of Albina. The State claims that the inhabitants of certain villages do not have a prominent and unique relationship with nature and only treat it as their hunting and fishing grounds.

26. Second, the State argues that its actions within the asserted traditional territory of the Lower Marowijne indigenous people are permissible restrictions upon any alleged property rights of the indigenous peoples in accordance with Article 21 of the American Convention. The State contends that the questions before the Inter-American Commission should be whether the grant of individual titles to non-indigenous persons, the establishment of the Nature Reserves, and the issuance of a mining concession in the Wane Kreek area are permissible restrictions on the alleged property rights of the Lower Marowijne indigenous peoples.

27. The State argues that the establishment and preservation of the three Nature Reserves in the Lower Marowijne area is consistent with what it calls the Inter-American Court's "four way test" for permissible interferences with indigenous land rights. As described by Suriname, this four-way test provides that a State may interfere with Article 21 property rights if the restrictions are: i) previously established by law; ii) necessary; iii) proportional, and iv) with the aim of achieving a legitimate objective in a democratic society. In the present case, Suriname claims that the Reserves were created pursuant to the 1954 Nature Protection Act, thereby complying with the first element of the test. Secondly, it maintains that these Reserves are necessary because they are geared toward satisfying a public interest of protecting certain flora and fauna in the region. Suriname claims that these measures are proportional because their establishment has no impact on the traditional way of life of the alleged victims, and there are no restrictions for the local indigenous people to practice their traditional rights in the Reserves. Lastly, Suriname argues that the Nature Reserves meet the fourth element of the four-way test because the alleged environmental protection interests are important and prevail over the necessity of full enjoyment of the restricted alleged property rights of the Kaliña and Lokono.

28. Suriname adds that the establishment of the Nature Reserves should not lead to the ordering of any reparations even if, *arguendo*, their establishment amounted to a dispossession in the terms of Article 21(2) of the Convention. According to the State, the conservatory objective of the Reserves is itself a justification not to reverse their establishment, and they comply with the four-way test for interfering with Article 21 property rights, as discussed above.

29. Third, the State claims that the issuance of individual land titles to non-indigenous persons does not interfere with the traditional activities of the Kaliña and Lokono Peoples, and so it does not amount to a violation of Article 21. Suriname claims that during the armed conflict in the 1980s,

many of the non-indigenous inhabitants of the Kaliña and Lokono villages had to abandon their homes. According to the State, this was abused by the Lower Marowijne indigenous peoples, who allegedly occupied vacant houses of non-indigenous people in the parceled out areas and prevented the title holders from returning to them. The State adds that the alleged victims invoked an exclusive traditional relationship with the land, which did not exist, and their own occupancy of these lands, to justify these acts.

30. In addition, the State submits that the petitioners have consented to the State actions in the area and have substantially benefitted from the economic development resulting from such actions. According to Suriname, the Kaliña and Lokono Peoples did not inhabit the area where the titles were granted for many years before the granting of the titles, and the issuance of individual land titles to non-indigenous people has not interfered with their traditional activities. Suriname claims that the non-indigenous title-holders who come as holiday citizens to the Lower Marowijne area have been welcome by the inhabitants of the community, as their presence creates a source of income for many local people. Suriname also argues that the non-indigenous title-holders should have their land respected because their titles were issued based on pre-existing legislation and in good faith, and these title-holders are innocent with respect to any claim by the petitioners. The State thus claims that the alleged victims are not entitled to any compensation or reparation for the granting of these titles.

31. Similarly, Suriname argues the mining concessions complained of only have marginal, trivial and *de minimis* effects on the alleged victims. The State claims that the mining area is relatively small and the scale of the activities so limited that there is no question of a substantial effect to the alleged victims' exercise of their rights and traditional activities. The State claims that no mining concession has been granted in some of the villages. The effects of the limited mining activities on the lifestyle of the Kaliña and Lokono Peoples, according to the State, are trivial and have been exaggerated by the petitioners to give apparent legitimacy to their claims, but there is only small-scale interference that does not rise to the level of a Convention violation. Suriname adds that any damage the petitioners may have suffered as a result of the mining concessions and mining activities in the area have been more than compensated by the benefits petitioners have received from the mining activities, such as the opportunities to use the haul road for their logging activities and to transport timber. Accordingly, Suriname maintains that there is no justification for any compensation, monetary or otherwise, based on the mining concessions and activities.

32. The State also argues that it has not violated Article 25 of the American Convention. Suriname cites Article 1386 of the Suriname Civil Code, which according to the State enables a citizen to apply to the independent judiciary in case of an alleged unlawful infringement of his interests by any person, including a public authority. The State asserts that any violation by act or omission of a person or the State, either of the law, of a subjective right or an unwritten standard of due care or good governance, that causes someone harm is an unlawful infringement of that person's interests and entitles that person to the reparation of the harm. The State adds that Article 1386 of the Suriname Civil Code provides adequate and effective remedies to address the alleged violations of Articles 3, 21, and 25 of the American Convention.

IV. PROVEN FACTS

33. Based on the arguments, evidence and information submitted by the petitioners and the State and information that is a matter of public knowledge,[3] the IACHR makes the following findings of fact.

A. The Kaliña and Lokono Peoples

34. The Kaliña and Lokono Peoples are indigenous to the Lower Marowijne River area.[4] They are two of the four most populous indigenous peoples in Suriname, and together they are also referred to as the "Lower Marowijne Peoples".[5] For centuries, their ancestors have traditionally occupied the lands and territories in the northeast coast of Suriname.[6] The boundaries of their traditional lands are contained in their oral histories, and recognized by neighboring communities.[7] Archeological evidence suggests that the Lower Marowijne indigenous peoples have inhabited the region for at least 2,000 years, long before the arrival of European settlers.[8] During the interior War of the 1980s, some villagers were forced to leave the area, but most have since returned to their traditional territories.[9] In 2007, the population of the Lower Marowijne indigenous peoples was approximately 2,026 persons, distributed among the eight villages represented in the petition.[10] The alleged victims self-identify as indigenous peoples.[11]

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[3] Article 43.1 of the Rules of Procedure of the IACHR states: The Commission will deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

[4] Annex 1. Petition, para. 40, Annex E, The historical use and occupation by Indigenous Peoples and communities of the Lower Marowijne River region of Suriname, p. 1; Submission of Suriname, March 22, 2008, p. 2.

[5] *See* Annex 2. IWGIA, THE INDIGENOUS WORLD 2012: Suriname 143 (2013), available at http://www.iwgia.org/images/stories/sections/regions/latin-america/documents/IW2012/suriname_iw_2012.pdf.

[6] Petition, para. 40; Submission of Suriname, March 22, 2008, p. 3. *See also* Annex 3. Petition, para. 86, Annex D-1, Map of the Lower Marowijne area presented to the Minister of Spatial Planning in 2002, indicating the location of the 8 Kaliña and Lokono villages, and places where they conduct traditional hunting and fishing activities. Annex 4. Map of Lower Marowijne area, indicating the Kaliña and Lokono traditional territory, presented during the Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname.

[7] Petition, para. 44. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 7.

[8] Petition, para. 41. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 7.

[9] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 11.

[10] Annex 6. Petition, paras. 40-42.

[11] Annex 7. Petition, para. 1, and Annex A, Power of Attorney Declaration ("We further declare that we are the traditional authorities of the indigenous communities and peoples of the Lower Marowijne River. . . .").

35. The Kaliña and Lokono Peoples inhabit the eight villages that form part of this petition in the following distribution, six Kaliña and two Lokono villages:

Village	Indigenous Peoples[12]
1. Christiaankondre	Kaliña
2. Langamankondre	Kaliña
3. Marijkedorp (or Wan Shi Sha)	Lokono
4. Pierrekondre	Kaliña
5. Alfonsdorp	Lokono
6. Bigiston	Kaliña
7. Erowarte	Kaliña
8. Tapuku	Kaliña

36. The Kaliña and Lokono have a special relationship, both materially and spiritually, with their land, territory and natural resources. In material terms, they have a profound knowledge of the local flora and fauna and their potential uses, and maintain a sustainable relationship of consumption, including self-imposed limits to help protect the environment and its resources.[13] The Kaliña and Lokono indigenous peoples derive the majority of their subsistence needs from their territory. Their subsistence activities are mainly hunting, fishing (in rivers and in the sea), swidden agriculture (also known as "slash-and-burn"), and gathering forest products.[14] They also obtain forest fruits and materials for a variety of uses such as building materials, medicines, utensils, timber for fuel, among others.[15] Under Kaliña and Lokono culture, it is of prime importance to preserve the balance between human beings and nature, and upsetting this balance can have very negative consequences, such as disease, accidents and misfortune.[16] In a very real sense, the Kaliña's and Lokono's notion of their own freedom as peoples depends on their ability to continue their traditional uses of their lands, territories and natural resources.[17]

37. The Kaliña and Lokono peoples also have a spiritual relationship with their land and territories, where natural elements such as trees, stones, creeks and rivers have sprits that protect them

[12] *See* Annex 6. Petition, para. 12(a).

[13] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 17.

[14] Annex 6. Petition, para. 47.

[15] Annex 6. Petition, para. 47. See also Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 17 (quoting Kaliña or Lokono individuals as stating that "[t]he forest, the creek, and the river is where we get our food; it is our pharmacy. We don't have to pay for it; we get everything we need from it.' 'Our knowledge of the forest is great; we know which plant is poisonous and which is not, and when a child is injured or sick, we take a leaf for a wound, or sap for an illness.'").

[16] See Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 93. For both Kaliña and Lokono, certain tree species, such as kapok tree and fig or forest cotton trees may never be cut down. *Id.*, p. 98.

[17] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 24.

and ensure the balance in nature is preserved.[18] If something bad happens in a village, such as an accident or a disease, it is not uncommon for that village to be abandoned for some time, until the negative spirits are gone, and then the population can return.[19] Their relationship with their territory also transcends generations, as they place a special significance in the territories where their ancestors are buried.[20] In addition, most villages have a *piay*, or shaman, who is the intermediary with the spiritual world and has healing powers.[21] Their social relations are largely egalitarian,[22] to the extent that some social activities are shared among different villages,[23] and each village has an elder authority, some times referred to as "chief" or "captain"[24]. The territories and their resources are also fundamental for the preservation and expression of Kaliña and Lokono culture. Weaving of the *matapi*—a traditional basket made from palm—was traditionally a male task, but now more and more women are taking on this, as men sometimes have to seek out work outside their villages[25]. Members of Kaliña villages still practice traditional fishing, but given the incursions into their territories there has been a decrease in traditional hunting in some villages.[26] The Kaliña language is the main language spoken in the villages of Christiaankondre, Langamankondre and Bigiston, while in Pierrekondre, Erowarte and Tapuku it is spoken to a lesser extent; the Lokono language is spoken by some in Marijkedorp and Alfonsdorp.[27]

38. The Kaliña and Lokono's customary law contemplates collective ownership over their traditional lands, while subsidiary communal rights over land and resources are vested in kinship groups

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[18] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 93.

[19] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 18.

[20] Annex 1. Petition, para. 40, Annex E, The historical use and occupation by Indigenous Peoples and communities of the Lower Marowijne River region of Suriname, p. 6.

[21] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, pp. 14, 93.

[22] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 19.

[23] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 16 (explaining that the Kaliña villages of Christiaankondre and Langamankondre each have their own village leader, but they cooperate in areas such as education of children and health care).

[24] Annex 9. IACHR, Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, testimony of Kaliña Captain Richard Pané, from the village of Langamankondre, available at: http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=22.

[25] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 20.

[26] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 17.

[27] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 14.

within each village.[28] Each one of the villages observes the boundaries among the various villages.[29] If a non-member of a village wants to use village lands, he or she must first obtain the permission of the village leader, who then follows traditional consultation practices within the affected village.[30] As for natural resources, the Kaliña and Lokono own them collectively according to their customary law, but a person or persons may acquire individual ownership of specific resources through their labor or inheritance.[31] For instance, timber is collectively owned, but a log becomes the property of the person who cuts it down.[32] Kaliña and Lokono customary law also provides that a hunter must not hunt young animals and must not hunt more game than he is able to carry with him.[33]

B. Indigenous Peoples under Surinamese Law

39. Surinamese law does not recognize the possibility for the Kaliña and Lokono indigenous peoples to be constituted as legal persons, and thus they are not legally capable of holding collective rights under domestic law.[34] Surinamese law does not recognize indigenous peoples or communities' collective property right to formally own lands, such as the Kaliña and Lokono Peoples. Additionally, traditional indigenous forms of land tenure are not classified as property under the 1987 Surinamese Constitution or domestic laws.[35]

40. Article 41 of Suriname's 1987 Constitution provides that "[n]atural riches and resources are property of the nation (...)."[36] The Constitution does not recognize the rights of indigenous peoples or their communities to their lands, but rather considers indigenous peoples permissive occupiers of State-owned land.[37] Similarly, Surinamese domestic land policy does not provide a mechanism for

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[28] Annex 6. Petition, para. 44.

[29] Annex 6. Petition, para. 44. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, pp. 15-18.

[30] Annex 6. Petition, paras. 44-45. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 93.

[31] Annex 6. Petition, paras. 46-47. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, pp. 93-94.

[32] Annex 6. Petition, para. 46.

[33] Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, pp. 94-95.

[34] Annex 6. Petition, para. 196-97; Submission of Suriname, September 12, 2008, pp. 4-5.

[35] Annex 6. Petition, paras. 50, 52; Submission of Suriname, March 22, 2008, p. 1; Submission of Suriname, September 12, 2008, pp. 4-5.

[36] Annex 10. Constitution of the Republic of Suriname, 1987, Article 41, available at: http://www.constitution.org/cons/suriname.htm.

[37] See Annex 10. Constitution of the Republic of Suriname, 1987, Article 34 (1. Property, both of the community and of private persons, shall fulfill a social function. Everyone has the right to the undisturbed enjoyment of his property, subject to the limitations which originate in the law. 2. Expropriation shall take place only in the general interest, pursuant to rules to be laid down by law and against compensation guaranteed in advance. ...). *See also* 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. 108

regularizing and securing indigenous peoples' collective property rights.[38] In connection with this legal framework, the Surinamese judiciary generally follows the principles that a grant of a real title supersedes a *de facto* right that may be asserted by indigenous peoples, even if the grant is within the residential area of an indigenous village.[39]

C. Actions by the Kaliña and Lokono Peoples to Seek Legal Recognition

41. The Lower Marowijne indigenous peoples have sought recognition of their rights for many years. These efforts began before Suriname obtained its independence from the Netherlands, as various indigenous peoples made various submissions to the Suriname Independence Commission in 1972 seeking to obtain greater recognition of their rights after independence.[40] These demands were not acknowledged in the Independence Commission's report and the issue of indigenous peoples' land and resource rights was not addressed in the 1975 Suriname-Netherlands Independence Agreement.[41]

42. The Lower Marowijne indigenous peoples have also undertaken a number of concrete steps, to the extent allowed by Surinamese domestic law, to attempt to obtain formal recognition of their rights. Specifically, given the lack of specific recourses to address indigenous peoples' land issues, they have filed petitions under Article 22(1) of the Constitution of Suriname, which provides that "[e]veryone has the right to submit written petitions to the competent authority." Under this provision, the Lower Marowijne Peoples have submitted three petitions to State officials requesting the State to negotiate a settlement that recognizes and secures the Lower Marowijne indigenous peoples' rights.[42] The three petitions were submitted on January 12, 2003, March 22, 2004, and September 25, 2005, respectively.[43] The State did not formally respond to any of the petitions.[44]

43. The Lower Marowijne Peoples have also held meetings with government officials to seek recognition of their rights. They met with the Ministers responsible for Regional Development and Natural Resources on three occasions: once in 2002 (in which they presented a map of their territory) and twice in 2003.[45] Since these meetings, the petitioners have not heard further from these State officials.[46]

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[38] Annex 6. Petition, para. 53; Submission of Suriname, September 12, 2008, pp. 4-5.

