

Case of the Saramaka People (Monitoring Compliance)

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Esteem Registrar:

Please find attached a submission in the above-referenced case and two annexes to this submission.

Respectfully,

Fergus MacKay
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Pablo Saavedra-Alessandri

Registrar,
Inter-American Court of Human Rights
Avenue 10, Calle 45-47 San Pedro
San José
Costa Rica

16 July 2021

Re: Case of the Saramaka People (Monitoring Compliance)

Esteemed Registrar:

1. I have the honour of communicating again with the Honourable Inter-American Court of Human Rights (“the Court”) about the above referenced case. On this occasion, I write in response to your communication of 25 June 2021 (CDH-12.338/429), by which you transmit letters submitted to the Court by Mr. Martin Misiedjan. These letters concern the situation of the Saramaka community of Balingsoela. This community has around 1,500 members. Having discussed this matter with the Saramaka authorities, who also held a village meeting in Balingsoela on 11 July 2021, the representatives respectfully offer the following observations.

IV. A Bill relating to the collective rights of Indigenous and the Tribal Peoples

14. The representatives note that the State has drafted a 'framework bill', entitled an "Act containing rules relating to the collective rights of the Indigenous Peoples and the Tribal Peoples" (Annex B). Approved in June 2021, the bill is based on a draft that was developed under the previous government. While some indigenous and tribal representatives participated in that process, the current and revised version of the bill was drafted without any formal participation by these or other representatives. That a bill was drafted at all is some progress however, even if it will require a series of (yet undrafted) implementing laws and regulations to give it full effect, including a separate, implementing law to allow for demarcation and titling. There is no indication of what the final form of the bill may be once the legislature has concluded its reading of the bill, and, for this reason, the representatives will refrain from commenting on its provisions at this time. They nonetheless request that the Court closely monitors this bill and any progress made in enacting as well as its content.

15. While this bill may be cause for some optimism, by itself, it does not address or provide an effective mechanism to give effect to the judgment of the Court in *Saramaka People*. Nor does it detract from the serious and ongoing violations of the rights of the Saramaka explained and proven above and the specific obligations of the State as set out in that judgment. Nor is it clear when the State may be ready and willing to comply with those obligations, if at all. As noted above, there has been no formal and focused dialogue between the State and the Saramaka about these matters for almost a decade and the State even fails to provide adequate information and evidence to the Court about any of these issues.

Please accept assurances of my highest regard,

A handwritten signature in blue ink that reads "Fergus MacKay". The signature is written in a cursive style with a large, sweeping flourish at the end.

Fergus MacKay

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ANEXO 2

PRESIDENT of the REPUBLIC OF SURINAME
Telephone: 420102

¹To: The Speaker of
The National Assembly,
Mr. M. Bee, MSc, LLB

Re.: secpres/2002/21
Paramaribo, 15 June 2021

Subject: submission Indigenous and Tribal Peoples” Collective Rights Act

Dear Mr. Speaker,

I enclose for consideration by the National Assembly, the draft law containing rules relating to the collective rights of the Indigenous and the Tribal Peoples (Indigenous and Tribal Peoples” Collective Rights Act), with the accompanying Explanatory Memorandum.

The President of the Republic of Suriname

Chandrikapersad Santokhi

Appendix: 1

*The National Assembly
Received on 15 June 2021
Agenda number 899 / 21*

¹ Translation: drs. Patricia van Aerde - Milzink (sworn translator- conference interpreter)
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ACT of
containing rules relating to the collective rights of
the
Indigenous Peoples and the Tribal Peoples
(Indigenous and Tribal Peoples’ Collective Rights
Act)

DRAFT

THE PRESIDENT OF THE REPUBLIC OF SURINAME,

Whereas it is necessary and desirable to lay down rules for compliance with international obligations and to guarantee legal certainty and legal protection of the collective rights of the Indigenous Peoples and the Tribal Peoples in Suriname;

After hearing the advice of the Council of State, following the approval by The National Assembly, has ratified the act below:

