Request for the Initiation of an Urgent Action and a Follow Up Procedure in Relation to the Imminent Adoption of Racially Discriminatory Legislation by the Republic of Suriname

Submitted to the United Nations Committee on the Elimination of Racial Discrimination

by

The Association of Indigenous Village Leaders in Suriname

The Association of Saramaka Authorities

Stichting Sanomaro Esa

Forest Peoples Programme

06 January 2004
Submitting Organizations

**The Association of Indigenous Village Leaders in Suriname (VIDS)**
The VIDS is an association of indigenous village leaders from each of the 37 indigenous villages in Suriname. Each village leader is elected by the community or chosen in accordance with traditional practices. Established in 1992, the VIDS’ goals and objectives are to promote and defend the rights of indigenous peoples, to speak for indigenous peoples on the national and international levels and to support sustainable development in Suriname. Address: PAS gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname tel. 597 520130; fax. 597 520131, e-mail: vids@sr.net

**Stichting Sanomaro Esa**
Sanomaro Esa is an indigenous organisation advocating for the rights and well-being of indigenous women and children in Suriname. It is constituted under the laws of Suriname and registered as a Foundation. Founded in 1989, Sanomaro Esa’s objectives are to promote the rights of indigenous women and children, and indigenous peoples in general; to ensure that indigenous women and children have equal access to health, education and other national services and to promote respect for Indigenous culture and identity. Sanomaro Esa is also the coordinator of the National Indigenous Women’s Network in Suriname, which seeks to improve the lives of indigenous women and children through the concerted action of local indigenous women’s organizations located in each of the 35 Indigenous villages. Address: PAS Gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname Tel. 597 490678; e-mail: sanomaro-esa@sr.net

**The Association of Saramaka Authorities (VSG)**
VSG is a representative organization of traditional Saramaka village leaders formed in March 1998 in response to increasing pressure from multinational logging companies and the failure of the Surinamese government to recognize and respect rights to their ancestral lands. The VSG presently represents 61 Saramaka villages with a total population of approximately 20,000 persons. Address: POB 9460, Paramaribo, Suriname, e-mail: shjabini@hotmail.com

**The Forest Peoples Programme (FPP)**
FPP is an international NGO, founded in 1990 and based in the United Kingdom, which supports the rights of forests peoples. The organisation provides policy advice and training to indigenous peoples and other forest peoples at local, national and international levels for them to secure and sustainably manage their forests, lands and livelihoods. It aims to secure the rights of peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies. The Programme has had an extensive field programme in Suriname since 1996 and has produced numerous publications relating to the situation in Suriname, the most comprehensive of which is entitled *The Rights of Indigenous Peoples and Maroons in Suriname* published by the International Work Group for Indigenous Affairs. Address: 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK Tel: (44) 01608 652893 fax: (44) 01608 652878 email: info@fpwrm.gn.apc.org
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I. Introduction

1. This request for urgent action and follow up to the Concluding observations on Suriname of 12 March 2004 is submitted to the Committee on the Elimination of Racial Discrimination (hereinafter “the Committee”) by the Association of Indigenous Village Leaders in Suriname, the Association of Saramaka Authorities, Stichting Sanomaro Esa and the Forest Peoples Programme (hereinafter “the submitting organizations”). The purpose of this request is specified in paragraphs 4 and 33, infra.

2. The submitting organizations have previously transmitted three reports to the Committee concerning the situation of indigenous and tribal peoples in Suriname: the first in December 2002 (a request for urgent action),\(^1\) the second in May 2003 (providing additional information)\(^2\) and, the last in January 2004 (providing comments on Suriname’s periodic report).\(^3\) At its 62\(^{nd}\) session, the Committee adopted Decision 3(62), concluding that the problems faced by indigenous and tribal peoples in Suriname call for “immediate attention;”\(^4\) and observing that

… serious violations of the rights of indigenous communities, particularly the Maroons and the Amerindians, are being committed in Suriname: in addition to discrimination against these communities in respect of employment, education, culture and participation in all sectors of society, particular attention is drawn to the lack of recognition of their rights to the land and its resources, the refusal to consult them about forestry and mining concessions granted to foreign companies and the fact that the mining companies’ activities, especially the dumping of mercury, are a threat to their health and the environment.\(^5\)

3. A year later, subsequent to review of Suriname’s periodic report and dialogue with the State at its 64\(^{th}\) session, the Committee issued Concluding observations.\(^6\) These observations and the associated recommendations highlighted and sought to address widespread and systematic racial discrimination against indigenous and tribal peoples in Suriname. Similar to Decision 3(62), the Committee emphasized discrimination with regard to, inter alia, rights to lands, territories and resources, particularly the failure of the State to recognize, guarantee and secure those rights;\(^7\) the absence of meaningful and effective procedural and other guarantees in relation to natural resource exploitation and the resulting negative cultural, health, social and

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5. Id. at para. 3.


7. Id. at paras. 11, 12, 23 and 30.
other consequences and the absence of adequate and effective domestic remedies to assert and seek protection for indigenous and tribal peoples’ rights in domestic venues.

II. Purpose of Present Request
4. This present request is submitted in order to bring to the Committee’s attention the imminent enactment of a new Mining Act in Suriname and the need for urgent action in relation to this law and follow up to the Committee’s Concluding observations in general. This revised draft Act is racially discriminatory on its face, directly contravenes the Committee’s Concluding observations and violates a series of rights guaranteed to indigenous and tribal peoples under the Convention on the Elimination of All Forms of Racial Discrimination. The Committee specifically mentioned the discriminatory nature of the draft Mining Act in its 2004 Concluding observations, noting that “under the draft Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached the matter will be settled by the executive, and not the judiciary.”

5. A revised version of the draft Mining Act was approved in late 2004 by Suriname’s Council of Ministers and a few months later by the Council of State, the latter being an advisory body. It is expected that it will be submitted to the National Assembly for enactment in the near future. The revised draft Act maintains the racially discriminatory language found in the previous version that denies indigenous and tribal peoples’ access to judicial remedies available under the Act to all other persons in Suriname. The draft Act also fails to include guarantees for indigenous and tribal peoples’ rights to be consulted about, participate in and consent to mining on their traditional lands. There has been no public consultation on the draft Act and no consultation with indigenous and tribal peoples, their communities or their organizations to date. Additionally, indigenous and tribal peoples’ rights to their lands, territories and resources have yet to be guaranteed and secured in law and fact and Suriname is not contemplating any measures towards this end at present.

6. In the time that has past since the Committee adopted its Concluding observations, Suriname has not taken any steps to give effect to the Committee’s recommendations in general. Moreover, as demonstrated by the approval of the draft Mining Act by the Council of Ministers and the Council of State, it is adopting measures that actively contravene the letter and spirit of those recommendations. This is the case despite requests by the submitting organizations, to meet and discuss implementation of the Committee’s recommendations and their active and vocal opposition to the draft Mining Act (see, infra, para. 30 and Annexes B and C).

III. The Draft Mining Act
7. The submitting organizations previously informed the Committee that Suriname was in the advanced stages of adopting a new Mining Act to replace the 1986 Mining Decree. In March 2004, the Committee observed that

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8 Id. at paras. 13-15 and 18

9 Id. at para. 14.

10 Id.

11 Concept Herziene Mijnbouwwet, (Draft Mining Act), 11 April 2002, Ch. IV.
under the draft Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached the matter will be settled by the executive, and not the judiciary. More generally, the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons.\(^\text{13}\)

8. A revised version of the draft Act was obtained by the submitting organizations in September 2004 (see, Annex A for an unofficial translation of the relevant articles).\(^\text{14}\) This revised draft Act, assuming it is enacted in its present form, is both incompatible with the rights of indigenous and tribal peoples (i.e., to lands and territories and to consent to activities that may affect them) and manifestly discriminatory on its face. Moreover, in practice, this Act, once enacted, will disproportionately affect indigenous and tribal peoples as the vast majority of mining in Suriname takes place in and around their traditional land and territories.