[39] Annex 6. Petition, para. 57. See also, L-1 Decree of 1982, which states that "(1) When domain land [i.e., land owned by the State by virtue of its Constitution] is allocated, the rights of tribal Bushnegroes [Maroons] and Indians to their villages, settlements and agricultural plots are respected, provided that this is not contrary to the general interest. ..." However, these are only "*de facto* rights", as opposed to legal rights, which limits the rights of maroons and indigenous peoples to enjoy their ancestral lands. *See* 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. 108.

[40] Annex 6. Petition, para. 59.

[41] Annex 6. Petition, para. 59.

[42] Annex 6. Petition, para. 33.

[43] Annex 11. Petition, para. 33, Annex C1, Letter of complaint filed by petitioners to the Commission of Land Rights, December 2004, and Annex 12. Petition, Annex C2, Request filed by petitioners to The Minister of Spatial Planning, land and Forest Policy, May 22, 2006; *see also* Annex 13. Submission of petitioners, May 29, 2008, Annex A, Petition filed by petitioners pursuant to Article 22 of the Constitution of Suriname, October 7, 2007.

[44] Annex 6. Petition, para. 34.

[45] Annex 14. Petition, paras. 34-35. Annex D to Petition, Maps of the Lower Marowijne River, indicating location of the eight Kaliña and Lokono villages and the Nature Reserves.

[46] Annex 6. Petition, para. 35.

44. The Lower Marowijne Peoples have also written complaints to the Minister and agency responsible for issuing land titles. Specifically, they sent a letter to the Commission on Lands Office in December 2004 complaining about the issuance of individual land titles to non-indigenous persons within the traditional territory of the Lower Marowijne Peoples.[47] In May 2006, a second letter was sent, this time to the Minister responsible for issuing land titles, regarding the same issue and also addressing the granting of mining concessions within the traditional territory of the Lower Marowijne Peoples.[48] The State did not respond to these requests.[49]

45. Given the absence of other alternatives, the Lower Marowijne Peoples have also engaged in social protest actions. In 1976, they organized a 142-kilometer long "land rights" march from the town of Albina to the capital city of Paramaribo to protest against violations of their rights in connection with the Galibi Nature Reserve and the forced sub-division and allotment of the villages of Erowarte, Wan Shi Sha, Tapuku, and Pierrekondre.[50] In connection with the march, the Commission on Entitlements to Land in the Interior, a State agency, expressed that indigenous peoples had no rights to land and therefore no right to object.[51]

46. The alleged victims also pursued available legal actions. Between 1975 and 1976, they filed three cases in domestic courts with the now defunct Association of Indigenous Peoples, arguing that the State had an obligation to recognize indigenous peoples' property rights.[52] All three cases were dismissed as lacking legal merit.[53]

47. After the 1980 military coup and the Interior War that ended in 1992, the Lower Marowijne Peoples sought to have their rights recognized by the new government. In 1995 and 1996, the traditional authorities of indigenous peoples and Maroons convened meetings to agree on and present a joint position to the State demanding recognition of their property and other rights.[54] In response, the State established the Commission on State Lands and Indigenous Peoples and Maroons, with a mandate to provide proposals and recommendations to the State to resolve this issue. However, that Commission was later dissolved without issuing a final report.[55]

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[47] Annex 11. Petition, para. 36. Annex C1, Letter of complaint filed by petitioners to the Commission of Land Rights, December 2004.

[48] Annex 15. Petition, para. 36. Annex C2, Request filed by petitioners to The Minister of Spatial Planning, land and Forest Policy, May 22, 2006.

[49] Annex 6. Petition, para. 36.

[50] Annex 6. Petition, para. 61.

[51] Annex 6. Petition, para. 61.

[52] Annex 6. Petition, para. 60. These cases were styled Case No. 165, Association of Indigenous People v Suriname, 17 March 1975; Association of Indigenous People v Suriname, A.R. No. 754180, 26 September 1975; and Association of Indigenous People v Suriname, A.R. No. 753160, 13 January 1976.

[53] Annex 6. Petition, para. 60.

[54] Annex 6. Petition, para. 64.

[55] Annex 6. Petition, para. 64.

48. In 2002, the Lower Marowijne Peoples submitted a map of their territories to the State, and in 2003 they requested that a negotiation team be established to resolve their land rights concerns.[56] In 2006, the State created the Commission on Land Rights, tasked with investigating land rights issues and making policy recommendations.[57] That Commission held a meeting with the Association of Indigenous Village Leaders in Suriname, which is one of the petitioners, on April 12, 2006.[58] At the meeting, the Lower Marowijne peoples were informed that the Commission on Land Rights had no mandate to address their specific situation; as of September 2006, that Commission still had no budget or operating funds.[59]

49. In this context, the State is undergoing a process of recognition in its domestic legislation of indigenous land rights, but that process has not been completed, as the State has acknowledged.[60]

D. Establishment of the Nature Reserves

50. Three Nature Reserves are at issue in this case: the Wia Wia, Galibi, and Wane Kreek Nature Reserves. Jointly, they cover approximately 85,000 hectares of territory in the northeast region of Suriname: the Wia Wia Reserve covers around 36,000 hectares, the Galibi Reserve around 4,000, and the Wane Kreek Reserve around 45,000 hectares.[61] Together, the three Reserves appear to cover an important part of the lands claimed by the petitioners as their traditional territory.[62]

1. Wia Wia Nature Reserve

51. On April 22, 1966, the government established the Wia Wia Nature Reserve, pursuant to the 1954 Nature Protection Act.[63] The Nature Protection Act did not provide for the protection of indigenous peoples or their lands, territories or natural resources.[64] The Wia Wia Reserve was established to protect sea turtle nesting beaches, and it also encompasses mudflats and mangrove

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[56] Annex 6. Petition, para. 65.

[57] Annex 6. Petition, para. 66; *see also* Annex 16. Annex G to Petition, Presidential Order for the Establishment of the Lands Rights Commission, January 4, 2006.

[58] Annex 6. Petition, para. 68.

[59] Annex 6. Petition, paras. 67-68.

[60] Submission of Suriname, September 12, 2008, pp. 4-5.

[61] Petitioners' submission of May 28, 2008, para. 32, See also Annex 17. *Natural Heritage in Suriname*, F. Baal, Head Nature Cosnervation Division of the Forest Service of Suriname, Paramaribo, February 19, 2000 (updated March 4, 2005), available at: www.unesco-suriname.org/natural/%20heritage%20in%20suriname.htm.

[62] Annex 3. Petition, para. 86, Annex D-1, Map of the Lower Marowijne area presented to the Minister of Spatial Planning in 2002, indicating the location of the 8 Kaliña and Lokono villages, and places where they conduct traditional hunting and fishing activities. *See also* Annex 4. Map of Lower Marowijne area, indicating the Kaliña and Lokono traditional territory, presented during the Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname.

[63] Annex 6. Petition, para. 83. At this time, Suriname had still not achieved its independence, so the then-existing Dutch colonial administration established this Reserve.

[64] Submission of Suriname, September 12, 2008, p. 16; Annex 18. Attachment I to Submission of Suriname, September 12, 2008, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 1.

forests for the feeding, nesting and roosting sites for many local and migratory birds.[65] The Wia Wia Reserve was established by the colonial administration, as Suriname had not yet achieved independence from the Netherlands. This Reserve was established without any type of consultation with or consent from the Kaliña or Lokono villages inhabiting the area, primarily Christiaankondre and Langamankondre.[66] As there are no exceptions to the access restrictions under 1954 Nature Protection Act, indigenous peoples are not allowed to enter the Wia Wia Reserve or conduct traditional hunting and fishing activities therein.[67]

2. Galibi Nature Reserve

52. On May 23, 1969, the government established the Galibi Nature Reserve, designed to protect the leatherback and green turtles, also pursuant to the 1954 Nature Protection Act, and also without any exceptions for indigenous peoples.[68] One of the main objectives of the Galibi Nature Reserve was to protect turtle eggs from over-harvesting, which are also harvested traditionally by the Lower Marowijne indigenous peoples, particularly the members of the Kaliña villages of Christiaankondre and Langamankondre.[69]

53. When the Reserve was established, problems arose between the authorities and the indigenous communities who inhabited the area.[70] Although some interaction with the indigenous inhabitants of the affected areas took place, no formal consultation was undertaken with the local indigenous communities, and some of the traditional authorities consider that the colonial authorities at the time misled the indigenous captains of the villages.[71] In the late 1990's, after an informal agreement between the Surinamese authorities and the local communities, the Consultation Commission of the Galibi Reserve was established.[72] That Commission was intended to ensure respect for the traditional egg harvesting of the local indigenous population as well as the preservation objectives of the Reserve.[73] The Consultation Commission did not grant property rights to the indigenous peoples living near the area.[74]

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[65] Submission of Suriname, March 22, 2008, p. 5.

[66] Annexo 18. Submission of Suriname, September 12, 2008, Attachment I, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 1.

[67] See Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 107; Annex 6. Petition, paras. 84-89.

[68] Annex 6. Petition, para. 83; Submission of Suriname, March 22, 2008, p. 5.

[69] Annex 6. Petition, para. 90; Annex 18. Attachment I to Submission of Suriname, September 12, 2008, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 2; Annex 19. Attachment II to Submission of Suriname, September 12, 2008, Affidavit of Rudy Emanuel Strijk, p. 2.

[70] Annex 18. Attachment I to Submission of Suriname, September 12, 2008, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 1.

[71] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 6.

[72] Submission of Suriname, March 22, 2008, p. 5.

[73] Petitioners claim that this happened in 1997, while Suriname states that it happened in 1998. Annex 6. Petition, para. 90; Submission of Suriname, March 22, 2008, p. 5.

[74] Annex 6. Petition, para. 90; Submission of Suriname, March 22, 2008, p. 5.

54. In 2005, the authorities established a guard post inside the Galibi Reserve near the Christiaankondre and Langamankondre villages, staffed by armed forest guards, and intensified enforcement of restrictions to access the Reserve, including restrictions on access for indigenous peoples.[75] In 2006 there was an incident in which local indigenous inhabitants were near the post, and one of the guards fired a shot in the air in the direction of the indigenous persons.[76]

3. Wane Kreek Reserve

55. On August 26, 1986, after its independence the government of Suriname established the Wane Kreek Nature Reserve.[77] This Reserve was created for the conservation of savannas, marsh and ridge forests and swamps, and other biological diversity.[78] This Reserve, like the Wia Wia and Galibi Reserves, includes lands that the Kaliña and Lokono claim they have ancestrally and traditionally owned and used. It is undisputed that the Kaliña and Lokono traditionally hunt and fish inside the Wane Kreek Nature Reserve.[79]

56. The 1986 State Decree creating the Wane Kreek Reserves provides that to the extent there are "villages and settlements of bushland inhabitants living in tribal form, within the areas designated by this State Decree as nature reserves, the rights acquired by virtue thereof, will be respected."[80] The State's position is that traditional activities of indigenous peoples are to be respected "as much as possible."[81]

57. A bauxite[82] mining concession was granted in 1958, and mining activities inside the Wane Kreek Reserve began in 1997.[83] The concession area is approximately 100 hectares, inside the

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[75] Annex 6. Petition, para. 91; Submission of Suriname, September 12, 2008, p. 9.

[76] Annex 6. Petition, para. 91; Submission of Suriname, September 12, 2008, p. 9, and Annex 18. Attachment I, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 2, describing the shot to the air as "appropriate police response to civil disobedience."

[77] Annex 6. Petition, para. 83; Annex 20. Submission of petitioners, May 29, 2008, Annex D, State Decree of 26 August 1986, Nature Protection Decree 1986.

[78] Submission of Suriname, March 22, 2008, p. 6.

[79] Annex 6. Petition, para. 86, 142; Submission of Suriname, September 12, 2008, p. 10, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk.

[80] Annex 20. Submission of petitioners, May 29, 2008, Annex D, Nature Protection Decree of August 26, 1986, Article 4.

[81] Annex 21. Submission of Suriname, September 12, 2008, Attachment III, Affidavit of Glenn Renaldo Kingswijk.

[82] Bauxite is an aluminum ore and the main source of common aluminum. In a report titled *Environmental Aspects of Bauxite, Alumina and Aluminum Production in Brazil*, the United Nations Conference on Trade and Development has explained that "[t]he main environmental problems associated with bauxite mining are related to the rehabilitation of mined-out areas and the disposal of tailings. Emissions of dust consisting of clay and bauxite particles from dryers' chimneys can also pose problems. In alumina production, the disposal of bauxite residue saturated with caustic soda ("red mud") is the main problem, although emissions to the atmosphere of gases and particles from boilers, calcination furnaces and bauxite dryers may also be important. In aluminum smelting, the emission of fluorides from reduction cells and of gases, smoke and steam resulting from pitch distillation are considered most important. Finally, in aluminum fabrication, emissions of gases and particles from smelting and re-heating furnaces pose the largest problems." UNCTAD, Environmental Aspects of Bauxite, Alumina and Aluminum Production in Brazil, February 8, 1995, UNCTAD/COM/49, p. 13. Available at: http://unctad.org/en/Docs/pocomd49.en.pdf. In a report about "Environmental Issues Related to Bauxite Mining and

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45000 hectares of the Reserve.[84] No consultations were conducted with indigenous communities either when the concession was granted or when the mining activities commenced in 1997.[85] Environmental or social impact assessments were similarly not conducted.[86] The mining activities and their effects are further discussed below.

58. The Wane Kreek Reserve has recently seen an increase in activities such as legal and illegal logging, illegal poaching, and sand, gravel, and kaolin mining.[87]

59. In short, all three Reserves were created without any formal consultation or consent procedure, which has also not been conducted with respect to the activities that have been implemented after their creation, including mining concessions. In addition, the law creating Wia Wia and Galibi Reserves establishes restrictions that prohibit access and activities by the Kaliña and Lokono peoples. These restrictions have recently been intensified in practice. In the Wane Kreek Reserve, a mining concession was been granted without the consultation or consent of the Kaliña and Lokono, and mining operations were authorized and commenced in the 1990s also without any consultation or consent. Although the law establishing the Wane Kreek Reserve provides for respect of "rights" of "bushland inhabitants living in tribal form" within the Reserve, the State places restrictions on traditional indigenous activities in the Reserve.

E. Issuance of Individual Land Titles

60. In 1975, the government initiated a parceling project called "Tuinstad Albina."[88] As part of this project, the government granted land titles to indigenous and non-indigenous individuals in the area surrounding the town of Albina, including territories claimed by the Kaliña and Lokono as their ancestral lands.[89] Between 1976 and the present, titles of ownership, long term lease and lease hold

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...Continuation
Processing, With Emphasis on Biodiversity and Water," the Bauxite Instituut discusses the consequences of bauxite mining in Suriname, and explains that bauxite mining can have very drastic effects on the environment, including pollution of water sources and coastal areas, as well as significant soil degradation. available at: http://www.bauxietinstituut.com/files/Environmental%20problems%20related%20to%20bauxite%20mining%20and%20processing-Paul%20Ouboter.pdf.

[83] Submission of Suriname, September 12, 2008, p. 10, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk; Annex 6. Petition, para. 140; Annex 8. Expert Report of Dr. Stuart Kirsch, November 25, 2010, pp. 11-12.

[84] Submission of Suriname, September 12, 2008, p. 10, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk; Annex 6. Petition, para. 86.

[85] Submission of Suriname, September 12, 2008, p. 10.

[86] Annex 8. Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 12.

