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Совет по правам человека
Восемнадцатая сессия
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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Доклад Специального докладчика по вопросу о правах коренных народов Джеймса Анайи

Добавление

Меры, необходимые для обеспечения прав коренных народов и племен на земли и связанных с этим прав в Суринаме*

Резюме

Настоящий доклад был направлен правительству Суринама и опубликован в апреле 2011 года. В этом докладе Специальный докладчик представил замечания и рекомендации в целях оказания содействия государству в разработке законов и административных мер по обеспечению прав коренных народов и племен в Суринаме, в частности их прав на земли и природные ресурсы. Этот доклад представлен в связи с просьбой правительства Суринама и Министерства регионального развития об оказании технической и консультативной помощи, поскольку оно разрабатывает законодательные и административные меры, необходимые для обеспечения территориальных и других прав коренных народов и племен в Суринаме. Специальный докладчик положительно ответил на эту просьбу и предложил в качестве предварительного шага посетить страну, с тем чтобы встретиться с соответствующими заинтересованными участниками в отношении возможной помощи с его стороны. Правительство согласилось на этот визит, который состоялся с 13 по 16 марта 2011 года.

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется в том виде, в котором он был получен и только на том языке, на котором он был представлен.

Просьба отправить на вторичную переработку

Представленные замечания и рекомендации основаны на дискуссиях, состоявшихся во время визита Специального докладчика. После краткой оценки международных правовых обязательств государства в отношении прав коренных народов и племен Специальный докладчик описывает процесс движения в направлении разработки законодательства и соответствующих административных мер в целях обеспечения этих прав. Специальный докладчик также включил предложения в отношении основного содержания этого законодательства, подчеркнув в то же время, что эти законодательные нормы должны стать результатом коллективного процесса при содействии соответствующих международных институтов, в который будут вовлечены сами коренные народы и племена. Специальный докладчик предполагает, что после представления данной записки могут последовать дальнейшие консультации с правительством и с коренными народами и племенами в Суринаме, и выражает готовность представить дополнительные комментарии и рекомендации по мере прогресса в направлении принятия законодательства для обеспечения прав этих народов.

Annex

Note by the Special Rapporteur on the rights of indigenous peoples, James Anaya, on measures needed to secure indigenous and tribal peoples' land and related rights in Suriname

Contents

I. Introduction

1. In this note the Special Rapporteur provides observations to assist with the development of laws and administrative measures to secure the rights of indigenous and tribal peoples in Suriname, in particular their rights over lands and natural resources. He offers these observations in accordance with his mandate from the United Nations Human Rights Council to "examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples […] and to identify, exchange and promote best practices", as well has his mandate to "develop a regular cooperative dialogue with all relevant actors […] including on possibilities for technical cooperation at the request of Governments".[1] The Special Rapporteur hopes that the observations below are useful to Suriname as it advances measures to implement its international legal obligations concerning indigenous and tribal peoples, especially in light of binding decisions rendered by the Inter-American Court of Human Rights.

2. This note is provided in the context of a request by the Government of Suriname and its Ministry of Regional Development for technical and advisory assistance as it develops the legislative and administrative measures necessary to secure the territorial and other rights of the indigenous and tribal peoples of Suriname.[2] The Special Rapporteur responded positively to this request and proposed that, as a preliminary step, he carry out a visit to the country to meet with relevant stakeholders regarding his possible assistance. The Government agreed to the visit, which was carried out from 13-16 March 2011.

3. During the visit, the Special Rapporteur met in Paramaribo with representatives of the Government, including the Vice President; the Ministers of Regional Development, Justice and Police, Foreign Affairs, Natural Resources, Physical Planning, and Labour, Technology and Environment, as well as participated in a joint meeting of the Council of Ministers. The Special Rapporteur also held meetings with the association of indigenous village leaders from each of the 35 indigenous villages in Suriname (Vereniging van Inheemse Dorpshoofden or "VIDS"), the Association of Saramaka authorities (Vereniging van Saramakaanse Gezagdragers or "VGS"), and other Maroon groups, including the 12 Okanisi clan, the Matawai clan, the Paramakan community, and the Bureau Moiwana. Finally, the Special Rapporteur met with the United Nations country team and Resident Coordinator, and has been in contact with representatives of the Inter-American Development Bank since the visit regarding coordination on work related to indigenous and tribal lands in Suriname. The Special Rapporteur is grateful for all those that assisted in planning and coordinating logistics for the visit, in particular the Ministry of Regional Development and the United Nations country team in Suriname.