9. In August 2004, Suriname’s Council of Ministers formally endorsed the draft Mining Act.\(^\text{15}\) It was subsequently endorsed by the Council of State in December 2004. The draft Act is presently with the Minister of Natural Resources who is expected to submit it to the National Assembly for enactment prior to the May 2005 general election. The Minister is not required to address any of the recommendations of the Council of State and, due to a lack of information sharing about the process to date, it is unknown whether the Minister will make any amendments to address indigenous and tribal peoples’ rights.

A. The draft Mining Act is discriminatory on its face because it denies indigenous and tribal peoples access to judicial remedies available to all other Surinamese

10. The draft Act denies indigenous and tribal peoples access to judicial remedies should they be unable to agree with miners on compensation for damages related to mining on their traditional lands.\(^\text{16}\) While non-indigenous/tribal persons may seek a judicial determination of the amount of compensation due if agreement cannot be reached,\(^\text{17}\) indigenous and tribal peoples’


\(^{13}\) Concluding Observations: Suriname at para. 14.

\(^{14}\) Concept Herziene Mijnbouwwet, (Draft Revised Mining Act), 16 October 2003 (unofficial translation) (hereinafter ‘Draft Revised Mining Act’).

\(^{15}\) ‘New Mining Act also aimed at limiting environmental damage’, De Ware Tijd, 15 October 2004 - “The Draft Mining Act was approved by the Council of Ministers some time ago and is currently being studied by the Council of State, after which it will be send to the Parliament for approval.”

\(^{16}\) Similar language is contained in the Forest Management Act of 1992. Article 41(1)(b) reads: “In case of violations of the customary law rights as mentioned under a, an appeal in writing may be made to the President, which appeal is to be drawn up by the relevant traditional authority of the tribal inhabitants of the interior stating the reasons for the appeal. The President will appoint a committee to advise him on the matter.” Forest Management Act, 18 September 1992, English Translation (UN FAO Project TCP/SUR/4551), done by the Ministry of Education and National Development.

\(^{17}\) Draft Revised Mining Act, article 68(3): “(2) The holder of a mining right is obligated to compensate all damage inflicted to the claimants and third parties, whether or not caused by his negligence as a result of his activities. (3)
remedies are limited to an appeal to the executive, which will issue a “binding decision.” Good. According to the explanatory note, this overt discrimination against indigenous and tribal peoples is warranted “because traditional rights do not lend themselves to the normal court procedure as individual rights are not involved.”

11. This provision is a slightly amended version of the language previously reviewed by the Committee. It maintains the racially discriminatory focus and intent of the prior version and perpetuates the denial of indigenous and tribal peoples’ legal personality as collective entities. The draft Act therefore directly contravenes, among others, articles 5(a) – the right to equal treatment before tribunals – and 6 of the Convention – the right to effective remedies. It also stands in stark contrast to the Committee’s recommendation that “indigenous and tribal peoples should be granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.”

B. The draft Mining Act fails to guarantee rights to prior and meaningful consultation about, participation in and informed consent to decision making

12. The draft Act, elaborated itself in a non-participatory manner without any consultation of indigenous and tribal peoples, contains no requirement that indigenous and tribal peoples be meaningfully consulted about, participate in decision making or give their free, prior and informed consent to mining on their traditional lands and territories. There is no requirement that this occur in any other law in force in Suriname either. Instead, the draft Act explicitly states that indigenous and tribal peoples must accept mining subsequent to prior notification and limits input in decision making to negotiating the amount of compensation that may be required to repair (potential or actual) damages. ‘Prior notification’ occurs after the Government permit for exploration or exploitation has already been granted and is ‘prior’ only to the commencement of actual mining activities. Therefore, indigenous and tribal peoples are not provided any procedural guarantees until after the miner has received the requisite permits from the State, at which point the utility of these guarantees is greatly diminished if not rendered meaningless (see, also, paras. 16-20, infra).

If the parties involved cannot reach agreement concerning the nature and the extent of the damage mentioned in subsection 2 of this article, the Cantonal Judge within whose jurisdiction the terrain is located which is the basis of this conflict, will determine, upon the request of any interested party, the amount of compensation.

18 Id. at art. 76(2) and Explanatory Note to article 76. Article 76(2) provides that “If there has been no agreement on the compensation as provided in subsection 1 under b, after negotiations between the parties involved, the State will make a proposal that is binding to the parties. The State will ensure that the interests of all parties involved will reasonably be taken into account.” The Explanatory note explains that “…If parties cannot agree [on the amount of compensation], the executive will provide a binding decision.”

19 Id. at Explanatory Note to article 76.

20 It should be noted that this provision will also contravene Suriname’s obligations under other ratified human rights instruments including the International Covenant on Civil and Political Rights and the American Convention on Human Rights.


22 Draft Revised Mining Act, arts. 31 and 76.

23 Id. at 76(1)(a) – “provided that they have been informed by the holder of the mining right prior to and in a timely manner of his intention to carry out said activities indicating the nature, the time and the location thereof….”
13. The Committee’s jurisprudence constante holds that states-parties are required to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”\textsuperscript{24} The Committee has also recognized indigenous peoples’ rights to “effective participation … in decisions affecting their land rights, as required under article 5(c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of ensuring the ‘informed consent’ of indigenous peoples.”\textsuperscript{25}

14. The Committee highlighted General Recommendation XXIII in its Concluding observations on Suriname and also recommended that the State “strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions.”\textsuperscript{26} The Committee further recommended “legal acknowledgement by the State party of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources.”\textsuperscript{27}

15. Suriname is a member of the Organization of American States and party to the American Convention on Human Rights. As such it has legal obligations under inter-American human rights law, obligations that are highly relevant to the issues discussed herein and the interpretation and application of the Convention on the Elimination of All Forms of Racial Discrimination (\textit{inter alia}, article 5(d)(v)). In particular, the Inter-American Commission on Human Rights has repeatedly held that recognition and protection of indigenous peoples’ property rights includes the right of indigenous peoples to give or withhold their fully informed consent to activities on or affecting traditional lands and territories. In the \textit{Mary and Carrie Dann Case}, the Commission held that special measures are required to ensure the recognition of indigenous peoples’ collective rights to their traditional lands and resources and “their right not to be deprived of this interest except with fully informed consent under conditions of equality, and with fair compensation.”\textsuperscript{28} Concerning mineral and timber concessions on indigenous lands, the Commission has held that these may only be granted “based upon a process of fully informed consent on the part of the indigenous community as a whole.”\textsuperscript{29}

C. The draft Mining Act fails to otherwise provide meaningful procedural and substantive guarantees for indigenous tribal peoples’ rights in relation to mining activities

16. Article 30(1)(f) and (g) of the revised draft Act, respectively, require that applications for exploration permits must be accompanied by a “protocol on the effects for the community” and

\textsuperscript{24} \textit{General Recommendation XXIII on Indigenous Peoples} (1997), at para. 4(d).

\textsuperscript{25} \textit{Inter alia}, \textit{Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia.} 24/03/2000, at para. 9.

\textsuperscript{26} \textit{Concluding Observations: Suriname} at para. 13.

\textsuperscript{27} \textit{Id.} at para. 11.