[87] Annex 8. Expert Report of Dr. Stuart Kirsch, November 25, 2010, p. 7.

[88] Submission of Suriname, March 22, 2008, p. 3.

[89] Submission of Suriname, March 22, 2008, p. 3, n. 6; see also Annex 6. Petition, para. 74, and Annex 22. Annex J to the Petition, Partial List of Non-Indigenous Title Holders. Individual land titles to non-idigenous persons have been issued in the villages of Pierrekondre, Marijkedorp (Wan Shi sha) and Erowarte. Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 106.

were granted in the indigenous villages of Erowarte, Tapuku, Pierrekondre and Wan Shi Sha.[90] The petitioners claim that Suriname is in possession of information regarding the specific dates on which these titles were granted; the State has neither denied that it has this information, nor provided it.[91]

61. There is a dispute between the parties as to whether indigenous peoples inhabited the specific areas where individual titles were granted at the time those titles were granted.[92] Nonetheless, it is undisputed that some titles were issued in lands that the Kaliña and Lokono Peoples claim are part of their ancestral territories.[93] Although the State alleges that some of the lands claimed are inside the town of Albina,[94] the petitioners explicitly state that they make no claim over land or titles issued in Albina.[95] Most of the non-indigenous title-holders are "holiday citizens" who have used their parcels to build vacation homes.[96] On at least one occasion, in the village of Wan Shi Sha, non-indigenous titleholders have secured the assistance of the Surinamese courts to assert their property rights to the exclusion of those of the indigenous members.[97] Indigenous peoples have written to the Surinamese authorities on at least two occasions to complain about the issuance of land titles in their territories and related practices.[98] The State did not provide evidence of having responded to these communications.

62. In accordance with the L-Decrees of 1982, any Surinamese citizen is entitled to request a piece of unencumbered State land. These Decrees are available to recognized legal persons, which include individuals, corporate bodies, and certain foundations.[99] Indigenous peoples, their communities or other traditional entities are not recognized as legal persons for purposes of holding land title under Surinamese law.[100]

63. From 1986 to 1987, an armed opposition group known as the Jungle Commando attacked military installations in eastern Suriname.[101] As a result, many of the occupants of the Tuinstad

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[90] Annex 6. Petition, paras. 74, 117; Submission of Suriname, March 22, 2008, p. 3.

[91] Submission of the petitioners, October 29, 2008, para. 31.

[92] Petitioners claim they inhabited these areas and protested to the sub-division into parcels. Annex 6. Petition, para. 74. The State, on the other hand, claims that the parceled areas were uninhabited for many years preceding the issuance of the titles, and that the Lower Marowijne indigenous peoples "never protested against the project to parcel out areas in the suburbs of Albina." Submission of Suriname, March 22, 2008, pp. 3-4.

[93] Annex 6. Petition, para. 74; Submission of Suriname, March 22, 2008, p. 3.

[94] Submission of Suriname, March 22, 2008, p. 3, n. 6.

[95] Annex 6. Petition, para. 73. *See also* Annex 4. Map of Lower Marowijne area, indicating the Kaliña and Lokono traditional territory, presented during the Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname.

[96] Submission of Suriname, September 12, 2008, pp. 12-13.

[97] Annex 6. Petition, para. 76, citing *Tjan A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, May 21, 1998; Annex 19. Submission of Suriname, September 12, 2008, Annex II, Affidavit of Rudy Emanuel Strijk, p. 1.

[98] *See* Annex 23. Petition, Annex C, translations of communications dated December 2004, addressed to Head of Service Domains, and May 22, 2006, to the Minister of Spatial Planning, Land and Forest Policy.

[99] Annex 6. Petition, paras. 71-72.

[100] *See* I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para 86(5); 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. 230.

[101] Submission of Suriname, March 22, 2008, p. 4.

area were forced to leave for security reasons.[102] When they returned in the early 1990s, disagreements with some indigenous communities arose again over who were the rightful owners of these communities.[103] The affected Kaliña and Lokono peoples have requested the State to clarify this situation, without obtaining a positive resolution.[104] For instance, indigenous members of the Wan Shi Sha village attempted to stop a resident of Paramaribo from rebuilding his vacation home, which had been destroyed in the so-called Interior War, inside the village.[105] They filed a complaint to stop the construction, but the Cantonal court ruled against them because the homeowner had formal title of his parcel, while rejecting the indigenous community's claim of traditional ownership.[106] On another occasion, the indigenous chiefs of the Lowe Marowijne River region filed a petition with the President of Suriname, pursuant to Article 22 of the Surinamese Constitution, to complain about certain activities by purported non-indigenous title holders in the village of Pierrekondre.[107] The State did not respond to this petition.

64. There is also a disagreement between the parties as to whether the indigenous peoples in the parceled areas still maintain a traditional way of life, as the petitioners claim,[108] or have been assimilated with the non-indigenous population and no longer maintain a special relationship with their lands, as asserted by the State.[109] The Inter-American Commission considers that there is sufficient evidence in this case to establish that the Kaliña and Lokono Peoples maintain their traditional way of life as indigenous peoples.[110] In any event, the relevance of this determination will be discussed below at Section V.A.

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[102] Submission of Suriname, March 22, 2008, p. 4.

[103] Submission of the petitioners, May 28, 2008, para. 27.

[104] Annex 6. Petition, paras. 75-77; Annex 5. Submission of the petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kalliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 106.

[105] Annex 6. Petition, paras. 75-76.

[106] Annex 6. Petition, para. 76, citing *Tjan A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, May 21, 1998; Submission of Suriname, September 12, 2008, Annex II, Affidavit of Rudy Emanuel Strijk, p. 1.

[107] Annex 13. Submission of the petitioners, May 28, 2008, Annex A, Petition filed by petitioners pursuant to Article 22 of the Constitution of Suriname, October 7, 2007.

[108] Submission of the petitioners, May 28, 2008, paras. 19-22.

[109] Submission of Suriname, March 22, 2008, pp. 3-4.

[110] See, e.g., Annex 24. Petition, Annex B, Petition by the Captains of Eight Lower Marowijne Indigenous Communities, including Tapuku, Pierrekondre, Erowarte; Annex 25. Peticion, Annex E, English Summary of Archival Research, explaining the history of the Kaliña and Lokono indigenous peoples; Annex 5. Submission of the petitioners, May 28, 2008, Annex E, Traditional use and management of the Lower Marowijne area by the Kalifia and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity, a 117-page report on the situation of the indigenous communities of the Lower Marowijne River; ; Submission of Suriname, March 22, 2008, pp. 3 (stating that "The people of Langamankondre and Christiaankondre who claim a unique relationship with the land of the Galibi Nature Reserve indeed have such a relationship with nature in the sense that their lives are connected with the periodic nesting activities of sea turtles in this territory").

F. Granting of Mining Concessions

65. According to available information, in 1958 a bauxite mining concession was granted inside the Wane Kreek Reserve.[111] Suralco N.V., a joint-venture between Alcoa and BHP-Billiton, the current holder of the concession, commenced mining operations in 1997.[112] The activities included, among other things, the construction of a mine (to exploit the Wane I and Wane II deposits) and building of a haul road to access the mine and transport the bauxite. As also mentioned above, the Kaliña and Lokono Peoples were not consulted in the granting of the concession or in the authorization of the mining activities in the Wane Kreek Reserve, and no environmental impact assessments were conducted prior to commencing mining activities.[113]

66. Mining activities in Suriname are governed by Decree E-58 of May 8, 1986 Containing General Rules for Exploration and Exploitation of Minerals.[114] This Decree does not contain provisions regarding protection of indigenous peoples or their rights.[115] Although the Wane Kreek Reserve was established with conservationist purposes, the 1986 State Resolution that created it provided, among other things, that existing mining and timber concessions would be respected, thus authorizing the continuation of the bauxite concession inside the Reserve.[116]

67. In connection with the mining activities, a haul road was constructed inside the concession area.[117] Access through the road is permitted for hauling logs, but not for hunting and fishing.[118] Bauxite mining requires strip-mining because this mineral is found near the surface of the earth, and dynamite is used in the process; explosions from the use of dynamite can be heard in the villages located near the mining area.[119] In addition, indigenous peoples are sometimes denied access for hunting and fishing purposes.[120]

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[111] Submission of Suriname, September 12, 2008, p. 1, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk; Petition, para. 140; Annex 8. Expert Report of Dr. Stuart Kirsch, November 25, 2010, pp. 11-12.

[112] Annex 6. Petition, para. 78; Submission of Suriname, September 12, 2008, p. 1, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk.

[113] Submission of Suriname, September 12, 2008, p. 14; Annex 6. Petition, paras. 79, 140.

[114] Annex 6. Petition, para. 80. Annex 26. Submission of Suriname, March 27, 2012, Annex I, Decree E-58 of May 8, 1986.

[115] Annex 26. Submission of Suriname, March 27, 2012, Annex I, Decree E-58 of May 8, 1986.

[116] Annex 27. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, p. ii.

[117] Submission of Suriname, September 12, 2008, p. 10, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk.

[118] Submission of Suriname, September 12, 2008, p. 10, and Annex 21. Attachment III to Submission of Suriname, September 12, 2008, Affidavit of Glenn Renaldo Kingswijk.

[119] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, pp.11, 14; Annex 19. Submission of Suriname, September 12, 2008, Annex III, Affidavit of Rudy Emanuel Strijk.

[120] Annex 6. Petition, para. 79; Annex 21. Submission of Suriname, September 12, 2008, Annex III, Affidavit of Glen Renaldo Kingswijk; Annex 28. Petition, Annex H, Affidavits of Biswana Rudolf Henry, Biswane Ronny, and Wong A Soy Marvin.

68. The above-mentioned mining activities have caused considerable damage to the forests and to the flora and fauna of the region, including pollution and reduction in the number of hunting game.[121] Suralco and BHP Billiton have done some rehabilitation work in the concession area, particularly in the Wane Hills Mine Site, but the rehabilitation is not complete and may take years to be concluded.[122] An Environmental Sensitivity Analysis commissioned by an entity affiliated to BHP Billiton in 2005 concluded that:

> considerable damage has already been done to Wane 1 and 2 by bauxite mining. If Wane 1 and 2 are effectively rehabilitated, the diversity of the Wane Hills will be partially restored... [BHP Billiton] should aim to conclude mining and exploration activities of the four Wane Hills as soon as possible, restore disturbed areas to an acceptable state, and withdraw from the [Wane Kreek Nature Reserve].[123]

69. The same study also considered that the Wane Hills, where mining is conducted inside the Wane Kreek Reserve, "represent a unique environment of high conservation value."[124] Despite this consideration, the report also stated that in "cases where financial returns are immense and social benefits very widespread, exceptions [to the conservation approach] could be countenanced (...)."[125] The final recommendations of the report included "[c]omit[ting] irrevocably to not mining Wane 3 and 4 and avoid any further disturbance of these hills" and "[r]ehabilitat[ing] damage to Wane 4 caused by the exploration programme," among others.[126] In addition, bauxite mining is known to potentially affect the environment in important ways, causing effects such as deforestation and habitat destruction, increased erosion and turbidity, disturbance and pollution of hydrology, which threatens aquatic biodiversity, acid soil drainage in coastal areas, among others .[127]

V. ANALYSIS OF LAW

70. Based on the foregoing factual findings and the legal arguments of the parties, this section applies relevant legal instruments and the inter-American jurisprudence to this case.

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[121] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, pp. 11, 14; Annex 28. Petition, Annex H, Affidavits of Biswana Rudolf Henry, Biswane Ronny, and Wong A Soy Marvin.

[122] Annex 8. Submission of the petitioners, December 22, 2010, Expert Report of Dr. Stuart Kirsch, November 25, 2010, pp. 15-16.

[123] Annex 23. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, pp. iv, 20-21.

[124] Annex 23. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, p. iii.

[125] Annex 23. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, p. iv.

[126] Annex 23. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, p. 21. The State has stated that mining activities were scheduled to be completed by 2008, but the Commission has not received information to confirm that the mining activities have been concluded. Submission of Suriname, March 22, 2008, p. 6.

[127] See, e.g., Environmental Issues Related to Bauxite Mining and Processing, With Emphasis on Biodiversity and Water, Bauxite Instituut, discussing consequences of bauxite mining in Suriname, available at: http://www.bauxietinstituut.com/files/Environmental%20problems%20related%20to%20bauxite%20mining%20and%20processing-Paul%20Ouboter.pdf. See also, Annex 27. Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, p.20 (stating that "[f]urther mining of the hills within the [Wane Kreek Nature Reserve] is likely to attract local and national criticism" and that "mining will ultimately reduce the conservation value of the area").

A. Preliminary Observation

71. In its communication of September 12, 2008, in the merits phase of the present case, Suriname has argued that the Commission does not have jurisdiction *ratione temporis* to determine potential violations of the rights protected by the American Convention arising from acts that took place before Suriname ratified the Convention on November 12, 1987. In particular, the State argues that certain land titles and long-term leases were issued before it acceded to the American Convention, so it cannot be held liable for those actions. As explained in the Admissibility Report, all three Nature Reserves were established before Suriname's accession to the American Convention, and Suriname similarly contends that this means it cannot be held liable for acts and omissions related to the establishment of the Reserves, as these took place before it acceded to the Convention. The State also claims that since the mining concession was granted before Suriname's accession to the American Convention, Article 21 "is therefore not applicable to granting of the concession (with or without consultation), nor to its status over time but possibly only to effects of activities carried out pursuant to the concession on the right of Article 21 of the Convention."[128]

72. As explained in the Admissibility Report, at the admissibility stage Suriname did not submit any arguments related to the Commission's jurisdiction *ratione temporis* in this case, and the Commission already decided in that Report that it has jurisdiction *ratione temporis* over the violations alleged by the petitioners "insofar as these events may be of a continuing nature"[129]. The IACHR recalls that the proper procedural stage to submit arguments about admissibility and jurisdiction is the admissibility stage before the IACHR. This way, in that stage the IACHR can make a determination regarding jurisdiction and admissibility based on the available information. Without prejudice to the foregoing, given that Suriname has repeatedly submitted arguments related to jurisdiction *ratione remporis* at the merits stage, and that in this specific case the continuity of some acts, omissions and their effects is intrinsically related to the merits of the case, the Commission addresses the State's arguments in this regard below.

73. As indicated in the Admissibility Report, the OAS Charter and the American Declaration of the Rights and Duties of Man ("American Declaration") became sources of legal obligations for Suriname once it became a Member State of the OAS, on June 8, 1977, and as of that date Suriname has had a continuing obligation to respect and guarantee the rights and duties enshrined in those instruments.[130]

74. In addition, the Inter-American Court and the IACHR have consistently applied the international law principle that a State is generally not liable for acts or omissions that were consummated prior to its ratification of a treaty.[131] However, it is also a principle of international law that if prior acts, or the effects of such prior acts or omissions, continue after the date of a State's ratification of or accession to the relevant treaty, the State can be internationally liable for violating that

[128] Submission of Suriname, September 12, 2008, p. 11.

[129] Report No. 76/07, Admissibility, The Kaliña and Lokono Peoples, Suriname, October 15, 2007, para. 48.

[130] Report No. 76/07, Admissibility, The Kaliña and Lokono Peoples, Suriname, October 15 ,2007, para. 44.

[131] *See* Admissibility Report, paras. 46-47, n. 22.

treaty.[132] Thus, if the effects of Suriname's issuance of land titles, the establishment of the Nature Reserves, and the granting of the mining concession before November 12, 1987 (the date of Suriname's accession to the American Convention) on the rights of the Kaliña and Lokono Peoples continued after that date, Suriname can be held liable for the effects caused by those acts after November 12, 1987.