Definitions
Article 1

For the implementation of this act and the provisions based on it, the following terms are defined as stated below:

- | | | |
|----|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. | Benefit-sharing | Sharing in the benefits that arise from the use of natural resources in a fair and honest way; |
| b. | Collective property right | The right of Indigenous peoples and Tribal peoples as a collectivity to freely enjoy and dispose in the fullest manner of things and goods that they own or use collectively, including their traditional residential and subsistence areas [territories], natural resources that they traditionally use, traditional knowledge, collective intellectual property and cultural property; |
| c. | Collective rights | Rights that accrue to the Indigenous peoples and the Tribal peoples as a collectivity; |
| d. | Collectivity | The Indigenous peoples or the Tribal peoples or their village communities; |
| e. | Village community | A community consisting of families and individual inhabitants, who are part of an Indigenous people or Tribal people characterized by, at least, the existence of a functional traditional authority and traditional governance systems; |

- f. FPIC “Free, Prior and Informed Consent” which is understood to mean: giving consent priorly and voluntarily and freely for the implementation of an idea, project, program, policy or other measure that may affect the lives and/or the rights of an Indigenous people or Tribal people or their village communities, after a relevant well-considered decision of the people involved or the village community/communities concerned, which was taken after careful consideration of complete and prior information about the proposed activity or measure;
- g. Land rights The collective property rights of the Indigenous peoples and the Tribal peoples to the land, territories and natural resources that they have traditionally inhabited, owned or used to own, or otherwise used or acquired, and the collective right to own, use, develop and manage this land, these territories and natural resources that are in traditional use;
- h. Indigenous Peoples The original peoples, who inhabit and use the geographical region in which the current state of Suriname is located ever since before the time it was conquered or colonized, or at which the current boundaries of the state were determined, have ties with their ancestral territory, identify themselves as Indigenous people, and have maintained partially or wholly, their identity and social, economic, cultural and governance circumstances, characteristics and institutions, which distinguish them from other sections of the national society;
- i. MI-GLIS Management Institute Land Registration and Land Information System;
- j. Natural Resources All substances, goods or services present in nature without human intervention, that serve to preserve and/or improve the quality of life of human beings;
- k. Tribal area The area that is considered by an Indigenous people or Tribal people as a collective ownership of that specific people;
- l. Tribal Collective form of living together with traditional governance systems, authority relationships and traditional family and social relationships that are based on a common history, culture, traditions and customs, and on a historical, spiritual and cultural bond to a specific traditional territory;
- m. Traditional governance system The coherent functional system of governing bodies, authorities, mechanisms and structures that the Indigenous peoples and the

Tribal peoples have and use partially or wholly for their governance processes;

- n. Traditional Authority The governing authority of the Indigenous peoples or Tribal peoples legitimised by customs and traditions of that people;
- o. Traditional authority official A member of the traditional authority;
- p. Traditionally used natural resources Those natural resources traditionally used by Indigenous peoples or Tribal peoples for their self-sufficiency, their cultural or religious activities;
- q. Traditional residential and subsistence areas [hereinafter traditional "territories"] Those geographical areas inhabited and used by Indigenous or Tribal village communities and with which they have historical, cultural, spiritual, social and economic ties, and on which they depend for the quality of their lives, their survival and their cultural integrity. These include their traditional agricultural plots, hunting and fishing grounds, historical, spiritual and sacred places and areas that provide for other necessities of life such as building materials, medicinal, cultural or spiritual plants, recreation and protection;
- r. Tribal peoples Tribal peoples whose identity as well as social, cultural and economic conditions distinguish them from other segments of the national society, who are not the original inhabitants, but who do have ties with their ancestral territories in Suriname, and whose governance and societies are wholly or partly regulated by their own traditions and customs;
- s. Right to self-determination The right of Indigenous peoples and Tribal peoples to self-determination, by virtue of which they may freely determine their political status and freely pursue their economic, social and cultural development, and by virtue of which they have the right to autonomy or self-government in matters concerning their internal and local affairs, as well as ways and manners to finance their autonomous functions;
- t. Self-government The traditional administration that the Indigenous peoples and Tribal peoples have and use for their own internal and autonomous governance processes.