\textsuperscript{29} \textit{Report No. 40/04}, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), 12 October 2004, at para. 142.
“a proposal for an agreement on relations with the community.” According to the explanatory note, both of these documents are aimed at assessing and compensating damages:

To determine the possible damage to the interests of these people, [the miner] determines what the results of his proposed activities might be for the community and he reports this in a protocol on the effects for the community, which he includes in his request [for an exploitation permit]. He also includes a proposal on relations with the community, stating how he intends to compensate the damage.\textsuperscript{30}

There is no requirement in the draft Act that the ‘proposal for an agreement on relations with the community’ be discussed with the affected community at this time; its adequacy is determined solely by the State. Moreover, this ‘agreement’ for the most part concerns only the amount of compensation that may be required (see, also, article 77, para. 19, infra). As discussed above, in the case of indigenous and tribal peoples only, disputes about compensation will be resolved by the executive rather than the judiciary.\textsuperscript{31}

17. Article 31(1) provides that the protocol on effects for the community, which will be submitted together with an application for an exploration permit, must contain the following elements:

\begin{itemize}
\item[a.] a statement of all villages and settlements of residents of community land in the area in question and in the vicinity thereof, as well as a map with the boundaries of the area to be explored and the location of the villages and settlements located within it.
\item[b.] A proposed study on the intensity of the effect of the mining activities on the local population, in which all issues are discussed, namely demographic, economic, social and cultural.
\end{itemize}

18. Article 31(2) adds that a report on the effects on the community “will be compiled based on the information that is collected during the right of exploration and will include the results of the study as indicated in subsection l(b) of this article. The results of this report must form the basis for the agreement on the relations with the community.” The preceding are all submitted to the Government at the time an exploitation permit is requested and are to be approved solely by the State rather than also by indigenous and tribal peoples.\textsuperscript{32} Additionally, the ‘proposed study’ will not be conducted until after an exploration permit has already been issued. There is also no requirement that indigenous and tribal peoples participate in these studies and nowhere is it specified what sanctions may apply in cases of failure to comply with agreements or the results of studies. There is also no requirement that these studies be undertaken by independent experts or companies, nor are there any prescriptive quality standards and benchmarks for the studies given the absence of legislation regarding the social, environmental and other impact assessment in Surinamese law.

19. Article 77 governs the ‘Agreement on Relations with the Community’ and, according to the explanatory note, “lays down the basis for negotiations for an agreement of cooperation and

\textsuperscript{30}Draft Revised Mining Act, at Explanatory note to article 30.

\textsuperscript{31}Id. art. 76(2) and Explanatory Note to article 76. The Explanatory note states that “This article aims at preventing conflicts between residents of community land and holders of mining rights by providing for a framework for consultation and compensation. This is provided for by a report about the effects of the mining activities on the community (consultation) and attached to this, an agreement on relations with the community (compensation).”

\textsuperscript{32}Id. art. 40(3)(e)
compensation between representatives of residents of community land and the holders of mining rights."\textsuperscript{33} Agreements made pursuant to article 77 will, “where possible,” include the following:

a. access to the hunting, agriculture and fishing grounds for the persons mentioned in article 76 (1);

b. income as compensation for the damage inflicted on the community on social, cultural, economic and environmental level;

c. contributions in kind to ease the cultural change to a more modern way of living, in such a way that the cultural identity will be maintained;

d. the possibility to access the exploitation terrain for the persons mentioned in article 76 (1), to the extent that active mining areas are avoided.\textsuperscript{34}

20. Again, the agreement contemplated in article 77 will be concluded only subsequent to the granting of an exploitation permit and therefore is not in any way related to whether the affected community considers that mining on its traditional lands is appropriate or consistent with the maintenance of its various relationships with those lands. This also directly contravenes the Committee’s Concluding observations, which recommend that ‘the State party … strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions.’\textsuperscript{35} There is no mention of protection of sacred areas or areas otherwise of cultural significance nor is there any prohibition of forcible eviction from traditional lands. Apart from this, negotiation, to be effective and fair, must include some degree of equality of bargaining power as well as equal access to information in a form understandable to both parties. Under the draft Act, the affected community is presented with a \textit{fait accompli}, there is no requirement that information be shared, and the community knows (as does the miner) that failure to reach agreement will result in a decision on compensation that will be imposed by the Executive. Moreover, financial compensation by itself does not mitigate the consequences of having effectively reduced the affected community or communities’ traditional land base and therefore the right to maintain its traditional lifestyle and sustainable livelihood.

21. The Committee’s General Recommendation XXIII directly addresses the impacts of resource exploitation on indigenous and tribal peoples and observes that ‘Indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.’\textsuperscript{36} Notwithstanding the draft

\textsuperscript{33} Article 1(v) defines an ‘agreement on relations with the community’ as ‘an agreement which documents and describes the relationship between the holder of the right to explore or exploit and residents of community land that live in or in the vicinity of the terrain on which the right applies, as provided for in article 77.’ This article’s explanatory note states that:

Internationally it is increasingly recognized that modernisation of indigenous communities can coincide with preservation of cultural identity and integrity. Mining is not hostile towards indigenous communities and the coexistence of mining with the model of ‘development with preservation of own identity’ therefore constitutes the basis of what is proposed here. The agreement provided in this article is the result of negotiations between the holder of the mining right and the residents of community land on or in the vicinity of the terrain where a mining right has been granted. In the agreements issues will be resolved such as compensation for economic and environmental damage and provisions that allow participation in the development process without losing the own identity.

\textsuperscript{34} \textit{Draft Revised Mining Act}, art. 77.

\textsuperscript{35} \textit{Concluding Observations: Suriname} at para. 13.

\textsuperscript{36} \textit{General Recommendation XXIII on Indigenous Peoples}, at para. 3.
Mining Act’s rhetoric about easing “the cultural change to a more modern way of living, in such a way that the cultural identity will be maintained,” the draft Act ensures that the violations identified by the Committee above and, more recently, in its Concluding observations on Suriname will continue unabated.

D. Suriname has failed to identify, delimit and demarcate indigenous and tribal peoples’ traditional lands and territories and is actively discriminating against indigenous and tribal peoples’ in relation to their property rights in the draft Mining Act

22. Suriname has failed to delimit, demarcate and title indigenous and tribal peoples’ lands and territories in order to provide certainty and clarity about the extent and boundaries of those lands and territories and security of tenure to indigenous and tribal peoples. Additionally, the draft Mining Act defines indigenous and tribal lands so as to limit these areas to villages, settlement and agricultural plots. This formulation excludes lands used for agricultural purposes but not presently under cultivation (shifting cultivation is the predominant method of agriculture used by indigenous and tribal peoples), as well as hunting, fishing and gathering areas, and sites of religious and cultural significance not located in villages or settlements. If mining is to take place in these areas, the (substantially inadequate) measures specified elsewhere in the draft Act will not apply at all.

23. The draft Act further discriminates against indigenous and tribal peoples by treating non-indigenous/tribal persons’ property rights differently than indigenous and tribal peoples’ property rights and providing a substantially higher measure of protection to the former. While both must accept mining and are required to negotiate compensation agreements, non-indigenous/tribal persons (‘claimants’ and ‘third parties’) have guaranteed rights to: restoration and rehabilitation of their land damaged by mining and compensation for lost value of the land; guarantees in relation to the manner in which mining may take place; to a higher standard of fault; to require the miner to pay rent or purchase the land if long-term mining takes place; to appeal to the judiciary in relation to disputes about mining; and to restitution of lands used for mining. None of these guarantees apply to mining on indigenous and tribal

37 Id. art. 1(k) – ‘community land’ means “land on which forest residents who dwell and live in tribes have established villages or settlements, or land that they have cultivated or are allowed to cultivate.” See, also, article 4 of Decree L-1, the primary legislation pertaining to state lands, which provides that “In allocating state land, the rights of the tribal Bushnegroes [Maroons] and Indians to their villages, settlements and forest plots will be respected, provided that this is not contrary to the general interest.”