75. Specifically, it has been proven that Suriname granted, among other things, long-term leases that continue to be valid after 1987. Suriname has not provided information to show that the long-term leases or land titles issued before November 12, 1987 to non-indigenous persons have been revoked or otherwise left without effect. Therefore, these titles, long-term leases and lease holds are still valid and continue to exclude the possibility that the Kaliña and Lokono are recognized as the traditional owners of their lands and receive legal title over them.[133] Similarly, it is undisputed that the Nature Reserves have remained in place after Suriname's accession to the American Convention. The Reserves have been administered after 1987, and continue to be administered today, pursuant to the terms of their establishment. Moreover, the legal status of the territories of the Kaliña and Lokono Peoples vis-à-vis the Nature Reserves also remains the same: their rights are not recognized, while the Nature Reserves are legally-protected. In fact, Suriname acknowledges that the lands covered by the Nature Reserves "were and still are domain land," that is, State-owned land.[134] When acts or omissions, or the effects of acts or omissions, that took place before a State's ratification or accession to a treaty continue after the date of a State's ratification or accession, the State can be internationally liable for violating that treaty.[135] As for the mining concession, it has also continued after 1987, and the State's own submissions confirm that plans for mining activities of the Wane I and Wane II deposits commenced in the mid 1990s, and actual mining started in 1997.[136] Therefore, the acts and/or omissions committed in connection with the commencement of mining activities in the Kaliña and Lokono's ancestral lands are protected by Article 21, and Suriname was obligated to comply with its obligations deriving from it.

76. Accordingly, the IACHR considers that the issuance of individual land titles, leaseholds and long-term leases to non-indigenous persons, the establishment and administration of the Nature Reserves, and the granting of the mining concession, as well as their effects, have continued after Suriname's accession to the Convention, and continue to the present. Therefore, the IACHR has

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[132] Admissibility Report, para. 47, n. 22 (citing I/A Court H.R., *Case of Blake*. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27; I/A Court H.R., *Case of Cantos*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85; I/A Court H.R., *Case of Alfonso Martín del Campo-Dodd*. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113; I/A Court H.R., *Case of Almonacid-Arellano et al.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154; IACHR Report N° 74/90 Case 9850, Hector Geronimo Lopez Aurelli, Argentina, 4 October 1990.).

[133] *Cf.*, I/A Court H. R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, paras. 146-156.

[134] Submission of Suriname, September 12, 2008, p. 10.

[135] Admissibility Report, para. 47, n. 22 (citing I/A Court H.R., *Case of Blake*. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27; I/A Court H.R., *Case of Cantos*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85; I/A Court H.R., *Case of Alfonso Martín del Campo-Dodd*. Preliminary Objections. Judgment of September 3, 2004. Series C No. 113; I/A Court H.R., *Case of Almonacid-Arellano et al.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154; IACHR Report N° 74/90 Case 9850, Hector Geronimo Lopez Aurelli, Argentina, 4 October 1990.).

[136] Submission of Suriname, March 22, 2008, p. 6; Annex 21. Submission of Suriname, September 12, 2008, Annex III, Affidavit of Glenn Renaldo Kingswijk.

jurisdiction *ratione temporis*, and Suriname can be held liable for violations of the American Convention if the effects of these acts and omissions infringe upon the Kaliña and Lokono's rights. In addition, the Commission notes that in the present proceedings Suriname has acknowledged the judgment of the Inter-American Court of Human Rights in the case of *Saramaka People v. Suriname*[137] and has expressly recognized "the force of precedent of the judgment for the consideration of the claims in the present case."[138]

B. The Kaliña and Lokono as Indigenous Peoples

77. The State does not challenge that the Kaliña and Lokono Peoples are indigenous peoples; in fact it refers to them as the "Lower Marowijne Indigenous People" and states that they are "assumed to have [certain] right[s] under international law."[139] Rather, Suriname claims that (i) the Kailña and Lokono Peoples are not a homogenous group insofar as the nature, scope and intensity of their relationship with the land is highly varied; and (ii) some members of six of the eight villages included in the petition have been integrated with the non-indigenous population, and their social, economic and cultural activities cannot be distinguished from those of the non-indigenous population.[140]

78. As mentioned above, the Kaliña and Lokono Peoples and their members are indigenous peoples of the Lower Marowijne River in Suriname. The petitioners have presented anthropological information, uncontested by the State, reflecting that their ancestors have inhabited their territory for thousands of years. They have their own economic, social, political and cultural characteristics and traditions, which they preserve to this day, as well as their own customary laws.[141] Like many indigenous peoples of the Americas, they have a special, all-encompassing relationship with their land and territory in terms of spiritual and cultural connection, as well as physical sustenance, since they derive most of their food from hunting, fishing and gathering the flora and fauna found in their territories.[142] The State does not deny the existence of this relationship with their land.[143] Additionally, as has been proven, the members of the Kaliña and Lokono Peoples self-identify as indigenous peoples.[144]

79. The Inter-American Court has stated that "[t]he identification of [an indigenous community or people], from its name to its membership, is a social and historical fact that is part of its autonomy. This has been the Court's criterion in similar situations."[145] Based on this and earlier jurisprudence, the IACHR considers that the fact that the eight Kaliña and Lokono villages subject of this

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[137] 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.

[138] Submission of Suriname, March 22, 2008, p. 1.

[139] Suriname's Submission, March 22, 2008, p. 1.

[140] Submission of Suriname, March 22, 2008, p. 2.

[141] *See* Annex 6. Petition, paras. 40-49; *see also* Annex 8. Expert Report of Dr. Stuart Kirsch, received on December 22, 2010.

[142] *See* Annex 6. Petition, paras. 43-47.

[143] But see discussion at Section V.C.2.a, below.

[144] Annex 6. Petition, para. 1, and Annex 7. Annex A to the Petition, Power of Attorney Declaration ("We further declare that we are the traditional authorities of the indigenous communities and peoples of the Lower Marowijne River. . . .").

[145] 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, para. 37.

case may be heterogeneous in their relationship with the land, and that some of their members may not have the same social, economic and cultural characteristics as the rest of their communities, does not neglect that the Kaliña and Lokono Peoples are indigenous peoples, and therefore does not affect their rights under the American Convention.

80. Suriname's second argument in this respect is that some members of the alleged victims have been integrated with the non-indigenous population and their social and cultural activities cannot be distinguished from those of the non-indigenous population. In the context of Suriname, the Inter-American Court has explained that "[t]he fact that some individual members of the Saramaka people may live outside of the traditional Saramaka territory and in a way that may differ from other Saramakas who live within the traditional territory and in accordance with Saramaka customs does not affect the distinctiveness of this tribal group nor its communal use and enjoyment of their property."[146] Moreover, according to inter-American jurisprudence, the provisions of the American Convention should be interpreted and applied in the context of developments in the field of international human rights law since those instruments were first composed, and with due regard to other relevant rules of international law.[147] The UN Declaration on the Rights of Indigenous Peoples, for instance, states that "[i]ndigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."[148] In addition, as the Inter-American Court has pointed out, Suriname has ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights, which recognize the right to self-determination of peoples, and the interpretation of Article 21 of the American Convention should be consistent with these instruments.[149] Based on all the foregoing, the IACHR considers that even if some

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[146] 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. The Court explained this in the context of the Saramaka, who are a tribal people. Nonetheless, in the same decision, the Court also explained that indigenous and tribal peoples enjoy protections under international law: "This Court has previously held, based on Article 1(1) of the Convention, that members of indigenous and tribal communities require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival." *Id.*, para. 85. *See also*, IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*, Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, paras. 37-38.

[147] *See* I/A Court H.R., Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Ser. A No. 10, para. 37; I/A Court H.R., Advisory Opinion OC-16/99, The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Ser. A No. 16 (1999), para. 114 (endorsing an interpretation of international human rights instruments that takes into account developments of the *corpus juris gentium* of international human rights law over time and in present-day conditions).

[148] United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 annex, UN Doc A/RES/61/295, 2 October 2007, Article 5. Suriname voted in favor of the adoption of the UN Declaration on the Rights of Indigenous Peoples. The IACHR has also stated that, for instance, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries "provide evidence of contemporary international opinion concerning matters relating to indigenous peoples ...". Report No. 40/04, Merits, Maya Indigenous Communities of the Toledo District, Belize, para. 118, n. 123.

[149] I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 93 ("Suriname's domestic legislation does not recognize a right to communal property of members of its tribal communities, and it has not ratified ILO Convention 169. Nevertheless, Suriname has ratified both the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights. The Committee on Economic, Social, and Cultural Rights, which is the body of independent experts that supervises State parties' implementation of the ICESCR, has interpreted common Article 1 of said instruments as being applicable to indigenous peoples. Accordingly, by virtue of the right of indigenous peoples to self-determination recognized under said Article 1, they may "freely pursue their economic, social and cultural development", and may "freely dispose of their

Continues...

members of the Kaliña and Lokono Peoples do not retain the traditions of the indigenous peoples as such, that does not deprive the indigenous people of the rights protected by the American Convention.

81. In addition, the IACHR and the Inter-American Court have established that indigenous peoples, as collective subjects distinguishable from their individual members, are rights holders recognized by the American Convention. In that respect, in its recent judgment in *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, the Inter-American Court stated that "international legislation concerning indigenous or tribal communities and peoples recognizes their rights as collective subjects of International Law and not only as individuals."[150] In addition, the Court stated that "[g]iven that indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise certain rights recognized by the Convention on a collective basis, the Court points out that the legal considerations expressed or issued in this Judgment should be understood from that collective perspective."[151] In that sense, and as in previous cases,[152] the IACHR will analyze the present case from a collective perspective.

82. The following sections examine what those collective rights are, and whether they have been violated by the State of Suriname.

C. The Right to Juridical Personality

83. Article 3 of the American Convention provides that "[e]very person has the right to recognition as a person before the law." The petitioners claim that Surinamese law does not recognize the Lower Marowijne indigenous peoples and their communities as legal persons, and that this violates Article 3 of the Convention. The State, in turn, contends that it, like many other countries, is still in the process of recognizing in their domestic legislation the rights of indigenous peoples.[153]

...Continuation
natural wealth and resources" so as not to be "deprived of [their] own means of subsistence". Pursuant to Article 29(b) of the American Convention, this Court may not interpret the provisions of Article 21 of the American Convention in a manner that restricts its enjoyment and exercise to a lesser degree than what is recognized in said covenants.") (internal citations omitted). The Court also cited the Human Rights Committee, which has stated that under Article 27 of the ICCPR, "minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture[, which] may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority." I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 94.

[150] 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.

[151] 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.

[152] See, e.g., IACHR, Case presented to the Inter-Am. Court H.R. in the Case of Mayagna (Sumo) Community Awas Tingni vs. Nicaragua, June 4, 1998; IACHR, Case presented to the Inter-Am. Court H.R. in the case of Yakye Axa Indigenous Community vs. Paraguay, March 17, 2003; Report No. 40/04, Case 12.053, Maya Indigenous Community of the District of Toledo v. Belize, October 12, 2004; IACHR, Case presented to the Inter-Am. Court H.R. in the Sawhoyamaxa Indigenous Community v. Paraguay, February 2005; IACHR, Case presented to the Inter-Am. Court H.R. in the Case of the Saramaka People vs. Suriname, June 23, 2006; IACHR, Case presented to the Inter-Am. Court H.R. in the Case of Yákmok Kásek Indigenous Community v. Paraguay, July 3, 2009; IACHR, Case presented to the Inter-Am. Court H.R. in the Case of the Kichwa Indigenous People of Sarayaku and its members v. Ecuador, April 26, 2010.

[153] At the admissibility stage, Suriname also argued that Article 1386 of its Civil Code provides adequate and effective remedies against the violations alleged by the petitioners. *See* Admissibility Report, paras. 51-59.

84. The Inter-American Court has previously analyzed the right to juridical personality in the context of indigenous communities, and has held that the State has an obligation to provide the general juridical conditions necessary to guarantee that each person enjoys the right to the recognition of his or her juridical personality.[154] The Court has also examined Article 3 in the collective context, precisely with respect to Suriname. In *Saramaka v. Suriname*, the Court explained that Surinamese law does not recognize collective tribal peoples as juridical entities capable of using and enjoying property, or of seeking equal access to judicial protection against alleged violations of their communal rights.[155]

85. The Court went on to explain that recognition of collective juridical personality is a way to ensure that collective property rights are respected. In the Court's words, "the right to have their juridical personality recognized by the State is one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions."[156] Failure to recognize their juridical personality places the indigenous community in a vulnerable situation because (i) individual property rights may trump collective rights over communal property, and (ii) indigenous people may not seek, as a collective juridical personality, judicial protection against violations of their rights.[157] This situation of vulnerability exists *vis-à-vis* the State as well as private third parties. The Court concluded that the State must establish, in consultation with the relevant indigenous people and fully respecting their traditions and customs, "the judicial and administrative conditions necessary to ensure the recognition of their juridical personality, with the aim of guaranteeing them the use and enjoyment of their territory in accordance with their communal property system, as well as the rights to access to justice and equality before the law."[158]

86. In this case, the petitioners have proven, and the State does not dispute, that Surinamese law does not recognize the legal personality of indigenous people (see paragraph 39). As with the Saramaka People, Surinamese law does not recognize the Kaliña and Lokono Peoples' right to juridical personality protected by Article 3 of the American Convention. Although Suriname states that it is in the process of recognizing indigenous rights, and that it acknowledges the precedential effect of the *Saramaka* judgment, it has provided no concrete evidence in this case to demonstrate that it has enacted laws, regulations or other provisions to give effect to the *Saramaka* decision relating to Article 3. In this case, Suriname has also not demonstrated that it has adopted measures to recognize the legal personality of the Kaliña and Lokono indigenous peoples.

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[154] *See, e.g.*, I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 179; *Case of the Indigenous Community Sawhoyamaxa v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, para. 188.

[155] I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 167.

[156] I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 172.

[157] I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172, para. 173.

[158] I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172, para. 174.

87. For the foregoing reasons, the IACHR finds that Suriname has violated the right of the Kaliña and Lokono Peoples to the recognition of their juridical personality pursuant to Article 3 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument.

D. The Right to Property

88. Article 21 of the American Convention provides:

> 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
>
> 2. No one shall be deprived of his property except upon payment of just compensation, for reason of public utility or social interest, and in the cases and according to the forms established by law.
>
> 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

89. Read in conjunction with Articles 1 and 2 of the American Convention, Article 21 establishes an obligation for States to respect the property rights described above and to give them effect in their domestic legal regime.[159]

90. The petitioners allege that Suriname has violated the alleged victims' property rights enshrined in Article 21 by failing to recognize those rights, and by issuing individual land titles, establishing and maintaining three Nature Reserves, and granting mining concessions in their traditional and ancestral territories. The State replies that the restrictions on the property rights of the alleged victims are permissible under inter-American jurisprudence, even if such rights have not yet been recognized under Surinamese domestic law. The following sections address each of these issues separately.

1. Violation of the Property Right of the Kaliña and Lokono due to Its Non-Recognition

91. As stated by the Inter-American Court, Article 21 of the American Convention protects the close relationship that indigenous peoples have with their ancestral lands and territories, as well as with the natural resources and intangible elements stemming from them.[160] The communitarian tradition of land ownership that exists among indigenous peoples is based on the culture, uses, customs, and beliefs of each community, and does not necessarily conform to the classic concept of property, in which land ownership is individualistic. The Inter-American Court and the IACHR have nonetheless stated unequivocally that this communitarian form of land ownership receives equal protection under

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[159] *See, e.g.*, I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172, paras. 97, 115-116.

[160] I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Preliminary Objections. Judgment of February 1, 2000, para. 149; 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. 145.