Legal personality **Article 2**

1. The Indigenous peoples and the Tribal peoples in Suriname are legal persons and they have collective rights as stipulated in this act.

2. The Indigenous peoples and the Tribal peoples shall assert their collective legal personality by means of representatives appointed by themselves on the basis of procedures established by them in accordance with their culture, customs, traditions and traditional governance systems.
3. The collective legal personality and the collective rights of the Indigenous peoples and the Tribal peoples shall in no manner whatsoever infringe on the individual rights of the members of the Indigenous peoples and the Tribal peoples.

Collective rights of Indigenous peoples and Tribal peoples

Article 3

1. The Indigenous peoples and the Tribal Peoples are entitled to the effective and full enjoyment of the collective rights recognised by virtue of this Act, namely:

a. Human rights

The Indigenous peoples and the Tribal peoples have the right to the full enjoyment and legal protection, as a collectivity, of all human rights and fundamental freedoms.

b. Right to self-determination

- i. The Indigenous peoples and the Tribal peoples have the right to internal and autonomous self-government with regard to their internal and local affairs. By virtue of this right, they may freely determine their political status, have and use their own autonomous governance systems, freely pursue their economic, social and cultural development, and freely determine their development priorities.
- ii. Neither the right to self-determination nor any other provision set out in this act shall be interpreted in any manner whatsoever as a right or authorization or encouragement for any action that endangers the political integrity, sovereignty, political immunity or national security of the State of Suriname.

c. Culture and cultural integrity

- i. The Indigenous peoples and the Tribal peoples have the collective right to live in freedom, peace and security as distinct peoples with their own culture and traditions.
- ii. The Indigenous peoples and the Tribal peoples have the right to experience, revive and/or strengthen their culture and cultural expressions.
- iii. The Indigenous peoples and the Tribal peoples shall not be subjected to any form of discrimination, genocide, forced assimilation or cultural destruction.

d. Land rights

- i. The Indigenous peoples and the Tribal peoples have collective property rights over the lands, territories and natural resources they have traditionally inhabited, own or have owned or have otherwise used or acquired, and have the collective right to own, use, develop and govern those lands, territories and natural resources that are in traditional use.
- ii. The characteristics of the land rights are further specified in this act.

e. Participation and engagement

- i. The Indigenous peoples and the Tribal peoples shall be entitled to effective participation and engagement, through representatives or representative institutions or bodies so designated by themselves, in decision-making processes concerning projects, programs, administrative measures, policies or other measures that may significantly affect their lives and/or their rights.
- ii. When taking or intending to take the measures as referred to under (i) and the decision-making processes to that effect, the opportunity must be given by or by means of the authorities responsible for the measures referred to under (i), to enable such effective participation and engagement.
- iii. As regards the participation of the Indigenous peoples and the Tribal peoples, the aforementioned bodies shall effectively take into account among other things, their respective socio-economic circumstances, their cultural norms and values, and linguistic needs.

f. FPIC

The Indigenous peoples and the Tribal peoples have the right to give FPIC as defined in the definitions, for the implementation of an idea, project, program, policy or other measure that may have a significant impact on their lives and/or rights.

g. Traditional knowledge

The Indigenous peoples and the Tribal peoples have the collective property rights to their traditional knowledge and their collective intellectual and/or cultural property.

h. Benefit-sharing

The Indigenous peoples and the Tribal peoples have the right to share in an honest and equitable way in the benefits arising from the utilization of the natural resources that occur in their territories.

Land rights

Article 4

1. The Indigenous peoples and the Tribal peoples have land rights to their respective traditional territories, which are indicated on the indicative maps attached to this Act.
2. The definitive extent and delimitation of the Indigenous territories and Tribal territories referred to in paragraph 1 shall be established by law.
3. Land rights may never be established in or in the name of a natural person or a legal person other than those referred to in paragraph 2.
4. Land rights have no limitation on the validity period.
5. Land rights may not be alienated or transferred.
6. Land rights may not be encumbered with any debt or mortgage or otherwise charged, nor serve as collateral or other security for any purpose.
7. Any stipulation within the meaning of paragraphs 3 up to and including 6 shall be null and void by operation of law.