38 Draft Revised Mining Act, arts. 68-75.

39 Id. art. 1(f) and (ab), respectively, define third parties’ as “those who have a personal right of enjoyment on private land” and; ‘claimants’ as “those who have the right of ownership or another real use right to the land.”

40 Id. arts. 68(6) and 69.

41 Id. art. 68(1) – “the holder of the mining right will carry out his mining activities in a reasonable and appropriate way, so that the interests of claimants and third parties will be damaged as little as possible.”

42 Id. art. 68(2) – “The holder of a mining right is obligated to compensate all damage inflicted to the claimants and third parties, whether or not caused by his negligence as a result of his activities.”

43 Id. art. 70.

44 Id. art. 72.
peoples’ lands and territories and there is no reasonable or objective reason for such a distinction in this case.

24. The Committee has stated numerous times that the Convention obligates states-parties to recognize and respect indigenous and tribal peoples’ ownership and other rights in and to their traditional lands, territories and resources. In doing so, it frequently makes reference to General Recommendation XXIII, which calls upon states-parties to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.”

25. Similar recommendations were made directly to Suriname in the Committee’s Concluding observations, including the need for “urgent action by the State party in cooperation with the indigenous and tribal peoples concerned to identify the lands which those peoples have traditionally occupied and used;” and “legal acknowledgement by the State party of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands.” ‘Control’ over communal land requires a recognition of and respect for indigenous and tribal peoples’ right to give or withhold their free, prior and informed consent to mining.

26. We wish to emphasize that the preceding must be viewed in light of the fact that there are no effective domestic remedies, either specific or generally applicable, designed to provide for recognition of and recovery of indigenous and tribal peoples’ ancestral lands, territories and resources, to challenge State-authorized activities thereon, and to ensure that the State consults with and obtains their informed consent prior to issuing resource exploitation concessions.

27. This conclusion was recently confirmed by the judiciary in Suriname in *Celientje Martina Joeroeja-Koewie et al v. Suriname & Suriname Stone & Industries N.V.* In this case, the indigenous community of Pierre Kondre challenged the grant and exploitation of a sand mining concession and asserted communal land rights based on traditional occupation and use. The sand mining concession and activity was located in close proximity to one of the residents’ houses. The court held that ‘Considering that the capacity in which plaintiffs say they are litigating, namely as inhabitants of the village Pierre Kondre, does not give them the competence to demand the measures which they do in this case, because this does not find any support in law.’

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45 Id. art. 74.


47 *General Recommendation XXIII on Indigenous Peoples*, at para. 5.

48 *Concluding Observations: Suriname* at para. 12.

49 Id. at para. 11.
28. The absence of effective domestic remedies was also confirmed by the Committee, which expressed its concern “that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons.” The result is that indigenous and tribal peoples are rendered defenseless and unprotected and their rights, as is presently the case in Suriname, are violated with impunity. This absence of effective domestic remedies and guarantees both invites and compels international scrutiny and intervention.

IV. Suriname has failed otherwise to implement the Committee’s 2004
Recommandations

29. The draft Mining Act is one example of how Suriname has failed to give effect to and is presently actively disregarding the Committee’s recommendations issued in March 2004. It is not the only example that could be cited and Suriname continues to disregard the Committee’s recommendations in toto to date. It has not given any indication that it is seriously considering implementation of the Committee’s recommendations and it has ignored requests for information about any intention it may have to give effect to these recommendations.

30. The Association of Indigenous Village Leaders in Suriname (hereinafter “VIDS”), on behalf of the submitting organizations, has written to the State requesting information and meetings about the measures the government intends to take to give effect to the Committee’s Concluding observations (see, Annex C). VIDS has also offered to assist the Government in any efforts to implement the Committee’s recommendations. No response has been received to date despite the passage of almost six months. The VIDS also submitted a formal petition pursuant to Article 22 of the 1987 Constitution in November 2004 requesting meaningful consultation on the revised draft Mining Act and the inclusion of adequate guarantees for indigenous and tribal peoples’ rights (see, Annex D). No response from the State has been received in relation to this petition to date.

V. Conclusion and Requests

31. Threats to indigenous and tribal peoples’ rights and well-being are particularly acute in relation to resource exploitation projects. Many of these operations have had and continue to have a devastating impact on indigenous and tribal peoples, undermining their ability to sustain themselves physically, spiritually and culturally. Numerous reports confirm that this experience with extractive industries is not confined to the past and is “one of the major human


53 Inter alia, T. Downing, Indigenous Peoples and Mining Encounters: Strategies and Tactics, Minerals Mining and Sustainable Development Project: International Institute for Environment and Development and World Business Council: London 2002 (concluding that indigenous peoples experiences with the mining industry have largely resulted in a loss of sovereignty for traditional landholders; the creation of new forms of poverty due to a failure to avoid or mitigate impoverishment risks that accompany mining development; a loss of land; short and long-term health risks; loss of access to common resources; homelessness; loss of income; social disarticulation; food insecurity; loss of civil and human rights; and spiritual uncertainty). Id. at 3.
rights problems faced by them in recent decades.”

The situation in Suriname is no different; indeed, it may be considered emblematic of the rights violations that often occur in relation to resource extraction.

32. Suriname’s draft Mining Act, together with its ongoing failure to recognize and guarantee indigenous and tribal peoples’ property rights, its failure to provide adequate and effective domestic remedies and its failure to recognize the right to participate in and consent to decision making, will ensure that indigenous and tribal peoples’ continue to suffer a wide range of severe human rights violations in relation to mining. In addition to failing to provide meaningful guarantees for indigenous and tribal peoples’ rights – rights that are not otherwise guaranteed in law – the revised draft Mining Act overtly and consciously discriminates against indigenous and tribal peoples in violation of Suriname’s obligations under the Convention on the Elimination of All Forms of Racial Discrimination and other ratified human rights instruments. It also directly contravenes both the letter and spirit of the Committee’s recommendations issued in March 2004.

33. In light of the preceding, we respectfully request that:

(a) the Committee formally initiates an Emergency/Urgent Action procedure on the situation in Suriname and gives its immediate and sustained attention to reversing the acts and omissions of Suriname that have given rise to the present widespread and persistent pattern of racial discrimination against indigenous and tribal peoples, with particular attention to the failure to recognize indigenous and tribal peoples’ traditional occupation and use and laws as sources of ownership and other rights to lands, territories and resources and the manner in which resource exploitation takes place;

(b) as provided for by Rule 65 of the Committee’s Rules of Procedure, the Committee initiate a follow up procedure aimed at ensuring that the draft Mining Act is enacted with adequate and meaningful participation by indigenous and tribal peoples, includes effective guarantees for their rights, and with amendment of the discriminatory language presently found therein; and,

(c) more generally, we further request that the Committee initiate a follow up procedure in order to continue and intensify its dialogue with Suriname with the objective of ensuring that its March 2004 Concluding Observations are implemented.

54 Supra note 52.
VI. Annexes

A. Excerpts of the Draft Revised Mining Act (unofficial translation)

TITLE ONE  GENERAL
Chapter I. General Provisions
Article 1 Definitions

b. residents of community land: forest residents who reside and live in tribes (…)
f. third parties: those who have a personal right of enjoyment on private land; (…)
k. community land: land on which forest residents who dwell and live in tribes have established villages or settlements, or land that they have cultivated or are allowed to cultivate. (…)
v. agreement on relations with the community: an agreement which documents and describes the relationship between the holder of the right to explore or exploit and residents of community land that live in or in the vicinity of the terrain on which the right applies, as provided for in article 77.