Article 21.[161] A contrary view would render the property rights protected by Article 21 of the American Convention illusory for millions of people.[162]

92. In the case of indigenous peoples, the right to land ownership is also connected to their traditional relationship with their territory, natural resources and other immaterial elements. The Court has stressed on several occasions the importance of protecting the relationship between indigenous peoples and their territories and natural resources in order to safeguard their physical and cultural survival and comply with the obligations enshrined in Article 21 of the American Convention.[163] The IACHR and the Inter-American Court have explained that the protections of Article 21 encompass the property rights of indigenous peoples over their ancestral territories. These rights protect the close relationship that indigenous peoples have with their ancestral lands, territories, natural resources and intangible elements stemming from this relationship.[164] This relationship and notion of "ownership" is frequently conceived at the collective level, as opposed to the individual ownership commonly found in non-indigenous contexts, and is based on, among other things, the culture, uses, customs, and traditions of each community. The Inter-American Court has stated unequivocally that this form of land ownership receives equal protection under Article 21.[165]

93. The Inter-American Court has also stated that the right to use and enjoy indigenous and tribal territories must also include the right to use and enjoy the resources found therein.[166] The inclusion of the right over natural resources is necessary to protect and preserve the lifestyle of indigenous and tribal peoples. This protection applies to the natural resources that have been used traditionally by indigenous peoples and which are necessary for their physical and cultural survival, as well as for preserving their worldview, social structure, customs, beliefs and tradition.[167] The Inter-American Court has also stated that even if an indigenous people temporarily is forced to leave its

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[161] 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. 145; I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172, paras. 88-89; IACHR, Report on the Situation of Human Rights in Ecuador, OAS/Ser.L/V/II.96.Doc.10 rev 1, April 24, 1997, p. 115.

[162] 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. 145.

[163] *See, e.g., Case of the Saramaka People*, para. 90; I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua Case*. Judgment of August 31, 2001. Series C No. 79, para. 149; I/A Court H. R., *Indigenous Community Sawhoyamaxa v. Paraguay Case*. Judgment of March 29, 2006. Series C No. 146, para. 118.

[164] I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Preliminary Objections. Judgment of February 1, 2000, para. 149; 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. 145. IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paras. 48-57.

[165] *See, e.g.*, 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. 145; I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, paras. 88-89.

[166] 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. 146.

[167] 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. 146.

traditional territory, "as long as this [special] relationship [with the land] exists, the right to claim those lands remains in force."[168]

94. As mentioned earlier, the Kaliña and Lokono indigenous peoples satisfy most of their survival needs from their territory. Their subsistence depends on hunting, fishing, slash-and-burn agriculture, gathering forest produce and fruit, and collecting building materials, medicines, utensils, timber for fuel, among others.[169] In addition, their customary law contemplates collective ownership of their traditional lands, and subsidiary communal rights over land and resources are vested in kinship groups.[170] Their uses and customs also provide for boundaries between villages, which are observed by other members of the community, as well as for collective ownership of natural resources.[171] Most of the members of the Kaliña and Lokono have and maintain a lifestyle in which they practice traditional indigenous economic, social, and cultural activities.[172] In short, the Kaliña and Lokono Peoples have collective property rights, and the State has an obligation to recognize those rights.

95. The Inter-American Court has twice looked at the lack of the recognition of property rights of indigenous and tribal peoples in Suriname.[173] It has held twice that Suriname's failure to recognize these rights is inconsistent with the protections of the American Convention.[174] International bodies such as the United Nations Committee on the Elimination of Racial Discrimination,[175] the United Nations Human Rights Committee,[176] and the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples[177] have also noted that Surinamese law does not recognize the rights of indigenous peoples to their communal land, territories, and resources. In the present case, Suriname has explicitly acknowledged that the Kaliña and Lokono Peoples "are assumed to have the right under international law to use and enjoy, with the parameters established by the [Inter-American] Court, the land allegedly traditionally used and owned by them."[178]

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[168] 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, para. 112.

[169] *See* above, para. 36.

[170] *See* above, para. 38.

[171] *See* above, para. 34. Natural resources are owned collectively, and they can become the property of an individual or a family through labor or inheritance.

[172] *See* above, para. 37.

[173] I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124; I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172.

[174] I/A Court H. R., *Case of the Moiwana Community v. Suriname Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 233; I/A Court H.R., *Saramaka People. v. Suriname Case. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007 Series C No. 172, para. 116.

[175] UNCERD, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Suriname (Sixty-fourth session, 2004), U.N. Doc. CERD/C/64/CO/9, April 28, 2004, para. 11.

[176] UNHCR, Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Concluding observations on Suriname (Eightieth session, 2004), U.N. Doc. CCPR/CO/80/SUR, May 4, 2004, para. 21.

[177] Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (fifty-ninth session), U.N. Doc. E/CN.4/2003/90, January 21, 2003, para. 21.

[178] Submission of Suriname, March 22, 2008, p. 1. Suriname adds that this "assumption does not prejudice the need to demarcate and delineate the alleged territory."

96. Despite this acknowledgment and reiterated pronouncements by various international bodies, the Article 21 property rights of the Kaliña and Lokono remain unrecognized by the laws of Suriname. The State does not dispute this, but rather takes the position that in Suriname "the process of recognition in [its] domestic legislation of indigenous land rights is not yet completed or even only in early stages of development."[179] Suriname's position is additionally that the property rights of indigenous peoples "exist independent[ly] of their recognition by the State," and that subject to the conditions established by the Inter-American Court, those rights may be restricted in certain circumstances.[180] In this respect, the IACHR considers that this position is inconsistent with the fact that, as has been proven, Surinamese courts and other State authorities have failed to enforce and give effect to those rights at the domestic level. Moreover, Suriname points to no concrete steps taken to accelerate this process of recognition or achieve its ultimate goals effectively.

97. With respect to the lack of recognition of the property rights of indigenous and tribal peoples in Suriname, the Inter-American Court has previously stated:

> [T]he 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. This title must be recognized and respected, not only in practice, but also in law, in order to ensure its legal certainty. . . . [T]o date, the State's legal system does not recognize the property rights of the members of the Saramaka people in connection to their territory, but rather, grants a privilege or permission to use and occupy the land at the discretion of the State. For this reason, the Court is of the opinion that the State has not complied with its duty to give domestic legal effect to the members of the Saramaka people's property rights in accordance with Article 21 of the Convention in relation to Articles 2 and 1(1) of such instrument.[181]

98. The Inter-American Commission sees no reason to depart from this holding in the present case, as Suriname has not shown that the recognition of property rights of indigenous peoples in its domestic legislation has changed since the *Saramaka* judgment.

99. Based on the foregoing, the IACHR finds that Suriname has failed to recognize the Kaliña and Lokono's collective property rights over their lands and territories, in violation of Article 21 of the American Convention, in relation to Articles 1 and 2 of that treaty.[182]

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[179] Submission of Suriname, September 12, 2008, pp. 4-5.

[180] Submission of Suriname, September 12, 2008, p. 5. Suriname's argumentation then focuses on whether the three concrete acts the petitioners complain of (i.e., issuance of individual titles, granting of mining concessions, and establishment of Nature Reserves) constitute violations of the alleged victims' property rights. These acts are discussed in the sections below.

[181] I/A Court H.R., *Saramaka People v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, paras. 115-116 (internal citations omitted).

[182] The Commission notes that in the *Case of the Saramaka People*, the Inter-American Court ordered Suriname to "recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival." *Case of the Saramaka People*, Operative Paragraph 7. In its second Order Monitoring Compliance with the Judgment, the Court noted that the State had not provided sufficient information to demonstrate

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2. Other Alleged Violations of the Kaliña and Lokono People's Property Rights

100. The petitioners allege that the State has violated the alleged victims' property rights by (a) issuing and maintaining individual land titles to non-indigenous individuals in their ancestral lands; (b) granting mining concessions and allowing mining operations over part of their ancestral lands; and (c) establishing and maintaining three Nature Reserves in part of their ancestral lands. This section analyzes each alleged violation separately.

a. *Issuance of Individual Land Titles, Long-Term Leases and Lease Holds*

101. The petitioners claim that Suriname has violated the alleged victims' Article 21 property rights by issuing land titles to non-indigenous individuals in their ancestral territories, specifically in the villages of Erowarte, Pierrekondre, Tapuku and Wan Shi Sha, and without conducting a prior consultation or providing any compensation. Suriname first responds that the land titles were issued before it acceded to the American Convention, so it cannot be held liable for acts committed prior to accession. It also argues that these titles were granted at a time when these areas were not inhabited by the alleged victims, that the indigenous peoples have tacitly consented to the issuance of these titles because they did not complain for many years, and that the issuance of the titles does not interfere with the Kaliña and Lokono's exercise of their rights and traditional activities. It also alleges that the individuals who have received these titles did so in good faith, and their interests should prevail over those of the alleged victims.

102. The Commission already explained why it has jurisdiction to decide whether the land titles issued before Suriname's accession to the American Convention constitute violation of the alleged victims' rights (see Section V.A.1, *supra*). The State does not deny that titles, long-term leases, and lease holds have been issued to non-indigenous individuals between 1975—the year of Suriname's independence—and the date of filing of the petition.[183] It is also undisputed that, to date, Kaliña and Lokono village members have no formal legal collective title over the lands they use and occupy.[184]

103. Suriname also argues that some members of the Kaliña and Lokono communities have left their traditional lifestyle, hold full-time non-traditional jobs, and their lifestyle is "not distinguishable from those of other non-indigenous inhabitants of the greater Albina area."[185] The Inter-American Commission reiterates what it and the Inter-American Court have previously stated: that some members of an indigenous community have been incorporated into the lifestyle of the non-indigenous neighboring communities does not mean that the community is no longer an indigenous community, and does not deprive it of its recognized rights by virtue of being an indigenous people, including those

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compliance with this point of the judgment, and requested additional information as well as a schedule for its compliance with these measures of reparation. I/A Court H.R., *Case of the Saramaka People v. Suriname*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 23, 2011, para. 30.

[183] Annex 6. Petition, para. 74, Annex J, Partial List of Non-Indigenous Title Holders; Submission of Suriname, March 22, 2008, p. 3, n. 6. Suriname claims that the list provided by the petitioners is "highly misleading," but does not deny that titles have been issued, or provide an alternative listing of title holders.

[184] *See* Annex 6. Petition, para. 73.

[185] Submission of Suriname, March 22, 2008, p. 2.

protected by Article 21.[185] The Court has also stated that "although the members of the Community do not own the lands claimed, in keeping with this Court's case law ... they have the right to recover them."[187] In other words, the fact that some members of the relevant villages may have led non-indigenous lifestyles, and may have temporarily not physically occupied their territory, does not affect the collective property rights of the Kaliña and Lokono Peoples over their territories. Consequently, the IACHR considers that the Kaliña and Lokono Peoples retain their property rights over their ancestral lands and territories, pursuant to Article 21 of the American Convention.

104. The State further alleges that the Kaliña and Lokono Peoples do not maintain the same relationship with the land that they previously had, and that in any event the issuance of land titles does not interfere in a substantial way with their ability to carry out their traditional lifestyle. Suriname adds that the alleged victims who were affected by the issuance of land titles "were not characterized by traditional, but by modern features like buildings rather than huts" and lacked "the cultural, social economic and spiritual uniqueness which is characteristic for the relationship between indigenous people and the land and resources which they traditionally occupy and use."[188] Suriname has provided no evidence in support of these assertions.

105. As has been proven, there is ample evidence in the record to reflect the special relationship between the Kaliña and Lokono Peoples and their traditional territory. The petitioners have provided a study titled "Traditional Use and Management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese Case Study in the Context of Article 10(c) of the Convention on Biological Diversity."[189] The study contains a comprehensive overview of the traditional lifestyle, economic activities, social organization, crop harvesting uses and customs, use of natural resources, cultural activities, special and forbidden traditional sites, and the relationship of the Kaliña and Lokono with their land and territories, as well as a specific description of each village. For instance, the study explains: "According to the Kaliña and Lokono everything on earth, as well as things that Westerners consider non-living such as stones, clay and water, are alive and connected to one another. All animal, plant and fish species, as well as stones, creeks and rivers have a spirit that protects them and that we as human beings should take into consideration. Preserving the right balance between man and nature is of prime importance. If this balance is upset, by incorrect or excessive use, there may be adverse consequences such as disease, accidents or misfortune."[190] The petitioners also provided evidence to this effect during the hearing on the merits of this case, when Captain Richard Pané explained, among other things, the

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[185] 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; IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*, Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, paras. 37-38.

[187] 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, para. 111.

[188] Submission of Suriname, September 12, 2008, p. 12. Suriname also argues that at the time some of these land titles were issued, the indigenous inhabitants of the communities were not living there. However, the State has failed to specify which specific titles this argument applies to. In addition, the petitioners have submitted ample evidence to show that the Kaliña and Lokono have inhabited these areas for centuries, through the present.

[189] *See* Annex 5. Submission of petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006.

[190] Annex 5. Submission of petitioners, May 28, 2008, Annex E, "Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity", February 17, 2006, p. 93.

Kaliña and Lokono's struggle to maintain their traditional lifestyle without having legal rights over their ancestral territories.[191] They have also expressed this in the numerous letters and petitions they have filed with various Surinamese governmental entities, given the absence of other legal avenues to obtain recognition of their collective ownership of their lands.[192]

106. The State did not specifically challenge the findings of the anthropological study presented by the petitioners, or provide a contrary one. The IACHR considers that the special relationship between the Kaliña and Lokono and their lands, territories and natural resources still exists. As stated by the Inter-American Court, "the spiritual and physical foundations of the identity of the indigenous peoples are based, above all, on their unique relationship with their traditional lands, so that as long as this relationship exists, the right to claim those lands remains in force."[193] According to Inter-American jurisprudence, thus, the Kaliña and Lokono retain their rights over their ancestral lands.

107. Suriname's next argument in this connection is that the issuance of land titles does not have a significant impact on the Kaliña and Lokono's traditional lifestyle. The Inter-American Commission has previously explained that "indigenous and tribal peoples and their members 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. The State has a corresponding obligation to prevent the invasion or colonization of indigenous or tribal territory by other persons, and to carry out the necessary actions to relocate those non-indigenous inhabitants of the territory who have settled there."[194] Although the State claims that there is little interference with the traditional use of the land by these "holiday citizens" who maintain vacation homes in the indigenous villages, it has not provided specific information regarding when such titles were issued, to who they were issued, or what plots of land they cover. The petitioners have presented evidence to prove that they have been forbidden from accessing certain areas in their traditional territory, and have not received collective title to their ancestral lands. There have also been instances in which non-indigenous title-holders have secured the assistance of the Surinamese courts to assert their property rights to the exclusion of those of the indigenous members of the Wan Shi Sha village, for instance.[195]

108. The Inter-American system of human rights has developed standards to resolve conflicts or interferences between private non-indigenous property rights and collective indigenous property rights. In the case of *Xámkok Kásek Indigenous Community v. Paraguay*,[196] the Court summarized Inter-American jurisprudence on collective ownership of indigenous lands, highlighting the following components of that right:

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[191] IACHR, Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname.

[192] See Section IV.C.

[193] 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, para. 112.

[194] IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*, Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, para. 114.

[195] Annex 6. Petition, para. 76, citing *Tjan A Sjin v. Zaalman and Others*, Cantonal Court, First Canton, Paramaribo, May 21, 1998; Submission of Suriname, September 12, 2008, Annex II, Affidavit of Rudy Emanuel Strijk, p. 1.

[196] 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, para. 109.