Governance of Indigenous Peoples and Tribal Peoples

Article 5

1. The Indigenous peoples and the Tribal peoples have their respective governance and management systems and traditional authority officials who administer their respective Indigenous people or Tribal people or parts thereof in accordance with their respective traditional governance systems.
2. The respective traditional authority officials have the authority to administer and manage the territories of the relevant Indigenous people or Tribal people recognised by virtue of this Act.
3. Other duties and powers of the traditional authority officials shall be determined by law in agreement with the Indigenous peoples and the Tribal Peoples.

Activities that require FPIC

Article 6

1. FPIC is required from the relevant Indigenous peoples or Tribal peoples at every stage of a project, program, policy or other measure that may affect the territories and/or the rights of an Indigenous people or Tribal people or peoples or their village communities.
2. The procedure for granting FPIC shall be further specified by the respective Indigenous peoples and Tribal peoples themselves, which shall be laid down by or pursuant to state decree.

Transitional provisions

Article 7

1. Rights that have already been allocated or granted to third parties prior to the date of entry into force of this Act and that relate to an area that is wholly or partially located within an Indigenous territory or Tribal territory and where, on the day this Act enters into force, the conditions or regulations regarding among other things, the cultivation, exploration or exploitation obligation have not yet been met, while the period to do so has expired, shall lapse by operation of law, effective from the date of the entry into force of this Act.
2. In case rights are concerned that have been allocated or granted to third parties before the entry into force of this Act and that relate to an area that is wholly or partially located within an Indigenous territory or Tribal territory, and where the person entitled has met the cultivation obligation, or has made investments or has undertaken economic activities in connection with the designated use in the allocation only with regard to the issued area that is located outside the Indigenous territory or Tribal territory, and/or the person entitled has immovable property in that area, the right shall lapse by operation of law only in respect of the part within the Indigenous or Tribal area, effective from the date of the entry into force of this act.
3. In case rights are concerned that have been allocated or granted to third parties before the entry into force of this Act and that relate to an area that is wholly or partially located within an Indigenous territory or Tribal territory, the person entitled has, also with regard to the area that is located within the Indigenous territory or Tribal territory, on the date of the entry into force of this act met the conditions or regulations regarding among other things, the cultivation obligation, or has made investments in accordance with the allocation criteria or has developed economic activities in connection with the designated use in the allocation, and/or he has immovable property in that area, and the community/communities express their explicit wish that these rights do not have to be revoked, parties, namely the community/communities involved, the government agency responsible for issuing those rights and the holder of the aforementioned rights, shall enter into consultations with the aim of reaching an agreement in which the conditions for the rights to continue to exist are laid down. If such agreement has not been reached within six months following the date of entry into force of this Act, such rights shall as yet lapse by operation of law.
4. In case rights are concerned that have been allocated or granted to third parties before the entry into force of this Act and that relate to an area that is wholly or partially located within an Indigenous territory or Tribal territory, the person entitled has, also with regard to the area that is located within the Indigenous territory or Tribal territory, on the date of the entry into force of this act met the conditions or regulations regarding among other things, the cultivation obligation, or has made investments in accordance with the allocation criteria, or has undertaken economic activities in connection with the designated use in the allocation and/or he has immovable property in that area, parties, namely the community/communities involved, the government agency responsible for issuing those

rights and the holder of the aforementioned rights, shall enter into consultations with the aim of reaching an agreement within a period of six months following the date of the entry into force of this Act, in which the conditions for the rights to continue to exist are laid down.