Explanatory Memorandum article 1 sub v (pg. 5):
Internationally it is increasingly recognized that modernisation of indigenous communities can coincide with preservation of cultural identity and integrity. Mining is not hostile towards indigenous communities and the coexistence of mining with the model of ‘development with preservation of own identity’ therefore constitutes the basis of what is proposed here. The agreement provided in this article is the result of negotiations between the holder of the mining right and the residents of community land on or in the vicinity of the terrain where a mining right has been granted. In the agreements issues will be resolved such as compensation for economic and environmental damage and provisions that allow participation in the development process without losing the own identity. See also the explanatory memorandum to article 31.

w. private land: land to which another than the State has the right of ownership, or domain land issued under a real or personal title. (…)
y. protocol basic environmental standards: a document as mentioned in article 30 (1) subsection e.
z. protocol on the effects for the community: a document in which the applicant of a right to exploration, when granted that right, commits himself to carry out a study as mentioned in article 31 (1).

aa. report about the consequences for the community: a document as mentioned in article 31 (2), which indicates the extent to which mining activities will be of influence to the residents of community land in which all issues will be discussed, including demographic, economic, social and cultural.

ab. claimants: those who have the right of ownership or another real use right to the land.

TITLE TWO MINING RIGHTS
Chapter I. General

Article 22. Geological Activities by the State
1. the Minister may in the general interest, have geological activities carried out.
2. Claimants and third parties, residents of community land and holders of mining rights are obligated to allow that geological activities in the name of the Minister are carried out on terrains to which their rights apply.
3. Before the start of the activities mentioned in section 1 of this article, claimants, third parties, and holders of mining rights, to the extent that they are mentioned in the general registers, or are known to the State, and residents of community land, will be notified in name of the Minister of the intention to carry out said activities. (…)
5. Claimants or third parties, as well as holders of mining rights will be compensated for the damages arising out of the activities out of the Treasury. The provisions of article 68 subsections 3, 4 and 5 are applicable mutatis mutandis.
6. Residents of community lands will be compensated for the damages arising out of the activities out of the Treasury. The provisions of article 76(2) are applicable mutatis mutandis.

Chapter III Right to Exploration
Article 30 Application
1. The application to obtain the right to exploration will . . . include: (…)
e. the protocol basic environmental standards in which the applicant indicates how and at which time he will carry out a study on the flora, fauna and environment present in the exploitation terrain.
f. when villages or settlements of residents of community lands are present, the protocol on the effects for the community.
g. when villages or settlements of residents of community lands are present, a proposal for an agreement on relations with the community. (…)

*Explanatory Memorandum to article 30 (pg. 15)*

(…) When carrying out mining activities, measures must be taken to protect humans and the environment. Exploration in general does not place too much pressure on humans and the environment, as it does during exploitation. Therefore it is desirable that already in this phase, when it appears that exploitation is feasible, the state of the environment will be documented in a report that is generally known as ‘base line study’. With the application for the right of exploration, the applicant indicates in the protocol basic environmental standards, which he must submit, how and which studies he intends to carry out and when these will be started. There must also be agreements with the residents of community lands on or in the vicinity of the requested terrain, to protect their interests. To determine the possible damage to the interests of these people, he determines what the results of his proposed activities might be for the community and he reports this in a protocol on the effects for the community, which he includes in his request. He also includes a proposal on relations with the community, stating how he intends to compensate the damage. (…)

**Article 31 Protocol and Report on the Effects for the Community**

1. The protocol on the effects for the community must contain the following:
   a. A statement of all villages and settlements of residents of community land in the area in question and in the vicinity thereof, as well as a map with the boundaries of the area to be explored and the location of the villages and settlements located within it.
   b. A proposed study on the intensity of the effect of the mining activities on the local population, in which all issues are discussed, namely demographic, economic, social and cultural.

2. The report on the effects for the community that must be submitted with the application for a right to exploitation, will be compiled based on the information that is collected during the right of exploration and will include the results of the study as indicated in subsection 1 (b) of this article. The results of this report must form the basis for the agreement on the relations with the community.

*Explanatory Memorandum to article 31 (pg. 15-16)*

With the request to the right of exploration, the applicant must indicate which villages or settlements of residents of community land are located on or in the vicinity of the requested terrain. These villages and settlements, along with the boundaries of the requested terrain, must be indicated in a map. If he expects that his exploration activities will result in exploitation, based on the protocol about the effects for the community, he must carry out a study to the extent in which his exploitation activities will affect the local community and document this in the report about the effects for the community. This report will be submitted with the request for the right to exploitation.

**Article 32. Granting of the Right**

1. If all the terms connected to the application as provided in article 30 have been met, the Minister will grant the right to exploration within sixty days after submission of the application or after submission of supplements and changes. (…)

**Article 35. Rights**

1. The right to exploration grants the holder thereof an exclusive right to carry out exploration works on the exploration terrain with regard to the minerals for which the right has been granted.
2. The holder of the right to exploration also has the right to:
   a. Have access to the exploration terrain (…)
   b. Drill holes for gathering samples and to carry out digging and underground activities which are necessary in his opinion;
   c. Build camps and temporary buildings on the exploration terrain for personnel and material;
   d. Add the necessary infrastructural works
   e. Use the samples gathered in the exploration terrain for tests and analyses;
   f. Export the samples after permission from the Minister.

**Chapter IV Right to Exploitation**

**Article 40 Application**

(…) 3. the application [for obtaining a right to exploitation] will be accompanied by:
   a. a detailed description of the mineral(s) with drawings necessary for the interpretation;
   b. a topographic map indicating the activities carried out and the proposed boundaries of the terrain;
c. a mine plan with a description of the mining facility and the intended anti-pollution and land rehabilitation measures;
d. the Environmental Impact Report as mention in article 41;
e. if villages or settlements of residents of community lands are present, the report on the effects for the community in accordance with article 31 (2) and the agreement on the relations with the community; (...)
4. In case of conflicts with or derogation of rights granted by the Minister to third parties, the applicant of the right to exploitation will indicate in what way he will comply with all laws and regulations that are in force and in which way he will avoid that the quality of any existing water source, which is used for domestic use, agricultural or industrial ends, will be reduced substantially and if that takes place anyway, in which way he will provide the users of this water with a comparable supply or source of water.

**Article 41 Environmental Effect Report**
1. The Environmental Effect Report which contains the basic information that has been collected in accordance with the protocol basic environmental standards, will include:
g. plans, analyses and predictions related to the effects that the activities that have been carried out or proposed by the applicant of the right to exploitation, will have on the environment.
h. An Environmental Management System, as mentioned in article 64, which indicates the measures that will undo or as much as possible mitigate the negative effects on the environment, and the measuring techniques that will be applied. (...)

**Article 42. Granting of the right**
1. If all the terms of the request, as stated in article 40, have been complied with, the Minister will grant the right to exploitation within one hundred and eighty days after submission of the request or after submission of supplements and changes. (...)