(i) the traditional possession by the indigenous peoples of their lands has the same effects as a title of full ownership granted by the State;[197]

(ii) traditional ownership grants the indigenous peoples the right to demand official recognition of their ownership and its registration;[198]

(iii) the State must delimit, demarcate and grant collective title to the lands to the members of the indigenous communities;[199]

(iv) the members of the indigenous peoples who, for reasons beyond their control, have left their lands or lost possession of them, retain ownership rights, even without legal title, except when the land has been legitimately transferred to third parties in good faith;[200]

(v) the members of the indigenous peoples who have involuntarily lost possession of their lands, which have been legitimately transferred to innocent third parties, have the right to recover them or to obtain other lands of the same size and quality;[201]

(vi) so long as the close relationship between an indigenous people and the territory exists, so does the ownership right.[202]

109. Based on existing jurisprudence, and on the evidence presented, the Commission considers that the petitioners have shown that the interferences with the alleged victims' ability to use and occupy their ancestral lands, territories and natural resources are incompatible with the protections of Article 21.

110. In addition, Suriname argues that the title-holders are innocent third parties whose property rights should prevail over those of petitioners. With respect to the non-indigenous third parties who hold titles to traditional indigenous lands, the Inter-American Court has also developed standards. The Court has stated that:

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[197] *Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, supra* note 101, para. 151, and *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra* note 20, para. 128.

[198] 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, para. 109 (citing *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, supra* note 101, para. 151, and *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra* note 20, para. 128).

[199] 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, para. 109 (citing *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, supra* note 101, para. 164; *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 215, and *Case of the Saramaka People v. Suriname*, para. 194).

[200] 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, para. 109 (citing *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, para. 133, and *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, para. 128).

[201] 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., para. 109 (citing *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra* note 20, paras. 128 to 130).

[202] 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, para. 112.

> States must assess, on a case by case basis, the restrictions that would result from recognizing one right over the other [i.e., indigenous versus non-indigenous]. Thus, for example, the States must take into account that indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations. Property of the land ensures that the members of the indigenous communities preserve their cultural heritage.[203]

111. The Court has also explained that restrictions on the property rights of indigenous peoples must be a) previously established by law; b) necessary; c) proportional, and d) have as their purpose the attainment of a legitimate goal in a democratic society.[204] Suriname's arguments in this connection focus on the fact that the land titles were previously issued by law, that they are proportional, since these are only holiday citizens, and that they are necessary to achieve the goal of protecting property rights.[205] The petitioners claim, as a starting point, that since Suriname does not recognize the legal rights of indigenous peoples, it cannot, therefore, legitimately restrict them.[206]

112. The Commission considers that given the special relationship that exists between indigenous peoples and their territories, and the recognized need to preserve such relationship, the protection of indigenous peoples' property rights must be approached differently than the property rights of non-indigenous peoples. The IACHR has previously stated that legitimate restrictions on the Article 21 rights of indigenous peoples presuppose "the recognition of such collective property rights, and secondly, the balancing of such rights against the public interest imperative of the State."[207] In this case, Suriname has acknowledged that its domestic legislation does not recognize the collective property rights of indigenous peoples.[208] In fact, there is no disagreement between the parties on the fact that the laws of Suriname neither recognize nor guarantee the rights of the indigenous and tribal peoples of Suriname to own their lands, territories, and natural resources. As mentioned above, this lack of recognition constitutes a violation of Article 21.

113. In the case of *Saramaka*, when analyzing Suriname's legal framework regarding indigenous peoples, the Inter-American Court stated:

> 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

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[203] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 215, and I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 146.

[204] I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 215, and *Case of the Saramaka People v. Suriname, supra* note 16, para. 144; see also 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. 127.

[205] *See* Submission of Suriname, September 12, 2008, pp. 10, 12-13.

[206] Submission of petitioners, October 29, 2008, pp. 4-5.

[207] Report No. 09/06, *Case of Twelve Saramaka Clans*, Case 12,388 (Suriname), IACHR, March 2, 2006, para. 188.

[208] Submission of Suriname, March 22, 2008, p. 1.

> permanent use and enjoyment. This title must be recognized and respected, not only in practice, but also in law, in order to ensure its legal certainty. In order to obtain such title, the territory traditionally used and occupied by the members of the Saramaka people must first be delimited and demarcated, in consultation with such people and other neighboring peoples.

114. The Court went on to hold that Suriname had "not complied with its duty to give domestic legal effect to the members of the Saramaka people's property rights in accordance with Article 21 of the Convention... ."[209]

115. In this case, the issuance of land titles does not satisfy the balancing test established by the Inter-American Court for cases in which the collective rights of indigenous peoples are coexistent with the private property rights of non-indigenous individuals over the same lands.[210] However, this full analysis is unnecessary in this case, since the State has failed to satisfy the first element (recognition of the rights of indigenous peoples) of the balancing test. Moreover, the Inter-American Court has stated that the duty to protect the property rights of tribal and indigenous peoples "requires the State to both accept and disseminate information, and entails constant communication between the parties." [211] The IACHR considers that the State's failure to provide information regarding which titles have been issued to non-indigenous individuals and over which plots of land violates the Kaliña and Lokono People's property rights over their ancestral lands, as they have a right to be informed regarding how their lands are being affected by acts authorized by the State.

116. For these reasons, the Inter-American Commission concludes that Suriname has violated Article 21 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, to the prejudice of the Kaliña and Lokono Peoples by issuing and maintaining land titles, long-term leases, and lease holds to non-indigenous individuals in the ancestral lands of the Kaliña and Lokono without consulting them.[212]

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[209] 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. 116 (Internal citations omitted).

[210] For instance, the State has not explained whether it considers the right to own vacation homes to trump the collective right of indigenous peoples to their ancestral lands, territories and natural resources (proportionality). Also, the State has not explained whether alternative plots in non-indigenous lands could be made available for these vacation homes (necessity).

[211] I/A Court H.R., *Case of the Saramaka People v. Suriname*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 23, 2011, para. 133 ("[I]n ensuring the effective participation of members of the Saramaka people in development or investment plans within their territory, the State has a duty to actively consult with said community according to their customs and traditions ... This duty requires the State to both accept and disseminate information, and entails constant communication between the parties."). In this case, there has been no such dissemination of information or constant communication between from the State to the petitioners, despite their repeated requests for information.

[212] The Inter-American Court has stated that "the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal ext3nsion and quality." I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, para. 128; *see also* 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, para. 133.

b. Granting of Mining Concessions and Other Activities

117. The petitioners also claim that Suriname has granted concessions and permits to conduct mining and other extractive activities in their ancestral territories without prior consultation, in violation of their rights under Article 21 of the American Convention. Suriname argues that the mining concession was granted before it acceded to the American Convention, and that in any event any affectation the mining activities may be causing is trivial and *de minimis*, and so a legitimate interference with the alleged property rights of the Kaliña and Lokono Peoples. The IACHR has already determined (see paragraph 76) that the effects of the granting of the mining concession have continued after 1987, and that it therefore has jurisdiction *ratione temporis* over potential violations arising from that act. Suriname does not dispute that it has not adopted domestic legislation to protect the rights of indigenous peoples to consultation and consent regarding projects or activities that affect their territories.

(i) The Right to Consultation

118. The Inter-American Court and the IACHR have elaborated on the content and scope of Article 21 of the American Convention, in connection with the right of indigenous peoples to use and enjoy their territory, by interpreting Article 21 progressively, in a way to permit the enjoyment and exercise of the rights recognized by the State in any other relevant treaties ratified by the State, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[213] Through developments in regulations and case law, international law has given specific content to the right of indigenous peoples to be consulted regarding situations that may affect their territory, and the corresponding duty of States to engage in prior consultations.

119. The right to free, prior and informed consultation of indigenous peoples is derived from the right to self-determination, pursuant to which indigenous peoples may "freely pursue their economic, social and cultural development" and "freely dispose of their natural wealth and resources" so as to not be "deprived of [their] own means of subsistence."[214]

120. In this regard, the IACHR has recalled the duty of States to consult indigenous peoples regarding any activity or economic project that affects their lands and natural resources, including cases in which the State seeks to exploit mineral resources in indigenous lands. The right to consultation comprises the positive duty of States to provide suitable and effective mechanisms to seek to obtain

[213] Suriname has ratified both the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights. Suriname ratified both on March 28, 1977. *International Covenant on Civil and Political Rights*, 19 December 1966, 99U.N.T.S. 171, Can T.S. 1976 No. 47, 6 I.L.M. 368 (entered in force 23 March 1976), and *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3, 6 I.L.M. 368 (entered into force 3 January 1976). The Committee on Economic, Social, and Cultural Rights, the body of independent experts that supervises State parties' implementation of the ICESCR, has interpreted common Article 1 of said instruments as being applicable to indigenous peoples. *Cf.* UNCESCR, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations on Russian Federation (Thirty-first session)*, U.N. Doc. E/C.12/1/Add.94, December 12, 2003, para. 11, in which the Committee expressed concern for the "precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant." Pursuant to Article 29(b) of the American Convention, the IACHR may not interpret the provisions of Article 21 of the American Convention in a manner that restricts its enjoyment and exercise to a lesser degree than what is recognized in said covenants.

[214] I/A Court H.R., *Saramaka People. v. Suriname Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No., para. 93.

prior, free, and informed consent in accordance with the customs and traditions of the indigenous peoples before undertaking activities that may adversely affect their interests or their rights to their lands, territory or natural resources.[215]

121. The Inter-American Commission has applied these principles in different contexts, including in connection with infrastructure or development mega projects, such as highways, canals, dams, ports, and similar projects, as well as to concessions for the exploration or exploitation of natural resources in ancestral lands that may have an especially profound effect on indigenous peoples by endangering their territories and ecosystems located therein, particularly when the ecological fragility of their territories is combined with their demographic weakness.[216] For that reason, the IACHR has highlighted the connection between the potential negative effects of certain development plans and projects in indigenous or tribal territories, as well as of natural resource exploration and exploitation concessions, and potential violations of multiple individual and collective human rights.[217]

122. The IACHR has also considered that the environmental damage that can be caused by natural resource exploration or exploitation concessions exacerbates the violations of communal property rights, rendering the violating authorities internationally liable.[218] In this regard, the IACHR has reiterated that it "acknowledges the importance of economic development for the prosperity of the populations of this Hemisphere."[219] "[A]t the same time, development activities must be accompanied by appropriate and effective measures to ensure that they do not proceed at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural and spiritual well-being."[220]

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[215] See *inter alia* IACHR, Report on Ecuador 1997 Conclusions of Chapter IX. Human Rights issues of special relevance to the indigenous inhabitants of the country and Conclusions of Chapter VIII; IACHR, Report on the Situation of Human Rights in Colombia, Chapter X, 1999. Recommendation No. 4.; IACHR, Final Merits Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002, para. 140; IACHR, Final Merits Report No. 40/04, Case 12.053. Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, para. 142; IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Chapter IV, Rights of Indigenous Peoples and Peasant Communities, paragraph 248; IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, Chapter IX.

[216] IACHR, Third Report on the Situation of Human Rights in Colombia. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, paras. 33-35.

[217] For example, these have concluded that the right to live in dignity is violated when development projects cause environmental pollution and harmful effects on basic subsistence activities, affecting the health of the indigenous and tribal peoples in the territories where those projects are carried out. IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, para. 250. In particular, mention was made of "adverse effects on health and production systems; changes in domestic migration patterns; a decline in the quantity and quality of water sources; impoverishment of soils for farming; a reduction in fishing, animal life, plant life, and biodiversity in general, and disruption of the balance that forms the basis of ethnic and cultural reproduction." These constitute violations of the human rights of the indigenous peoples living in the places where projects to extract mining, timber, or oil are conducted. IACHR, Follow-up report - *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, paragraph 158.

[218] IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 148.

[219] IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 150.

[220] IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 150.

(i)(a) Established by law, necessary, proportional, and legitimate

123. Similarly, the Inter-American Court of Human Rights has established that in the event of restrictions or limitations on the exercise of the indigenous peoples' property rights over their lands, territories, and natural resources, States have a duty to provide certain guarantees.[221] First, the Court has pointed out that States must comply with the requirements established for instances of expropriation in Article 21 of the American Convention. As the Court has explained,

> the protection of the right to property under Article 21 of the Convention is not absolute [...] Although the Court recognizes the interconnectedness between the right of members of indigenous and tribal peoples to the use and enjoyment of their lands and their right to those resources necessary for their survival, said property rights, like many other rights recognized in the Convention, are subject to certain limitations and restrictions. In this sense, Article 21 of the Convention states that the "law may subordinate [the] use and enjoyment [of property] to the interest of society." Thus, the Court has previously held that, in accordance with Article 21 of the Convention, a State may restrict the use and enjoyment of the right to property where the restrictions: a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society.[222]

(i)(b) Not a threat to the indigenous people's survival

124. The second binding requirement on States is to ensure that the authorization of a project in ancestral indigenous territories does not affect the survival of the indigenous or tribal people concerned in accordance with its traditional way of life. As the Inter-American Court has stated, "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 its members."[223] As the Court pointed out in its interpretation judgment in the *Saramaka* case, the notion of "survival" is not to be equated with mere physical subsistence but "must be understood as the ability of the Saramaka people 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 (...). That is, the term 'survival' in this context means more than mere physical survival."[224] Likewise, for the IACHR "the term 'survival' does not refer only to the obligation of the State to ensure the right to life

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[221] As discussed below, these rights and duties have been established in, among others, the following cases: I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Preliminary Objections. Judgment of February 1, 2000; I/A Court H.R., *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146; 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; 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.

[222] 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, paragraph 127. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. para. 156.

[223] 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, paragraph 128. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. para. 156.

[224] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 37.

of the victims, but rather to take all the appropriate measures to ensure the continuance of the relationship of the indigenous people with their land or their culture."[225]

(i)(c)(1) Effective participation and consent

125. The third guarantee established by the Court contains three separate but related obligations. According to the Court, Article 1(1) of the American Convention requires that, in order to guarantee that restrictions to the property rights of the members of the indigenous or tribal peoples by the issuance of concessions or authorization or projects within their territory does not amount to a denial of their survival as a people, States must comply with the following three safeguards:

> First, the State must ensure the effective participation of the members of the [people concerned], in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan [...] within the [ancestral] territory. Second, the State must guarantee that the [members of the people concerned] will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within [the ancestral] territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment.[226]

126. As explained by the Court, these safeguards "are intended to preserve, protect and guarantee the special relationship that the members of the [indigenous people] have with their territory, which in turn ensures their survival as a tribal people."[227] The three obligations are complementary in their aim to guarantee the survival of the indigenous or tribal people.[228]

127. With respect to the effective participation requirement, the organs of the inter-American system have specifically established that indigenous and tribal peoples have a right to "be involved in the processes of design, implementation, and evaluation of development projects carried out on their lands and ancestral territories."[229] Moreover, the State must guarantee that "indigenous peoples be consulted on any matters that might affect them,"[230] and "the purpose of such consultations should be to obtain their free and informed consent."[231] Through the consultation process the

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[225] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 29.

[226] 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.

[227] 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. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. para. 157.

[228] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 38.

[229] IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, para. 157.

[230] IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, para. 157.

[231] IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, para. 157. See *Inter alia* IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, para. 143.

participation of the indigenous and tribal peoples must be guaranteed "in all decisions on natural resource projects on their lands and territories, from design, through tendering and award, to execution and evaluation."[232]

128. For the Court, effective participation consists precisely in the right of the indigenous peoples to prior consultation "in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan" within their ancestral territory.[233] The Court has also considered that, in the case of large scale investment or development plans that could have a major impact within the indigenous territory, "the State has a duty, not only to consult with the [indigenous people], but also to obtain their free, prior, and informed consent, in accordance with its customs and traditions."[234] The Court has emphasized that "the obligation to consult, in addition to being a conventional standard, is also a general principle of International Law" and 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."[235] The Court has also specified that "it is the State's obligation—and not that of the indigenous peoples—to effectively demonstrate, in this specific case, that all aspects of the right to prior consultation were effectively guaranteed."[236]

129. In order to be consistent with inter-American human rights law, the consultation with the indigenous peoples must fulfill certain requirements: it must be prior, that is to say, it must be conducted "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."[237] It also must be culturally appropriate and take the traditional methods used by the people concerned to take decisions, as well as their own forms of representation.[238] It must be informed, which requires that full and accurate information be provided to the communities consulted regarding the nature and consequences of the process.[239] The consultation must also be conducted in good faith and for the

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[232] IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, para. 248.