5. If the consultations referred to in paragraphs 3 and 4 do not lead to an agreement acceptable to all parties, the rights acquired by third parties shall be suspended.
6. For the purposes of the provisions laid down in this article, the third party to whom the right has been allocated or granted as referred to in the paragraphs 2 up to and including 4, shall submit a definitive map drawn up by a sworn surveyor registered with the MI-GLIS no later than eighteen months following the date of the entry into force of this Act to the Ministry of Regional Development and Sports, and the Ministry of Land Policy and Forest Management, which map shall indicate how the area so granted, is located in relation to the Indigenous or Tribal territory.

Article 8

1. Interested parties may appeal to the Land Rights Chamber within six months following the date of entry into force of this Act.
2. The composition, duties, and powers of the Land Rights Chamber shall be further regulated by law.

Article 9

The status, as “nature reserve”, of areas established by virtue of the Nature Protection Act G.B. - Governmental Bulletin of Acts and Decrees - 1954 no. 26, amended by S.B. - State Bulletin of Acts and Decrees - 1992 no. 80, which are wholly or partially located within Indigenous territories or Tribal territories shall be further regulated by or pursuant to state decree in consultation with the relevant Indigenous peoples or Tribal peoples.

Final Provisions

Article 10

1. This Act shall be cited as: Indigenous and Tribal Peoples” Collective Rights Act.
2. It shall be promulgated in the State Bulletin of Acts and Decrees of the Republic of Suriname.
3. It shall enter into force on the day following its promulgation.
4. The Ministers of Regional Development and Sports, Land Policy and Forest Management, and Natural Resources shall be in charge of implementing this Act.

Issued in Paramaribo on.....

Chandrikapersad Santokhi

ACT of
containing rules relating to the collective rights of the
Indigenous Peoples and the Tribal Peoples
(Indigenous and Tribal Peoples’ Collective Rights Act)

DRAFT

EXPLANATORY MEMORANDUM

General

Suriname is party to several international and regional human rights treaties and declarations, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (also known as the BUPO treaty), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the American Convention on Human Rights. In addition, there are several other international instruments and standards dealing with the collective rights of Indigenous and Tribal peoples that are of substantial importance in international law and for the administration of justice, such as the Convention on Biological Diversity, the UN Framework Convention on Climate Change, ILO Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Constitution of Suriname lays down in Chapter V - Fundamental Rights, the recognition and guarantee of the fundamental rights and freedoms of the human being. Article 105 states further that provisions of the agreements referred to in article 103 [with other powers and with international institutions], the contents of which may bind everyone, have binding force after they have been published, and furthermore that pursuant to article 106, legal regulations applicable within the Republic of Suriname shall not be applied if such application would be incompatible with legally binding provisions of agreements concluded either prior to or after the conclusion of the regulations. A number of laws also contain provisions stating that the rights and interests of residents of the interior must be taken into account.

However, the collective rights of the Indigenous peoples and the Tribal peoples, have not been included as such in the Constitution, or in the Suriname legal system, or in legal practice and are therefore not recognised. It is therefore of the utmost importance to eliminate this discrepancy between international law and Suriname law in this area of human rights, and to comply with the obligations arising from the aforementioned treaties, in particular the American Convention on Human Rights. Suriname is the only country in the Western Hemisphere that, until prior to the coming into force of this Act, had not yet structurally recognised the rights of Indigenous peoples and Tribal peoples in its legislation.

The American Court of Human Rights has established in case law² that under the American Convention on Human Rights and other international human rights standards, Suriname is obliged to incorporate the rights, including land rights and traditional justice, of Indigenous peoples and Tribal peoples as a specific human rights regime in its legal system. The main characteristics of such a legal system are: It is a national legal system, the scope is limited to the Indigenous peoples and Tribal peoples, the rights are based on culture and traditions, and these traditions have to be laid down in order to know what the rights are. The traditions are known to the peoples themselves and not always or not fully known to others, and this may make the administration of justice complex. Furthermore, the concepts of law are not the same as in Western law; they have autonomous characteristics.

The purpose of this Act is to guarantee legal certainty and legal protection of the collective rights of the Indigenous peoples and the Tribal peoples in Suriname. To this end, these peoples are recognised as such as legal persons, so that now, unlike before, they may appeal to the law and, in particular, the administration of justice for and on behalf of themselves as a collectivity.