**Article 47. Rights**
1. The right to exploitation grants the holder thereof an exclusive right to mining in and on the exploitation terrain the mineral(s) for which the right has been granted, taking into account the laws, regulations and if applicable, conditions has agreed upon in a mining development agreement.
2. The holder of the right to exploitation is further entitled to:
a. have access to the exploitation terrain to carry out the activities as mentioned in subsection 1.
b. To treat, process, transport and trade the minerals mentioned in subsection 1 of this article;
c. To construct all works or buildings in or on the exploitation terrain for the mining and processing of the minerals for which the right has been granted. If the exploitation terrain is domain land, the holder is also entitled to set up buildings for his personnel. The holder of the mining right has the right of superficies to these works and buildings.
d. To continue reconnaissance and exploration activities in or on the exploitation terrain with regard to the mineral for which the right was granted;
e. If the terrain concerns domain land, to use building materials and timber on the exploitation terrain, taking into account existing timber concessions, permits for incidental timber cutting and timber exploration, to be used for building and maintaining of the works and buildings mentioned in subsection b of this article. The Minister may determine conditions in this respect.
f. If the terrain concerns domain land, to plant vegetables and fruit for his personnel, it is forbidden to carry out agriculture for commercial purposes on said exploitation terrain without the consent of the Minister and without due regard to the existing and the further to be determined conditions by the Minister.
g. To utilize all existing water sources, taking into account the provisions of article 40(4).

**TITLE FOUR. RIGHTS OF THIRD PARTIES**

**Chapter I Title Holders**

**Article 67. Right of superficies and compensation**
1. Claimants and third parties of terrains on which a mining right has been granted, are obligated to permit the holder of this mining right to carry out activities with regard to his granted right on the terrain that belongs to them in ownership or to which they are entitled:
a. Provided that they have been informed of his intention to carry out said activities prior to and in a timely manner, of the nature, the time and the location thereof;
b. after receiving prior compensation or after security thereof, in accordance with the provisions of this law. (...)

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Article 68. Compensation and rehabilitation of the land
1. The holder of the mining right will carry out his mining activities in a reasonable and appropriate way, so that the interests of claimants and third parties will be damaged as little as possible.
2. The holder of a mining right is obligated to compensate all damage inflicted to the claimants and third parties, whether or not caused by his negligence as a result of his activities.
3. If the parties involved cannot reach agreement concerning the nature and the extent of the damage mentioned in subsection 2 of this article, the Cantonal Judge within whose jurisdiction the terrain is located which is the basis of this conflict, will determine, upon the request of any interested party, the amount of compensation.
4. The entitlement to compensation, which is owed based on subsection 2 of this article, if it is not based upon an agreement, will become barred by the statute of limitations after five years, starting from the day on which the damage became known to the claimants and third parties. (…)
6. If damage has been inflicted on private lands or to its belongings by mining activities, in place of the individually owed monetary compensation, the claimants and third parties are entitled to demand that within a reasonable time, the land or its belongings are restored to their former state by the holder of the mining right, unless this will impede or prevent the activities, without prejudice to the right of the claimants or third parties to claim, pursuant to the present article, compensation for every decline in value of the lands and everything that belongs to it, which may exist after the restoration in their former state.
7. If the costs related to the restoration to its former state exceed the monetary compensation, the claimants and third parties are obliged to accept this compensation.

Article 69 Compensation
[provides that the holder of a mining right remains liable for rehabilitation of mined lands, even if he has been forced to pay compensation or costs for rehabilitation to holders of land lease titles (on domain land).]

Article 70 Rent and Sale
[provides that if private land will be used for a long period for mining activities, the holder of a mining right will, at the request of the claimant, rent or buy the land; if parties cannot agree upon the amount, the Cantonal Judge will determine the amount]

Article 71 Appraisal
[provides that only the real value that private lands will be taken into account]

Article 72 Appeal
2. Appeal is allowed for all decisions taken by the Cantonal Judge, with the exception of the decision in which the amount of the security that must be provided, is determined.
3. The provisions of the Code of Civil Procedure are applicable, in so far as not provided otherwise in this act, to every case between a holder of a mining right and the claimants and/or third parties.
4. If the Cantonal Judge decides that a request as provided for in the articles 68-72, to determine the rental fee, the price or the compensation, is sustainable, he will appoint one or more experts in uneven numbers to advise him regarding the rental fee, price or compensation.
[4-8. provides rules regarding the civil procedure]
9. Regardless of whether parties have appeared or not, the Cantonal Judge will deliver his judgement within fourteen days after [the parties have appeared to provide oral information on the case] regarding the amount of the rental fee, the price or the compensation that is due to the claimants and third parties. (…)

Article 74 Restitution of the land to claimants
With the exception of the case as mentioned in article 70 (2) [if the land is sold to the miner], the land or parts thereof, must be returned to the claimants or the third parties after its use. Works that have been erected or established by the holder of the mining right, must be removed and openings in the earth surface, such as holes and pits, must be safely restored.

Article 75 Authorization to restore by claimants
By failure to comply with the obligations provided under article 74, the claimants and third parties, each to the extent of their own interest, may be authorized by the Cantonal Judge within whose jurisdiction the conflict is at issue, to take the necessary measures themselves at the costs of the holder of the mining right.
TITLE FIVE TRADITIONAL RIGHTS
Chapter 1 Traditional Rights
Article 76 Compensation
1. Residents of community land are obligated to permit the holder of a mining right to carry out activities with regard to his granted rights, on lands that are used or occupied by them:
   a. provided that they have been informed by the holder of the mining right prior to and in a timely manner of his intention to carry out said activities indicating the nature, the time and the location thereof;
   b. against prior secured compensation in accordance with the provisions of this law.
2. If there has been no agreement on the compensation as provided in subsection 1 under b, after negotiations between the parties involved, the State will make a proposal that is binding to the parties. The State will ensure that the interests of all parties involved will reasonably be taken into account.
3. The applicant for a right to exploration will lay down the compensation mentioned in subsection 1 under b of this article in the protocol on the effects for the community provided by article 31 (1).
4. The applicant for a right to exploitation will lay down the compensation mentioned in subsection 1 under b of this article in the report on the effects for the community provided by article 31 (2).

Explanatory Memorandum to article 76 (pg. 25-26)
This article aims at preventing conflicts between residents of community land and holders of mining rights by providing for a framework for consultation and compensation. This is provided for by a report about the effects of the mining activities on the community (consultation) and attached to this, an agreement on relations with the community (compensation).
Residents of community land are, just as other title holders, obligated to permit holders of mining rights to carry out mining activities on lands they use based on their traditional rights (article 76 subsection 1). As a result they may suffer damages for which compensation must be offered (article 76 subsection 1 under a and b). With the application of a right to exploration, the compensation will be laid down in the protocol about the effects for the community (see also explanatory note to article 31). If parties cannot agree, the executive will provide a binding decision. This model has been chosen because traditional rights do not lend themselves for the normal court procedure, because it does not concern individual rights.

Article 77 Agreement on relations with the community
The agreement on the relations with the community with the persons mentioned in article 76 (1), will, where possible, include the following provisions:
   a. access to the hunting, agriculture and fishing grounds for the persons mentioned in article 76 (1);
   b. income as compensation for the damage inflicted on the community on social, cultural, economic and environmental level;
   c. contributions in kind to ease the cultural change to a more modern way of living, in such a way that the cultural identity will be maintained;
   d. the possibility to access the exploitation terrain for the persons mentioned in article 76 (1), to the extent that active mining areas are avoided.

Explanatory Memorandum to article 77 (pg. 26)
This article lays down the basis for negotiations for an agreement of cooperation and compensation between representatives of residents of community land and the holders of mining rights. The results of the report about the effects for the community (article 31 subsection 2) lays the foundation for holders of mining rights to negotiate with residents of community land to reach an agreement on relations with the community, which includes compensation for material and immaterial damage suffered. See further the explanation to article 76, last sentence.
B. Letter to the State about Implementation of the Committee’s Recommendations (original in Dutch)

VIDS
Vereniging van Inheemse Dorpshoofden in Suriname

PAS gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname tel. 597 520130 fax. 597 520131, e-mail: vids@sr.net

Paramaribo, June 24, 2004

President of the Republic of Suriname

RE: Recommendations of United Nations Human Rights Committees on Suriname

Your Excellency:

The VIDS, as a representative of the indigenous peoples of Suriname, is writing to you to request an audience with you or with the relevant Ministers you may designate to discuss how indigenous peoples can assist the Government of Suriname in implementing the Concluding Observations issued by the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Human Rights Committee. These Committees issued their observations on Suriname’s periodic reports in March 2004.