[233] 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. 127, 128. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paras. 159-167.

[234] 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. 134.

[235] I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paras. 164 and 165.

[236] I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 179.

[237] I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. para. 167 and paras. 180-182. 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. 133.

[238] 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. 27, 131, 133, 154. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 201-202.

[239] IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 142. 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. 133. IACHR, *Report on the Situation of Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997. IACHR, *Report on the Situation of Human Rights in Ecuador*. Doc.

Continues...

purpose of reaching an agreement.[240] Regarding the good faith requirement, the Court has emphasized specifically that said requirement "is incompatible with practices such as attempts to disintegrate the social cohesion of the affected communities, whether it is through the corruption of communal leaders or the establishment of parallel leaderships, or through negotiations with individual members of the community that are contrary to international standards."[241]

(i)(c)(2) Benefit Sharing

130. The second component relates to the sharing of the project's benefits and requires the establishment of mechanisms for participation in the benefits of the project for the communities or peoples affected by the extraction of natural resources or the investment or development projects.[242] In the Court's opinion, "the notion of sharing benefits (...) is inherent to the right of compensation recognized under Article 21.2 of the Convention" and "extends not only to the total deprivation of property title by way of expropriation by the State, for example, but also to the deprivation of the regular use and enjoyment of such property."[243]

(i)(c)(3) Social and environmental impact assessment

131. The third guarantee relates to the carrying out of a prior social and environmental impact assessment by "independent and technically capable entities, with the State's supervision."[244] The ultimate purpose of social and environmental impact studies is to "preserve, protect and guarantee the special relationship" of the indigenous peoples with their territories and to guarantee their subsistence as peoples.[245] For the Inter-American Court, Article 21 of the American Convention, in conjunction with Article 1(1), is violated when the State does not conduct or supervise environmental

...Continuation
OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997. IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, para. 248.

[240] 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. 133. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paras. 185-187.

[241] I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 186.

[242] IACHR, *Democracy and Human Rights in Venezuela, 2009*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, para. 1137, Recommendations 5 and 6; IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paras. 248 and 297, Recommendations 5 and 6.

[243] 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. 138-139. *See also* United Nations, Committee on the Elimination of Racial Discrimination, *Observations of the Reports submitted by States parties under article 9 of the Convention. Concluding Observations on Ecuador*, paragraph 16. United Nations, Report of the Special Rapporteur on the situation of human Rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (Fifty-ninth session), United Nations Doc. E/CN.4/2003/90, January 21, 2003, para. 66.

[244] 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. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 205.

[245] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 40. IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, para. 254.

and social assessments prior to the granting of concessions.[246] It has also determined that environmental and social impact studies must be conducted prior to approval of the respective plans,[247] and it requires States to allow indigenous peoples to take part in those prior social and environmental impact studies.[248] In general terms, social and environmental impact assessments "must respect the traditions and culture [of the indigenous or tribal] people concerned,"[249] and their findings must be shared with the communities so that they can make an informed decision.

(ii) *Consultation and consent with the Kaliña and Lokono Peoples*

132. In this case, Suriname acknowledges that no consultation of any kind was conducted with the Kaliña and Lokono at the time the concession was granted.[250] Similarly, it has been proven that the Kaliña and Lokono Peoples were not consulted when the specific mining activities were planned in the 1990s, or when they commenced in 1997, both of which are subsequent acts to Suriname's incorporation to the OAS and its accession to the American Convention.[251] In addition, contrary to the State's arguments, it has been proven (see paragraphs 68-69) that the bauxite mining activities has had a significant negative impact on the Kaliña and Lokono's traditional territory. Accordingly, the IACHR finds that Suriname has violated the Article 21 property rights of the Kaliña and Lokono Peoples, in connection with Article 1.1 and 2 of the same treaty, by failing to conduct a free, prior and informed consultation, and by failing to cease and redress the effects of the lack of such consultation, in connection with the bauxite mining activities planned and commenced after 1990.

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[246] 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. 154.

[247] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 41. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paras. 205-206.

[248] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 133; I/A Court H.R, *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 16.

[249] I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, para. 41.

[250] The lack of such a consultation, even if it took place before Suriname acceded to the American Convention, can be cited "to place into the proper context those alleged violations over which the [Court] actually exercises jurisdiction." I/A Court H.R., *Moiwana Village v. Suriname*, Judgment of June 15, 2005, Series C No. 124, para. 70.

[251] At the hearing held on March 27, 2012 at the facilities of the IACHR, the State of Suriname indicated that generally when a large-scale project is planned in indigenous territories, the State consults with the relevant communities. IACHR, Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname. However, Suriname has not provided evidence that any such consultation was conducted with the Kaliña and Lokono Peoples. In this case, it is not necessary to analyze whether the free, prior and informed consent of the Kaliña and Lokono was obtained in order to conduct mining activities, since no consultation was conducted at all. In *Saramaka*, the Inter-American Court ordered Suriname to review concessions previously granted in lights of the terms of the *Saramaka* udgment. 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. 214(5).

c. Establishment of the Nature Reserves

133. The petitioners also claim that Suriname has violated their Article 21 property rights by establishing three Nature Reserves in part of what they claim as their ancestral territory: the Wia Wia, Galibi, and Wane Kreek Nature Reserves. Suriname argues that the Nature Reserves were established before its accession to the American Convention, so it cannot be held liable for acts or omissions related to their heir establishment. As explained above (see paragraph 76), the effects of establishing the Nature Reserves have continued after Suriname's accession to the American Convention in 1987, and the Commission therefore has jurisdiction to determine potential human rights violations arising from their establishment. Suriname adds that the Reserves serve a legitimate public interest, namely environmental conservation, and do not interfere with indigenous peoples' rights or the exercise of their traditional lifestyle.

(i) The Rights of Indigenous Peoples and Environmental Conservation

134. The IACHR, the Inter-American Court and other international human rights bodies have expressed that environmental preservation is an important public imperative, but it must not be pursued at the cost of denying the rights of indigenous peoples. The Inter-American Commission, for instance, has explained that "in some cases the establishment of protected natural areas can be a form of limitation or deprivation of indigenous peoples' right to the use and enjoyment of their lands and natural resources, derived from the State's unilateral imposition of regulations, limitations, conditions and restrictions upon said use and enjoyment for reasons of public interest, in this case the conservation of nature."[252] The IACHR has also stated that when the establishment of protected areas affects indigenous territories, the special safeguards mentioned above in connection to development projects also apply.[253]

135. The Inter-American Court of Human Rights has also addressed the issue. In the case of *Xákmok Kásek Community v. Paraguay*, the Court analyzed, among other things, the establishment of a protected area in ancestral indigenous territory without consulting the indigenous community.[254] The Court held that the establishment of the protected area without consulting the Xákmok Kásek community was one factor, among others, that contributed to the violation of their Article 21 property rights because it implied serious restrictions to the basic, traditional activities of the indigenous community, as well as the impossibility of expropriating those lands to restitute them to the Xákmok Kásek.[255]

136. In the context of creating protected areas, the Inter-American Court has established that, in order to guarantee the right to property of the indigenous peoples, States must ensure the effective participation of the members of affected indigenous communities in accordance with their

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[252] IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*, Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, para. 222.

[253] IACHR, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources*, Doc. OEA/Ser.L/V/II, Doc. 56/09, December 30, 2009, para. 222.

[254] 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, paras. 80-82, 157-158, 169-170.

[255] 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, paras. 169-70.

customs and traditions, in any plan or decision that could affect their traditional lands and restrict the use and enjoyment of these lands, to ensure that such plans or decision do not negate their survival as indigenous people.[256] With respect to prior acts that attempt against the rights of indigenous peoples, and in which no consultation or other safeguards were followed, the Court has stated that the State must review them in light of the Court's jurisprudence in order to evaluate whether any changes are necessary in order to fully respect the rights of indigenous peoples.[257]

137. The IACHR considers that it is precisely in order to harmonize respect for indigenous peoples' rights and conservationist objectives that the State must undertake free, prior and informed consultations in which the effective participation of affected indigenous peoples, in accordance with their customs and traditions, is guaranteed. As expressed in the IUCN/WCPA/WWF Principles and Guidelines on Protected Areas and Indigenous/Traditional Peoples ("Principles and Guidelines"), cited by Suriname in this case, "[a]greements between representatives of the respective communities and conservation agencies for the establishment and management of protected areas should contribute to securing indigenous and other traditional peoples' rights, including the right to the full and effective protection of their areas, resources and communities."[258]

138. The United Nations Declaration on the Rights of Indigenous People, for which Suriname voted in favor, provides that "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources."[259] Moreover, the UN Special Rapporteur on the Rights of Indigenous Peoples has stated that the "establishment of protected areas such as national parks and nature reserves often involves eviction of indigenous people from large tracts of indigenous lands, the collapse of traditional forms of land tenure, and their impoverishment, which has led to many social conflicts (...)"[260] The Special Rapporteur has also underscored "the need for new paradigms for protected areas in order to ensure that violated

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[256] 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, para. 157.

[257] See I/A Court H.R., *Saramaka People. v. Suriname Case.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 172, para. 194(a): "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."

[258] World Commission on Protected Areas (WCPA), The World Conservation Union (IUCN), World Wildlife Fund, Principles and Guidelines on Protected Areas and Indigenous/Traditional Peoples, Guideline 2.1. With respect to situations in which the rights of indigenous peoples are not yet recognized by law, the Principles and Guidelines state: In cases where indigenous and other traditional peoples' rights within protected areas are not yet recognised by a government, and until the process leading towards such recognition is completed, the concerned communities should still be guaranteed access to the resources existing in their terrestrial, coastal/marine and freshwater areas, insofar as they are necessary for their livelihoods. Any access restrictions should be agreed on with the communities concerned, and appropriate compensation should be given in cases where such restrictions are considered necessary by all parties, to ensure appropriate conservation of the resources contained within the protected area." Guideline 2.5.

[259] United Nations Declaration on the Rights of Indigenous Peoples, GA Res. 61/295 annex, UN Doc A/RES/61/295, 2 October 2007, Article 29.

[260] UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, UN Doc. A/HRC/4/32, 27 February 2007, paras. 22.

indigenous rights are restored and are respected in the future," reiterating that the "defence of human rights must be a priority in environmental campaigns (...)"[261]

139. This is consistent with Principle 1 of the Principles and Guidelines, which states that:

> there should be no inherent conflict between the objectives of protected areas and the existence, within and around their borders, of indigenous and other traditional peoples. Moreover, they should be recognised as rightful, equal partners in the development and implementation of conservation strategies that affect their lands, territories, waters, coastal seas, and other resources, and in particular in the establishment and management of protected areas.[262]

140. The Principles and Guidelines also underscore that "[i]ndigenous and other traditional peoples have long associations with nature and a deep understanding of it. Often they have made significant contributions to the maintenance of many of the earth's most fragile ecosystems, through their traditional sustainable resource use practices and culture-based respect for nature."[263]

141. The African Commission on Human and Peoples' Rights ("African Commission") has also looked at the issue of indigenous communities' rights to their ancestral lands and resources in the context of environmental conservation. In the *Endorois* case, the African Commission examined whether the State of Kenya's establishment of a "Game Reserve," which displaced some members of the Endorois indigenous community from their ancestral land and restricted the community's access to it, was consistent with respect for the indigenous community's rights to their ancestral lands and resources.[264] The African Commission explained that in these types of cases, a State's limitations on rights must be proportionate to a legitimate need and should be the least restrictive measures possible,[265] and "[a]t the point where such a right [i.e., the right that is being infringed] becomes illusory, the limitation cannot be considered proportionate."[266] The African Commission considered that "even if the Game Reserve was a legitimate aim and served a public need, it could have been accomplished by

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[261] UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, UN Doc. A/HRC/4/32, 27 February 2007, paras. 23.

[262] World Commission on Protected Areas (WCPA), The World Conservation Union (IUCN), World Wildlife Fund, Principles and Guidelines on Protected Areas and Indigenous/Traditional Peoples, Principle 1. Available at: http://data.iucn.org/dbtw-wpd/edocs/PAG-004.pdf.

[263] World Commission on Protected Areas (WCPA), The World Conservation Union (IUCN), World Wildlife Fund, Principles and Guidelines on Protected Areas and Indigenous/Traditional Peoples, Principle 1.

[264] African Commission on Human and Peoples' Rights, Communication 276/2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, November 2009. The Inter-American Court of Human Rights has cited the *Endorois* decision when analyzing indigenous peoples' right to consultation and collective property in relation to the right to cultural identity. 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. 216, n. 285.

[265] African Commission on Human and Peoples' Rights, Communication 276/2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, November 2009, para. 214.

[266] African Commission on Human and Peoples' Rights, Communication 276/2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, November 2009, para. 215.

alternative means proportionate to the need."[267] It thus concluded that the State of Kenya had "not only denied the Endorois community all legal rights in their ancestral land, rendering their property rights essentially illusory, but in the name of creating a Game Reserve and the subsequent eviction of the Endorois community from their own land, the Respondent State has violated the very essence of the right itself, and cannot justify such an interference with reference to 'the general interest of the community' or a 'public need.'"[268]

142. The Inter-American Commission considers that protection of the rights of indigenous peoples is consistent with respect for the environment, including in the context of protected areas, provided appropriate safeguards and guarantees are put in place and enforced, as discussed below.

(ii) The Wia Wia Nature Reserve

143. The Wia Wia Reserve was established 1966, pursuant to the 1954 Nature Protection Act. It is undisputed that this Act did not provide for respect for the rights of indigenous peoples.[269] It is likewise undisputed that the affected Kaliña and Lokono villages living in the area were not consulted before it was established, and were not consulted at the time of Suriname's accession to the American Convention or at anytime thereafter.

144. Although Suriname has not undertaken acts to consult with indigenous peoples regarding the Wia Wia Nature Reserve, it contends that it has "no impact whatsoever on the traditional way of life" of the Kaliña and Lokono Peoples.[270] The petitioners dispute this, arguing that traditional indigenous subsistence practices are prohibited and criminalized inside the Wia Wia Reserve.[271] Suriname also adds that the State's stewardship in environmental protection is necessary, and that the petitioners lack expertise and authority to ensure that protected areas are adequately respected.[272] The petitioners, on the other hand, argue that the traditional activities of the Kaliña and Lokono in the Reserve have never represented a threat to the environment, and that their traditions in fact promote respect for the environment and its subsistence.[273]

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[267] African Commission on Human and Peoples' Rights, Communication 276/2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, November 2009, para. 215.

[268] African Commission on Human and Peoples' Rights, Communication 276/2003 – Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, November 2009, para. 215.

[269] *See* Submission of Suriname, September 12, 2008, p. 16. In fact, there is consensus between the parties that all land rights in Suriname must derive from a concession awarded by the State. In this context, the indigenous and tribal peoples who cannot show a title granted by the State are regarded by the latter as occupants with permission to inhabit state lands, but whose interests are subordinate to the "general interest." Titles are only granted to individuals, unless a community registers itself as a legal entity, such as a foundation.

[270] Submission of Suriname, March 22, 2008, p. 5.

[271] Submission of petitioners, May 29, 2008, para. 44.