This Act is a framework Act, which for the time being lays down the main points and serves to establish the framework within which the collective rights of the Indigenous peoples and the Tribal peoples are placed and within which further regulations must be made.

Taking into consideration the extent of the subject matter regulated in the present Act, it is necessary not only to establish further implementation regulations, but also to make administrative and organisational provisions for the effective protection of the Indigenous peoples and Tribal peoples in Suriname.

Explanatory notes on individual articles

Article 1 - Definitions

In view of the required consistency with international law the terms mainly follow relevant internationally accepted definitions as used in relevant treaties and declarations, in particular the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the ILO Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries, and the jurisprudence of the Inter-American Court of Human Rights.

Article 2 - Legal Personality

Article 2 lays down that Indigenous peoples and Tribal peoples in Suriname are legal persons and have collective rights as described in more detail in this Act. The collectivity referred to is an Indigenous people or a Tribal people; it is therefore not an individual or a number of individuals or an ethnic group, but a tribal people as a new legal concept in Suriname's legislation.

The second paragraph of this article lays down that the Indigenous and Tribal peoples enforce their collective legal personality through representatives appointed by themselves on the basis of

² Inter alia: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf; http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf

procedures determined by them in accordance with their culture, customs, traditions and traditional administrative systems. This is intended to ensure the internationally recognised right of self-determination of these peoples.

The third paragraph of this article, although self-evident, emphasizes that each individual person who is part of the collectivity still remains a natural person and retains his/her individual rights and obligations.

Article 3 - Collective rights of Indigenous peoples and Tribal peoples

Article 3 enumerates the collective rights of Indigenous peoples and Tribal peoples as recognised under this Act, more in particular: human rights, self-determination, culture and cultural integrity, land rights, participation and engagement, FPIC, traditional knowledge and benefit-sharing. This is not an exhaustive list of collective rights; there are other important collective rights of Indigenous and Tribal peoples that are recognised under international law, for example the prohibition of discrimination, forced relocation, forced assimilation, the right to live in voluntary isolation and the right to maintain family and cultural relationships across borders. However, in this law, a choice has been made for the rights that need to be legally recognised most urgently, without intending to violate any other (internationally) recognised right.

In view of the hierarchical nature of these rights, they should be constitutional provisions and should be enshrined in the Constitution at a later date.

Human rights have been explicitly mentioned in order to emphasize that collective rights do not in any way detract from individual rights or vice versa.

The **right to self-determination** is one of the collective rights of every people, as enshrined in various human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR, also known as BUPO) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Applying comparative law to the constitutions and laws of decolonised republics with Indigenous peoples and Tribal Peoples, it is noted that these peoples are referred to by various names: “peoples”, “nations” or “nationalities”. At the same time, international law emphasizes that the right of Indigenous peoples and Tribal peoples to self-determination is not to be understood as synonymous with the right of secession or the right to form “a state within a state”. This is explicitly stated in paragraph 1b. The wording used is in line with the relevant similar article in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Constitution of the Republic of Suriname recognises “the right to education and cultural expression” in article 38, in the twelfth section on Education and Culture. Culture, cultural identity and cultural integrity are comprehensive concepts (and rights) and constitute an integral part of the enjoyment of Human Rights and Peoples’ Rights. From this point of view, the collective **right to culture and cultural integrity** has therefore been explicitly included in this law.

The term “**land rights**” [“*grondenrechten*” in Dutch], not to be confused with fundamental rights (human rights or basic rights in general) [“*grondrechten*” in Dutch] is a typically Surinamese, and by now fully established, name for the collective rights of the Indigenous peoples and Tribal

peoples to their ancestral territories. It is therefore decided to give this established term also a legal status.

Land rights, according to international law and the decisions of the Inter-American Court of Human Rights, also include the “traditionally used natural resources”. “Traditionally used natural resources” are those resources which are used in the traditional, subsistence way of life by relevant Indigenous peoples and Tribal peoples, including forests for hunting, trees for building materials, creeks and rivers for fishing, water for drinking, bathing and cooking, medicinal plants and other non-timber products.