After reviewing Suriname’s periodic reports and discussing these with government delegations, the above referenced UN Committees both recommended, among others, that Suriname give urgent attention to recognizing indigenous peoples’ rights to our traditional lands, territories and resources. The Committee on the Elimination of Racial Discrimination also recommended that Suriname consider seeking the assistance of the Office of the UN High Commissioner for Human Rights in order to draft framework legislation that recognizes and guarantees the rights of indigenous and tribal peoples in Suriname.

Your Excellency, we are aware from your public speeches and those of your ministers that Suriname is committed to honouring its international human rights obligations and that the Government highly values the views of the UN human rights committees. The VIDS also believes that the views of these illustrious committees are extremely valuable and of great assistance to the Government and people of Suriname.

The VIDS will be honoured to assist your Government in any way possible to ensure that the Committees’ recommendations are implemented and will be equally honoured to meet, at your convenience, with you or your Ministers and other persons designated by you to discuss how we can assist with this.

Respectfully,

Captain Ricardo Pane
Chairman
C. Petition submitted about the Draft Mining Act

VIDS
Vereniging van Inheemse Dorpshoofden in Suriname

PAS gebouw, Verl. Keizerstraat 92, Paramaribo, Suriname tel. 597 520130 fax. 597 520131, e-mail: vids@sr.net

Paramaribo, 15 November 2004

To: The Chairman of the National Assembly
Mr. R. Sardjoe
Onafhankelijkheidsplein 10

Re: Petition on Draft Revised Mining Act

Esteemed Mr. Sardjoe,

Please find enclosed a petition written by the Association of Indigenous Village Leaders in Suriname (VIDS). This petition is submitted to you as the chairman of the National Assembly in accordance with the right to petition laid down in article 22 of the Constitution.

By sending copies of this petition, the VIDS will express its position to the President of the Republic of Suriname, the members of the Council of Ministers, members of the National Assembly, the Council for the Development of the Interior (ROB), the National Institute for Environment and Development in Suriname (NIMOS), the Bauxite Institute, Suralco LLC and Billiton Suriname NV.

After 30 November, the VIDS will also communicate her position in wider circles, both nationally and internationally. However, as always the VIDS is open to further discussion/dialogue about the contents of this petition.

Yours sincerely,

On behalf of the Association of Indigenous Village Leaders in Suriname

Ricardo Pané,
Chairman
PETITION TO THE NATIONAL ASSEMBLY OF THE REPUBLIC OF SURINAME

Presented to the Chairman of the National Assembly in accordance with article 22 of the Constitution of the Republic of Suriname

VIDS REQUESTS STAYING THE CONSIDERATION OF THE DRAFT REVISED MINING ACT BECAUSE OF FLAGRANT VIOLATION OF RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES AND INTERNATIONAL TREATY OBLIGATIONS OF SURINAME

Primary objections of the VIDS with regard to the Draft Revised Mining Act:

1. There has been no form of consultation with the indigenous peoples and the maroons with regard to the Draft Revised Mining Act, which is a violation of our right to participation.
2. The rights to the lands and natural resources that have been used and occupied by indigenous peoples and maroons for centuries, will be violated if the Draft Revised Mining Act is adopted in its present form.
3. The Draft Revised Mining Act contains extremely discriminatory provisions.
4. The Draft Revised Mining Act has a disproportional negative effect on indigenous peoples and maroons compared with other Surinamese population groups and geographical areas.
5. The Draft Revised Mining Act does not offer effective legal protection to indigenous peoples and maroons.
6. Exploitation of natural resources is not a justification for violation of human rights.
7. There are no guarantees or even preferential benefits for indigenous peoples and maroons of the profits that will be gained by mining in Suriname. Indigenous peoples and maroons have protected and maintained the natural resources in Suriname for centuries and are now threatened to become the victims.
8. Measures for compensation are inadequate.
9. The Draft Revised Mining Act goes against all international applicable legislation and standards regarding the rights of indigenous and tribal peoples.

Recommendations of the VIDS:

1. To stay the consideration of the Draft Revised Mining Act until further notice and immediately start just and effective consultations of indigenous peoples and maroons.
2. To revise the Draft Revised Mining Act, based on the recommendations of the consultations and in agreement with international treaty obligations of Suriname regarding the rights of indigenous peoples and maroons.
I. THE DRAFT REVISED MINING ACT VIOLATES THE RIGHTS OF INDIGENOUS AND TRIBAL PEOPLES

The Association of Indigenous Village Leaders in Suriname (VIDS) believes that the Draft Revised Mining Act\(^1\) constitutes a violation of the rights of indigenous and tribal peoples as recognized in national and international human rights instruments (see also section II)

a. No Consultation on Draft Revised Mining Act

1. There has been no form of consultation with indigenous peoples and maroons regarding the Draft Revised Mining Act. Despite promises by the Minister of Natural Resources that the residents of the Interior would be consulted, the Act has been approved by the Council of Ministers and sent to the Council of State, after which it will be discussed by the National Assembly. The argument that the National Assembly also constitutes a representation of indigenous peoples and maroons does not stand according to international treaty obligations. According to the Inter-American Human Rights Commission, the State must take special measures to ensure that at least ‘all members of the indigenous community are fully and accurately informed’ (Maya case, 2002). There is no traditional representation of the indigenous peoples and maroons in the National Assembly; the individual parliamentarians of indigenous or maroon descent are representatives of their own different political parties. The only organ which may be said to contain a representation of indigenous peoples and maroons, is the Council for the Development of the Interior (ROB). However, this Council has also not been given the opportunity to give its opinion about the Draft and the Council does not have any authority to issue binding advisory opinions.

The VIDS urgently requests the government and the National Assembly to stay the consideration of the Draft Revised Mining Act until full consultations have been held with the indigenous and maroon communities, which allows them to assert real influence on the final content of the Act. It is recommended to accept the offer from the UN Committee on the Elimination of Racial Discrimination to request technical assistance from the United Nations.

b. Violation of Indigenous Peoples and Maroon Land Rights

2. The Draft Revised Mining Act violates the internationally recognized rights to land and natural resources of indigenous peoples and maroons, among others by:
   a. obligating the indigenous peoples and maroons to allow mining activities on their lands, without their free, prior and informed consent.
   b. Limiting the obligating the concession holder to submit an agreement with residents of the interior to the exploitation phase. Only after considerable damage has been inflicted to the area by drilling and construction of roads in the concession area for exploration purposes, does the concession holder have to show an agreement indicating the compensation for the exploitation phase. If

\(^1\) Concept Herziene Mijnbouwwet, (Draft Revised Mining Act), 16 October 2003 (hereinafter ‘Draft Revised Mining Act’).
residents do not agree with the compensation, the government will take a binding decision.

c. not attaching any legal consequences to possibly disastrous effects of the mining activities on indigenous and maroon lands and communities. The concession holder is only required to submit a report when requesting a permit for exploitation, which describes the effects for the community. The law is silent about the way in which this report is produced and about the content of the report. It is completely up to the Minister to grant the request whether or not the report has been written by somebody who has never been in the area, with or without any consultation with the residents and irrespective of whether the report shows that mining might lead to, for example, serious health problems within the community.