[272] Submission of Suriname, September 12, 2008, pp. 16-17.

[273] Annex 6. Petition, para. 89.

145. The IACHR considers that Suriname has not demonstrated that it considered alternative, less intrusive mechanisms or arrangements that take into account the rights of indigenous peoples in connection with the establishment, maintenance and management of the Wia Wia Nature Reserve.

146. For the foregoing reasons, the IACHR concludes that Suriname has violated Article 21 of the American Convention, in connection with Articles 1.1 and 2 of the Convention, to the detriment of the Kaliña and Lokono Peoples in connection with the continuing effects of the establishment and management of the Wia Wia Nature Reserve.

(iii) The Galibi Nature Reserve

147. The Galibi Nature Reserve was established 1969, also pursuant to the 1954 Nature Protection Act. The affected Kaliña and Lokono villages living in the area were not consulted when the Reserve was initially established. However, Suriname alleges that some "consultations" have been undertaken subsequent to its creation, primarily with the establishment of the Consultation Commission of the Galibi Reserve.

148. In this respect, the Inter-American Court has stated that "it is the obligation of the State– and not of the indigenous peoples– to prove that all aspects of the right to prior consultation were effectively guaranteed" in a given case.[274] Despite the establishment of the Consultation Commission of the Galibi Reserve in the late 1990s, the property rights of indigenous peoples over their ancestral lands remains unrecognized. There are contradicting accounts of the purported "arrangement" agreed with the indigenous inhabitants at the time,[275] but it is undisputed that the Reserve was created pursuant to the 1954 Nature Protection Act, which did not provide for respect of the rights of indigenous peoples. Irrespective of the alleged "consultations" carried out during the early years of the Galibi Reserve, the IACHR considers that Suriname has not complied with other important safeguards established by Inter-American jurisprudence.

149. Firstly, it is undisputed that the property rights of the Kaliña and Lokono Peoples over their ancestral lands are subordinate to the legal status of the Galibi Reserve. In addition, the State has not provided evidence that an environmental or social impact assessment has been conducted. Similarly, the State has not shown that the current legal framework governing the existence of the Reserve is the only method to achieve the conservationist objectives of the Reserve, or the least intrusive on the rights of indigenous peoples (to satisfy the "necessity" and "proportionality" requirements discussed above). In other words, Suriname has not shown that, since its accession to the American Convention, it has considered other conservation alternatives that are less infringing of the Kaliña and Lokono's property rights. It is clear from the evidence presented that the Kaliña and Lokono

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[274] 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. 179.

[275] For instance, petitioners claim that this was no true consultation and that "the villagers were not involved in the decision-making process. They were confronted with the [Galibi] reserve as a *fait accompli*. . . ." Annex 6. Petition, para. 83. The State, for its part, first claimed that an arrangement was reached with the local indigenous communities in 1985, and then stated that this arrangement had been reached in 1969. *See* Submission of Suriname, March 22, 2008, p. 5; Submission of Suriname, September 12, 2008, p. 9. Dr. Stuart Kirsch stated that the "current Captains of Galibi believe that the Dutch colonial administration took advantage of the fact that the Kaliña were unfamiliar with their rights" and "regard the process through which the Galibi Nature Reserve was established as fraudulent and therefore a violation of their human rights." Annex 8. Submission of petitioners, December 28, 2008, Expert Report of Stuart Kirsch, p. 6.

have for many years expressed their opposition and lack of consent to the existence of the Reserve, and that they have been prevented from accessing the Galibi Reserve and on at lest one occasion were even harassed when some of their members were near the Reserve.[276]

150. For the foregoing reasons, the IACHR considers that Suriname has violated Article 21 of the American Convention, in connection with its Articles 1.1 and 2, to the detriment of the Kaliña and Lokono Peoples in connection with the continuing effects of the establishment and management of the Galibi Nature Reserve.

(iv) The Wane Kreek Nature Reserve

151. The Wane Kreek Reserve was established by State Decree of August 26, 1986, at a time when Suriname was already independent.[277] Among other things, the Decree creating the Wane Kreek Reserves provides that to the extent there are "villages and settlements of bushland inhabitants living in tribal form, within the areas designated by this State Decree as nature reserves, the rights acquired by virtue thereof, will be respected."[278] There are no indigenous villages settled inside the Reserve, but as was proven in the proceedings (see paragraph 55) the Kaliña and Lokono have used the area for their traditional activities.[279] Despite its status as a Nature Reserve, bauxite mining operations are conducted inside the Reserve.[280]

152. Moreover, the Wane Kreek Reserve was created when Suriname had become a Member State of the OAS and was obligated to protect and guarantee the rights enshrined in the American Declaration, including the right to property (Article XXIII) and the right to the benefits of culture (Article XIII).

153. As with the Wia Wia Reserve, no consultation of any type with the indigenous communities was conducted when the Reserve was created, when Suriname acceded to the American Convention, or when the mining operations were authorized. Although Suriname claims that restrictions on activities in the Reserve "are never enforced in a way which would interfere with the traditional use rights of the indigenous groups concerned,"[281] it acknowledges that the rights of indigenous peoples to enter the Reserve are not formally recognized by law, and therefore are legally subordinate to the status of the Nature Reserve.

154. In addition, there is evidence of significant environmental damage inside the Wane Kreek Reserve as a consequence of the extractive activities conducted therein. No environmental or social impact assessment was conducted by the State, but ex post assessments have shown significant environmental affectation. Specifically, as has been proven (see paragraph 68), "considerable damage has already been done to Wane 1 and 2 by bauxite mining (...) [The mining company recommends] to

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[276] See paragraph 54, *supra*.

[277] *See* Submission of petitioners, May 29, 2008, Annex D, State Decree of 26 August 1986, Nature Protection Decree 1986.

[278] Submission of petitioners, May 29, 2008, Annex D, State Decree of 26 August 1986, Nature Protection Decree 1986, article 4.

[279] Submission of Suriname, March 22, 2008, pp. 5-6; Petition, paras. 86-88.

[280] See, e.g., Submission of Suriname, September 12, 2008, Annex III, Affidavit of Glenn Renaldo Kingswijk.

[281] Submission of Suriname, September 12, 2008, Annex I, Affidavit of Ferdinand Baal and Bryan Drakenstein, p. 1.

conclude mining and exploration activities of the four Wane Hills as soon as possible, restore disturbed areas to an acceptable state, and withdraw from the [Wane Kreek Nature Reserve]."[282] The Commission notes the inherent inconsistency in allowing mining activities inside a purportedly protected natural reserve.

155. This type of activity inside ancestral indigenous lands is precisely the type of activity that the Inter-American Court has stated should be subject to consultations and consent of the affected indigenous peoples. In *Saramaka*, the Court stated that "regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka, but also to obtain their free, prior, and informed consent, according to their customs and traditions."[283] No consultation or consent of this type was conducted or obtained in connection with the authorization of bauxite mining operations inside the Wane Kreek Reserve.

156. For the foregoing reasons, the Inter-American Commission considers that Suriname has violated Article 21 of the American Convention, in connection with Articles 1.1 and 2 of that instrument, to the detriment of the Kaliña and Lokono Peoples in connection with the continuing effects of the establishment and management of the Wane Kreek Nature Reserve, and the authorization of mining activities therein.

E. The Right to Judicial Protection

157. Article 25 of the American Convention on Human Rights provides that:

> 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> 2. The States Parties undertake:
>
> a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
>
> b. to develop the possibilities of judicial remedy; and
>
> c. to ensure that the competent authorities shall enforce such remedies when granted.[284]

158. The petitioners claim that Suriname has violated Article 25 of the American Convention by failing to provide timely and effective judicial remedies for violations of the Kaliña and Lokono Peoples' human rights.

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[282] Submission of the petitioners, December 22, 2010, SRK Consulting Environmental Sensitivity Analysis, pp. iv, 20-21.

[283] 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. 134.

[284] American Convention on Human Rights, Article 25.

159. With regard to indigenous peoples, the Inter-American Court has stated that "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."[285] The Court has held that in order to guarantee members of indigenous peoples their right to communal property, States must establish "an effective means with due process guarantees [...] for them to claim traditional lands"[286] and that "[t]he inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs."[287]

160. In the specific case of Suriname and compliance with Article 25 as it applies to indigenous and tribal peoples, the Court has found that Suriname's Civil Code does not provide adequate and effective recourse against acts that violate indigenous and tribal people's rights to communal property;[288] that the L-Decree of 1982 and the Mining Decree of 1986 are inadequate and ineffective because they do not offer legal protection to inhabitants of the interior living in indigenous or tribal communities, who do not hold title to their traditional territories;[289] and that the Forest Management Act of 1992 does not satisfy the requirement under Article 25 of the American Convention to provide adequate and effective judicial remedies for alleged violations of communal property rights of members of indigenous and tribal peoples.[290] As a result, the Court held that Suriname had "violated the right to judicial protection recognized in Article 25 of the Convention, in conjunction with Articles 21 and 1(1) thereof, to the detriment of the members of the Saramaka people, as the aforementioned domestic provisions do not provide adequate and effective legal recourses to protect them against acts that violate their right to property."[291]

161. In this case, Suriname has not provided information that it has enacted laws or legislation to address the problems found by the Inter-American Court in *Saramaka* in connection with the State's compliance with Article 25 of the American Convention. In its submission of September 12, 2008, the State stated that the process of recognition of the rights of indigenous peoples in Suriname is "only in early stages of development." To the extent this statement was intended to apply to the availability of adequate and effective judicial protections under Article 25, the IACHR considers that sufficient time has passed, and Suriname has not demonstrated what specific steps, if any, it has taken

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[285] 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.).

[286] 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 the Indigenous Community Yakye Axa*, para. 96.).

[287] 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.

[288] 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. 179-182.

[289] 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. 183.

[290] 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. 184.

[291] 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. 185.

in this alleged process to provide judicial protections to the Kaliña and Lokono Peoples.[292] In addition, at the hearing held in connection with this case, the State cited a number of laws, policies and procedures to support the proposition that the Kaliña and Lokono have judicial protections under Surinamese legislation.[293] However, the cited laws and measures were the same that the Inter-American Court dismissed in *Saramaka*.

162. For the foregoing reasons, the Inter-American Commission concludes that there are no effective domestic judicial means available for the Kaliña and Lokono Peoples to assert their rights, and, consequently, the State of Suriname has violated the right to judicial protection established in Article 25 of the American Convention to the detriment of the Kaliña and Lokono Peoples.

F. The Right to Freedom of Thought and Expression

163. Subsequent to the Report on Admissibility, the petitioners alleged that the State's failure to provide details regarding the precise dates when titles were issued to non-indigenous persons violates Article 13 of the American Convention, which protects the right to freedom of thought and expression. Specifically, they state that "this failure to make public information available without providing any reason contravenes Article 13 of the American Convention."[294] The State has not made any observations regarding this claim by the petitioners.

164. Article 13 of the American Convention provides, in relevant part:

> 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice (....)

165. Since the petitioners alleged a violation of Article 13 only after the adoption of the Admissibility Report in this case, the IACHR has not received important information regarding the admissibility of this specific alleged violation, including whether domestic remedies were exhausted.[295] In any event, as discussed above at paragraph 115, the Inter-American Commission has found that the State's failure to provide this information constitutes a violation of the Kaliña and Lokono Peoples' property rights protected by Article 21 of the American Convention.

166. For these reasons, the IACHR concludes that it does not have sufficient information to find that Suriname has violated Article 13 of the American Convention to the detriment of the Kaliña and Lokono Peoples.

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[292] *Cf.* 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, para. 161.

[293] IACHR, Hearing on the Merits, March 27, 2012, IACHR 144 Period of Sessions, Case 12.639 – Kaliña and Lokono Peoples, Suriname.

[294] Submission of petitioners, October 29, 2008, para. 31. In support of this allegation, the petitioners cited I/A Court H.R., *Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151.

[295] *Cf.*, I/A Court H.R., *Case of Grande v. Argentina. Preliminary Objections and Merits*. Judgment of August 31, 2011. Series C No. 231, paras. 44-61.

VI. CONCLUSIONS

167. Based on the foregoing analysis, the Inter-American Commission on Human Rights concludes that:

1. The State of Suriname violated the right to juridical personality of the Kaliña and Lokono Peoples enshrined in Article 3 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, by failing to recognize their legal personality.

2. The State of Suriname violated the right to property established in Article 21 of the American Convention, in connection with Articles 1.1 and 2 of the Convention, to the detriment of the Kaliña and Lokono Peoples by not adopting effective measures to recognize their collective property right to the lands, territories and natural resources they have traditionally and ancestrally occupied and used.

3. The State further violated the Kaliña and Lokono peoples' property rights established in Article 21 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, by (i) granting land titles to non-indigenous individuals within Kaliña and Lokono traditional territory, (ii) establishing and maintaining the Wia Wia, Galibi and Wane Kreek Reserves, and (iii) granting a mining concession and authorizing mining activities inside their traditional territory, all without conducting a consultation process aimed at obtaining their free, prior and informed consent according to inter-American standards.

4. The State of Suriname violated the right to judicial protection enshrined in Article 25 of the American Convention to the detriment of the Kaliña and Lokono Peoples, by not providing them effective access to justice for the protection of their fundamental rights.

5. The IACHR does not have sufficient elements to determine whether the State has violated Article 13 of the American Convention to the detriment of the Kaliña and Lokono Peoples.

VII. RECOMMENDATIONS

168. In accordance with the analysis and conclusions contained in this report, the Inter-American Commission recommends that the State of Suriname:

1. Take the necessary legislative and regulatory measures to recognize the Kaliña and Lokono Peoples as legal persons under Surinamese law;

2. Remove the legal provisions that impede protection of the right to property of the Kaliña and Lokono Peoples and adopt in its domestic legislation, and through effective and fully informed consultations with the Kaliña and Lokono Peoples and their members, legislative, administrative, and other measures needed to protect, through special mechanisms, the territory in which the Kaliña and Lokono Peoples exercise their right to communal property, in accordance with their customary land use practices, without prejudice to other tribal and indigenous communities;

3. Refrain from acts that might give rise to activities of third parties, acting with the State's acquiescence or tolerance, that may affect the right to property or integrity of the territory of the Kaliña and Lokono Peoples as established in this Report;

4. Review, through effective and fully informed consultations with the Kaliña and Lokono Peoples and their members and respecting their customary law, the land titles, lease holds, and long-term leases issued to non-indigenous persons, the terms of the mining activities authorized inside the Wane Kreek Nature Reserve, and the terms of the establishment and management of the Wia Wia, Galibi, and Wane Kreek Nature Reserves, to determine the modifications that must be made to the terms of these titles, lease holds, long-term leases, concession and Nature Reserves to ensure respect for the property rights of the Kaliña and Lokono's over their ancestral lands, territories and natural resources in accordance with their customs and traditions;

6. Take all necessary steps, through effective and fully informed consultations with the Kaliña and Lokono Peoples and their members and respecting their customary law, to delimit, demarcate and grant collective title to the Kaliña and Lokono Peoples over the lands and territories that they have traditionally occupied and used;

7. Take the necessary steps to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protections and give effect to the collective and individual rights of the Kaliña and Lokono Peoples in relation to the territory they have traditionally occupied and used.

8. Redress individually and collectively the consequences of the violation of the aforementioned rights. Especially, consider the damages caused to the members of the Kaliña and Lokono Peoples as a result of the failure to grant them legal title of their ancestral territory as well as the damages caused on the territory by the acts of third parties.

Done and signed in the city of Washington, D.C., on the 18 day of the month of July, 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa Maria Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rodrigo Escobar Gil, and Rose-Marie Antoine, Commissioners.

The undersigned, Emilio Álvarez Icaza, Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.

Emilio Álvarez Icaza L.
Executive Secretary