The **right to participation and engagement** is a further guarantee of the legal security and protection of the Indigenous peoples and Tribal peoples as a collective entity, from a culturally sensitive approach that takes into account their respective socio-economic circumstances, cultural values and norms, and linguistic needs.

Free, prior and informed consent (FPIC) is a long-established international concept and norm within human rights and rights of Indigenous peoples and Tribal peoples, consistent with the right to self-determination. FPIC is also rooted in the collective culture of Indigenous and Tribal peoples: a weighty decision is not the decision of an individual but of the community as a whole.

With regard to the **right to traditional knowledge**, this Act lays the foundation for the further elaboration of the legal recognition in Suriname of collective rights over this specific knowledge, which has the distinctive feature that it is a knowledge system of a collective nature, which has been empirically created through observation and application by several generations and cannot be claimed by any individual as his/her exclusive intellectual property. Adequate protection of this type of intellectual knowledge is therefore both conceptually and legally difficult to achieve with existing, individual intellectual property rights such as individual copyrights, and requires further customised legislation.

The right of Indigenous and Tribal Peoples to **benefit-sharing** is a well-known principle of justice and included in, among others, the Convention on Biological Diversity (CBD). As with FPIC, the established English name of this concept has been chosen.

Article 4 - Land Rights

This article defines the areas over which the Indigenous peoples and the Tribal peoples will acquire collective ownership. For the time being, indicative maps have been used, and the definitive extent and boundaries of these Indigenous and Tribal territories will be determined by law. The article goes on to discuss the specificity and validity of land rights. Any act contrary to these provisions shall be null and void by operation of law and shall therefore not require any legal procedure for annulment.

Article 5 - Traditional Authority and Governance

The traditional systems of governance and management and the traditional authority among the Indigenous peoples and Tribal peoples are based on the respective history and culture of each of

these peoples. This Act recognises the authority of the traditional authority to govern and manage the lands and territories recognised by virtue of this Act of the relevant Indigenous people or Tribal people. However, these systems are yet to be laid down and enacted by law. Although the traditional authority is eligible for a honorarium and a number of other facilities by executive order, their legal status has not been regulated by law. For effective legal protection of traditional authority and governance, the tasks and powers of traditional authority officials must be clearly regulated by law. The legal position of the traditional authority will be further regulated by law in agreement with the Indigenous peoples and Tribal peoples. This will require in-depth discussions on their role in the overall State's governance.

Article 6 - Activities that require FPIC

The imperative necessity for the legal recognition of the requirement for FPIC is established in this Act. The procedure for obtaining it has yet to be defined and may vary from people to people. The guiding principle is that this procedure should be determined by each people itself, taking into account its administrative systems and decision-making processes, after which it shall be established by or pursuant to a State Decree.

Article 7 - Transitional provisions

The draft provides, that acquired rights to the land or natural resources previously granted by the competent administrative body to third parties within the territories of the Indigenous peoples and the Tribal peoples, shall expire after a period of 6 months following the entry into force of this Act. Exceptions to this general rule may be made after agreement with the relevant Indigenous Peoples and/or Tribal Peoples. It is then reasonable and fair to consider the possibilities on a case-by-case basis in consultation with the relevant government body. Interested parties may apply to the Land Rights Chamber for dispute resolution.

This Act lays down in this article how to deal with these, possibly conflicting, rights.