3. The Draft Revised Mining Act violates the right to equality of indigenous peoples and maroons, guaranteed by international treaties and the Surinamese Constitution in article 8. Among others because:
   a. access to a judge, including the right of appeal, is only open to holders of an individual right to determine compensation, while holders of a collective right must settle for a binding decision taken by the government.
   b. concession holder are required to mitigate the damages as a result of the mining activities, only in case of holders of individual rights;
   c. the Act provides the opportunity to demand restoration of the land only to holders of individual rights; in case of indigenous and maroon areas, the land does not have to be restored;
   d. after the activities have terminated, the concession holder is required to return the land only to holders of individual rights; in case of indigenous and maroon areas, the land does not have to be returned.

Indigenous peoples and maroons are not only directly discriminated by the Draft Revised Mining Act, they are also, compared to residents of the coastal area, disproportionately affected by this Act. Most large scale mining activities take place in the Interior, in areas that have been occupied and used by indigenous peoples and maroons for centuries.

d. No Effective Legal Protection

4. The Draft Revised Mining Act and the Surinamese law in general, offer indigenous peoples and maroons no effective remedies to protect their rights to land and resources. In this regard, the UN Committee on the Elimination of Racial Discrimination has already expressed its concern about the fact that ‘indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons’. Similarly, in a case that was brought against the State by the inhabitants of the indigenous community Pierrekondre (district of Para), for issuing a sand mining concession on their territory, the judge concluded that the inhabitants lack the competence to request withdrawal of the concession because this

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would not be supported by the law. The current Draft Revised Mining Act goes even further and effectively cuts off the road to the judge for indigenous peoples and maroons, because collective rights are not considered suitable for litigation before a court. The notion that traditional collective rights could not be tried in a regular court procedure is out-of-date; all countries in the region offer this possibility. Suriname would be the only country in the Western Hemisphere where independent judges would be unable to render a judgment about the rights of indigenous and tribal peoples.

II. THE DRAFT REVISED MINING ACT CONSTITUTES FLAGRANT VIOLATION OF INTERNATIONAL TREATIES AND TREATY OBLIGATIONS OF SURINAME

5. The Draft Revised Mining Act that has been sent by the government to the Council of State for approval, is in flagrant violation of Suriname’s international treaty obligations. This is the conclusion of the VIDS after a thorough investigation of the Draft Act. This petition is an appeal to the National Assembly to stay the consideration of the Act until an effective and just consultation process has been held with indigenous peoples and maroons; the results of this process have been implemented and the Draft Revised Mining Act has been brought in conformity with the international treaty obligations of Suriname with regard to the rights of indigenous peoples and maroons. This petition only contains some of the most blatant violations of our rights. The VIDS reserves the right to consider the content of the Draft Revised Mining Act more fully at a later date.

6. The UN Committee on the Elimination of Racial Discrimination already concluded in March 2004 that the Draft Revised Mining Act is discriminatory, because it does not provide indigenous peoples and maroons with access to an independent judge to determine compensation as a result of mining activities on their territories. The Draft Revised Mining Act does provide this opportunity to those who have a real title to their land, such as holders of land lease (“grondhuur”) and ownership (“eigendom”) titles. These are allowed to litigate the amount of compensation before a judge with the possibility of appeal. Indigenous peoples and maroons however, have to settle for a binding decision by the government. The same government therefore, who issued the concession to a company, may determine which amount is reasonable for compensation. This direct discrimination is ‘justified’ by the government, because this entails “traditional rights” that “do not lend themselves to the normal court procedure as individual rights are not involved.”

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4 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname. CERD/C/64/C09/Rev.2, 12 March 2004, para 14 (“The Committee notes that, under the Draft Revised Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached the matter will be settled by the executive, and not the judiciary. More generally, the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons. It recommends that indigenous and tribal peoples should be granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.”)
5 Draft Revised Mining Act, Explanatory Note to article 76, p. 25.
Are Collective Rights Less Worthy in Suriname?

Although the VIDS welcomes the recognition by the government that indigenous and tribal peoples rights to land are collective and not individual rights, the conclusion that collective rights should enjoy less legal protection than individual rights, is again a blow in the face of the original inhabitants of Suriname. It is a violation of concluding observations by the UN Committee on the Elimination of Racial Discrimination, but also the jurisprudence of the UN Human Rights Committee, the Inter-American Commission on Human Rights and the Inter-American Human Rights Court.

All these organs are responsible for monitoring legally binding international treaties that have been ratified by Suriname. Suriname has thus out of its own free will, obligated itself to abide by the content of the treaties and the decisions and conclusions of these organs. Approving the current Draft Revised Mining Act would send an international signal that Suriname dismisses the findings of these organs and, undeterred, continues to violate the human rights of one group of Surinamers: the indigenous peoples and maroons.

Recent Observations by UN Committees Concerning Suriname

This year both the UN Committee on the Elimination of Racial Discrimination (CERD) and the UN Human Rights Committee issued concluding observations concerning Suriname. Both Committees reached the conclusion that Suriname should legally recognize the rights of indigenous peoples and maroons to own, develop, manage and use their communal lands. It is therefore required to adopt legislation, with the full participation of indigenous peoples and maroons, which officially recognizes that indigenous peoples and maroons have ownership and use rights to their collective lands and resources. Failing to do this, is in itself a violation of Suriname’s treaty obligations. Suriname has been requested to report to the Committees which measures they have adopted to comply with their obligations. In addition, CERD offered technical assistance from the United Nations. Despite requests by the VIDS for a meeting with the President, there has been no reaction from the government to the conclusions of the UN Committees.

More generally, years ago CERD concluded that every decision affecting indigenous peoples, must be adopted with their full participation and their informed consent.

Obligations based on the Inter-American Human Rights System

Suriname is also party to human rights treaties within the system of the Organization of American States (OAS). The Inter-American Human Rights Commission and the Inter-American Human Rights Court have both held that:

1) indigenous collective ownership rights must be laid down in the law;
2) indigenous lands and territories must be delimited and demarcated;
3) indigenous peoples must be fully consulted before concessions are issued on their lands and that this should take place based on their free and informed consent;
4) indigenous peoples should have effective remedies to protect their rights to lands and resources;

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5) all damages to their lands and resources must be fairly compensated;
6) it is prohibited to discriminate between traditional collective ownership rights of indigenous peoples and ownership rights of non-indigenous peoples.

III. EXPLOITATION OF NATURAL RESOURCES IS NO JUSTIFICATION FOR HUMAN RIGHTS VIOLATIONS

Development of Suriname’s natural resources should take place in the national interest. However, the exploitation of natural resources may never be a justification for violation of human rights. By abolishing the statute of limitations to prosecute grave human rights offenders, the government and the National Assembly has recently shown to be willing and able to ensure a better protection of the human rights of Surinamese citizens. The VIDS urgently calls on the government, the National Assembly and the entire Surinamese society not to stop here, but to take all necessary steps to ensure the human rights of all Surinamers.

IV. RECOMMENDATIONS OF THE VIDS

By firstly, staying the consideration of the Draft Revised Mining Act until indigenous peoples and maroons have been fully consulted about the contents of this law, and secondly, ensuring that the Act is in conformity with Suriname’s international treaty obligations, the process can start that may end the five centuries long institutional discrimination of the indigenous and tribal peoples of Suriname.

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8 See the reports of the Inter-American Human Rights Commission in the Maya-case (case 12.053, Maya indigenous communities of the Toledo District (Belize), 24 October 2003, report no. 96/03) and the Dann-case (case 11.140, Mary and Carrie Dann (United States), 27 December 2002, report no. 75/02, and the judgement of the Inter-American Human Rights Court in the Awas-Tiingni case: (Mayagna (Sumo) Community of Awas Tingni versus Nicaragua, Judgement of 31 August 2001.