



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS  
 COMISION INTERAMERICANA DE DERECHOS HUMANOS  
 COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS  
 COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



**ORGANIZACIÓN DE LOS ESTADOS AMERICANOS**  
 WASHINGTON, D.C. 20006 EEUU

January 26, 2014

Ref:: **Case No. 12.639**  
**Kaliña and Lokono Peoples**  
**Suriname**

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights case No. 12.639, *Kaliña and Lokono Peoples* versus the State of Suriname (hereinafter "the State or "Suriname"), regarding violations of the rights of the members of eight Kaliña and Lokono indigenous peoples' communities of the Lower Marowijne River in Suriname; specifically, because the legal framework in effect in that country as of the present date still does not provide for the recognition of the legal personality of indigenous peoples and, consequently, it precludes the Kaliña and Lokono peoples from receiving that recognition. Moreover, the State has failed to lay the legal foundations to provide for recognition of the right to collective property ownership of the lands, territory and natural resources of the Kaliña and Lokono indigenous peoples. In addition to failing to recognize this right, individual property titles have been issued to non-indigenous persons; concessions and licenses have been granted for mining operations to be conducted on part of their ancestral territory; and three natural reserves have been established and remain in place on part of their ancestral territory.

As of the present date, the right to collective property ownership stemming from this situation is still being violated. Additionally, as of today's date, neither the granting of mining concessions and licenses, nor the establishment and permanence of natural reserves, have been the subject of any consultation process aimed at securing the prior, free and informed consent of the Kaliña and Lokono peoples. All of these acts have taken place in a context marked by the absence of judicial protection and a situation of defenselessness under the law, inasmuch as no effective judicial remedy for indigenous peoples to assert their rights has been instituted in Suriname.

The State of Suriname acceded to the American Convention on Human Rights on November 12, 1987 and accepted the jurisdiction of the Inter-American Court on that same date.

Mr.  
 Pablo Saavedra Alessandri, Secretary  
 Inter-American Court of Human Rights



The Commission has appointed Commissioner José de Jesús Orozco Henríquez and IACHR Executive Secretary Emilio Álvarez Icaza L. as its delegates. Elizabeth Abi-Mershed, Assistant Executive Secretary, and Silvia Serrano Guzmán, Staff Attorney of the IACHR Executive Secretariat, will act as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is attaching hereto a copy of Merits Report 79/13, prepared in keeping with Article 50 of the Convention, as well as a copy of the entire case file before the Inter-American Commission (Appendix I) and the annexes used in drafting Report 79/13. A copy of this merits report was notified to the State of Suriname in a communication dated July 26, 2013, and the State was granted a period of two months to report on compliance with the recommendations. In a communication received on September 26, 2013, the State submitted a response noting that the recommendations ignore the particular characteristics of the ethnic composition of Suriname and mentioning that there may be difficulties in implementing the recommendations. The State requested an extension, which was granted by the Commission for a period of three months, with the State being required to submit a report on compliance with the recommendations no later than January 15, 2014. On January 15, 2014, the State submitted a report, wherein it made general references to indigenous and tribal peoples in Suriname, but did not provide any information or any specific plan regarding compliance with each recommendation. In a communication of January 24, 2014, the State filed anew for an extension. In said request, no additional information was provided and, therefore, the State has not reported on any steps taken to implement the recommendations regarding reparation for the established violations, since the time it was notified of the merits report to date.

Accordingly, the Commission submits the instant case to the jurisdiction of the Inter-American Court, in light of the need to obtain justice for the victims, inasmuch as no progress has been made to comply with the recommendations.

The Inter-American Commission is submitting all of the facts and human rights violations described in Merits Report 79/13 to the jurisdiction of the Court. The Commission wishes to bring to the attention of the Court that during the merits stage of the proceedings, the State of Suriname made objections to *ratione temporis* competence for the case to be heard under the American Convention. These arguments were expressly addressed in paragraphs 71 *et seq* of the merits report. In light of the fact that, in the instant case, the time-based competence of the Commission under the American Convention and the *ratione temporis* competence of the Inter-American Court coincide, the Commission refers to the explanations set forth in Merits Report 79/13.

Consequently, the Commission requests the Court to find and declare 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.

Accordingly, the Commission requests the Inter-American Court to order the State of Suriname to:

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;
5. 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;

6. 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.

7. 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.

In addition to the need to obtain justice for the victims, the IACHR notes that the instant case involves issues of Inter-American public order.

Firstly, the instant case entails structural issues pertaining to the failure to recognize under domestic law the legal personality and right to collective property ownership of indigenous peoples in Suriname. Another component of this issue is the absence of effective judicial remedies for the protection of the rights of indigenous peoples. In this regard, the structural nature of this issue means that the case may have a significant impact on the recognition and exercise of the rights of indigenous peoples in Suriname and that this impact would extend beyond the victims in the case.

Furthermore, some of the violations of the right to property in the instant case require further development of legal precedents in at least three areas. On the one hand, the Court is called upon to examine restrictions on the right to property, when such restrictions pit the private or individual property ownership right of non-indigenous persons against the collective property ownership right of an indigenous people. And specifically, in weighing both types of property, the Court will have the opportunity to concretely shape its own legal precedents as to the special connection of indigenous peoples to their land and the importance thereof to the subsistence of the peoples as such.

On the other hand, the instant case raises an issue, which thus far has still not been addressed in-depth in the jurisprudence of the Court, as to how States must reconcile their environmental initiatives and policies with the rights of indigenous peoples. Concretely, the Court will have the opportunity to flesh out the standards applying to the creation of natural reserves, when doing so can affect the lands, territory and natural resources of indigenous peoples. This analysis includes both the obligation to consult the indigenous peoples involved in order to secure their consent, and the need to explore environmental conservation alternatives, which may be less harmful to the rights of indigenous peoples.

Inasmuch as these issues have a consequential effect on Inter-American public order, as provided under Article 35.1.f of the Rules of Procedure of the Inter-American Court, the Commission takes this opportunity to propose the appointment of the following experts:

An expert witness, whose name will be provided as soon as possible, who will offer testimony on international standards and, should it be relevant, on comparative law, applying to situations in which conflicts arise between the right to private property of non-indigenous peoples and the right to collective property of indigenous peoples. The expert witness will provide the Court with an analytical framework regarding restrictions on rights, which covers and is applicable to the particular characteristics of the right to property of indigenous peoples. This expert witness will also outline possible means of restitution, reparation or compensation, which a State would be obligated to provide in keeping with the outcome of this restrictions analysis. To the extent that it is relevant, the expert witness will apply the standards and analytical framework to the specific facts of this case.

An expert witness, whose name will be provided as soon as possible, who will offer testimony on international standards and, should it be relevant, on comparative law, applying to situations of actual or apparent conflict between the rights of indigenous peoples and protection of the environment. This expert witness will offer elements of analysis that will aid the Inter-American Court in establishing the scope of State obligations, with regard to the right to property of indigenous peoples, in designing and implementing environmental protection initiatives and policies.

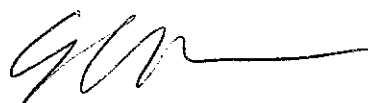
The *curricula vitae* of the proposed expert witnesses shall be included in the annexes to Merits Report 79/13.

The Commission brings to the attention of the Court the contact information for the individuals, who have acted as petitioners throughout the proceedings.

Fergus Mackay, David Padilla and Jacqueline Jubithana. The contact information for these individuals made available to the Commission is: [REDACTED].

I would like to take this opportunity to extend my greetings to you.

Respectfully yours,



Elizabeth Abi-Mershed  
Assistant Executive Secretary

Annexes