Paragraphs 1, 2, 3 and 4 of this article deal with four possible situations that may arise due to the entry into force of this Act:

1. (Paragraph 1) The rightholder/third party has not fulfilled the conditions or regulations pertaining to the title, concession or other right obtained within the prescribed period. In this case, that previous right shall lapse by operation of law. The basic principle is that if an entitled party/third party does not make use of a right under the associated conditions and obligations, the government is authorised to take back that right, which authority is also applied in this Act. If the right expires by operation of law, the government is not required to perform a legal act by repossessing the right. In order to know whether the concession holder has fulfilled his obligations or not, an investigation must first be carried out to establish that the entrepreneur has not fulfilled them.
2. (Paragraph 2) The second possible situation that may arise is where the entitled party/third party has fulfilled the necessary conditions and obligations within the prescribed time, but only for that part of the land over which he/she has a right that is located outside the now

recognised territory area of an Indigenous people or Tribal people. For the part of the area over which he/she has a right that lies within the territory area of an Indigenous people or Tribal people, and the entitled party/third party has not fulfilled the conditions and obligations within the prescribed period, the right over the latter area then lapses by operation of law.

3. The third and fourth possibilities concern cases where the rightholder/third party of a piece of land or resources within an Indigenous territory or Tribal territory has fulfilled all conditions and obligations within the prescribed period and, moreover, has already made investments and/or has already engaged in economic activities. If the village community or communities concerned explicitly indicate that the other right does not need to be withdrawn (paragraph 3), the parties will have to consult with each other in order to reach an agreement in which the conditions are laid down for the continuation of that right or those rights. The size or value of the investments or economic activities is irrelevant for the purposes of this article, although that size or value may be a factor for consideration during the aforementioned consultations.

As regards “rights issued before the entry into force of this Act”, these are formal rights issued by the government, such as land lease, concession right or permit right. Alleged claims by occupants and persons who believe they have rights based on internal, traditional or other non-statutory means cannot be invoked under this article. With the entry into force of this Act, such land shall become part of the collective property of the relevant people and such persons shall deal with the competent traditional authority.

The term “community or communities concerned” means, in the first instance, the village community directly concerned, within whose territory the land on which a right of the previous rightholder lies. However, the situation may arise that the community directly involved does not have an objection, but other neighbouring community/communities that also have an interest in, or are inconvenienced by, the activities of that previous rightholder, do have objections. The community or communities indirectly concerned should then also be involved in the consultations. The duty to determine which are the “communities concerned” rests with the prior rightholder.

The term “parties” refers to the village communities directly and indirectly involved, the rightholder/third party, and the government, more specifically the body that had granted the other right. The role of the government should be clarified here, namely that of facilitating consultation between rightholders and, where necessary, bringing in perspectives concerning the balancing of individual interests, community interests or national interests. Furthermore, the government will be able to play an important role in offering alternatives, for example another piece of land to the entitled party/third party or to the village community/communities as compensation.

By “indicate explicitly the wish” is meant that this must be done in writing, by a representative of the community (communities) concerned who is entitled to do so. If this wish is not explicitly indicated, the provisions of paragraph 4 of this article shall apply.

4. The fourth paragraph applies to the same situation as in the previous paragraph, with the difference that the community concerned, does not indicate that the other right may continue to exist. In this case too, consultation must take place as described under 3 above.
5. If these consultations do not lead to an agreement acceptable to all parties within the set period of six months after the date of entry into force of this Act, the rights of third parties will be suspended.
6. Finally, the eighth paragraph states that the third-party rightholder or owner of a previously acquired right (third-party beneficiary), must have a map made and submit it to MI-GLIS of the area over which that right applies, after clarity has been obtained on a possible conflicting right, such in the interest of the national land registration.

A period of six months has been chosen to reach an acceptable agreement, as there should be no prolonged uncertainty about the rights of either party.

The provision “by operation of law” is used in this article to avoid the need for any additional legal act in order to terminate the right.

Article 8

Article 8 indicates that interested parties may appeal to an independent Land Rights Chamber, yet to be established. This will be a new body, since it will concern matters that are entirely new to the Suriname legal system. The composition, tasks and powers of this Land Rights Chamber will be regulated in more detail by law.

Article 9

The status of nature reserves and other protected areas will also have to be reassessed with the entry into force of this Act. The nature reserves are often located within the territories of Indigenous peoples and/or Tribal peoples and have been established by state decree under the Nature Reserves Protection Act. This status will be determined in agreement with the relevant Indigenous peoples and/or Tribal peoples by or pursuant to a state decree.

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