4. The observations below include recommendations that build on the discussions during the Special Rapporteur's visit to Suriname. After a brief assessment of Suriname's international legal obligations in relation to the rights of indigenous and tribal peoples, this note outlines a process for moving forward toward developing legislation and related administrative measures to secure these rights. The note also includes suggestions about the basic contents of the legislation, while emphasizing that this legislation should be the outcome of a participatory process, assisted by relevant international institutions, in which indigenous and tribal peoples are themselves involved.

[1] Human Rights Council Resolution 15/14, para. 1(a) and 1(f).

[2] See Letter from Michel Felisi, Suriname Minister of Regional Development, to James Anaya, United Nations Special Rapporteur, dated 13 November 2008; Letter from Minister Linus Diko, Surinam Minister of Regional Development to James Anaya, United Nations Special Rapporteur, dated 6 October 2010.

5. The Special Rapporteur anticipates that this note may be followed by further consultations with the Government and with indigenous and tribal peoples in Suriname, and he stands ready to provide additional comments and recommendations as progress is made toward adopting legislation to secure these peoples' rights.

II. Suriname's international legal obligations concerning indigenous and tribal peoples

6. It should be noted by way of background that the indigenous peoples of Suriname include the following groups: Kaliña (or Karinya or Carib); Lokono (or Arawak); Trio/Tareno and associated peoples; and Wayana. In addition to these indigenous groups whose ancestors' presence predated European settlement in the continent, culturally distinct tribal peoples known generally as Maroons inhabit Suriname's interior region. The Maroons, who are the descendants of African slaves who began arriving the area in the late 1700s, include the following groups: Saamaka (or Saramaka); N'djuka (or Aucaner); Matawai; Kwinti; Paramaka; and Aluku (or Boni).

7. It is apparent that the Maroon tribal groups in Suriname have characteristics and human rights concerns similar to those of indigenous peoples, especially in regard to cultural and linguistic distinction and the existence of traditional authority and land tenure patterns. Given these similarities, the tribal and indigenous peoples of Suriname fall within a common set of international standards, as reflected in International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.[3] Even though Suriname is not a party to ILO Convention No. 169, the Convention is indicative of the common responses and standards that have developed within the international arena to the common human rights concerns of indigenous and tribal peoples.

A. The American Convention on Human Rights and the Judgments of the Inter-American Court of Human Rights

8. The Inter-American Court of Human Rights has specifically affirmed that, like indigenous peoples, the Maroon tribal peoples of Suriname have individual and collective rights, including collective rights over lands and natural resources, which are protected by the American Convention on Human Rights, a multilateral treaty to which Suriname is a party. The Inter-American Court has issued two judgments related to tribal peoples in Suriname, *Moiwana village v. Suriname*[4] of 2005, and *Saramaka v. Suriname*[5] of 2007. In the case of *Moiwana village v. Suriname*, the Inter-American Court found Suriname

[3] See Article 1 of Convention No. 169, which articulates the Convention's scope of coverage: "This Convention applies to:(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply".

[4] Moiwana Village v. Suriname, Judgment of 15 June 2005, Inter-Am Ct. H.R., (Ser. C) No. 124 (2005).

[5] Saramaka People v. Suriname, Judgment of 28 November 2007, Inter-Am Ct. H.R., (Ser. C) No. 172 (2007).

responsible for the failure to investigate and punish those who had carried out the 1986 massacre in which at least 39 Moiwana villagers were killed.[6] The Court also found that Suriname had violated article 21 of the American Convention on Human Rights, which protects the right to property, and ordered that Suriname "adopt such legislative, administrative and other measures as are necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and provide for their use and enjoyment of those territories".[7] The Court ordered that these measures include the "creation of an effective mechanism for the delimitation, demarcation and titling of said traditional territories".[8]

9. In the case of *Saramaka v. Suriname*, the Inter-American Court of Human Rights recognized the rights of the Maroon Saramaka communities to lands and resources on the basis of their traditional tenure, and affirmed that these rights are property protected by article 21 of the American Convention on Human Rights. Building upon its earlier jurisprudence[9], the Court expounded on the elements and implications of the right to property in the context of indigenous and tribal peoples, and it ordered Suriname, among other measures, to "delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people, without prejudice to other tribal and indigenous communities";[10] and to "adopt, in its domestic legislation, and through prior, effective and fully informed consultations with the Saramaka people, legislative, administrative, and other measures as may be required to recognize, protect, guarantee and give legal effect to the right of the members of the Saramaka people to hold collective title of the territory they have traditionally used and occupied".[11]

10. The Court further ordered Suriname to "adopt legislative, administrative and other measures necessary to recognize and ensure the right of the Saramaka people to be effectively consulted, in accordance with their traditions and customs, or when necessary, the right to give or withhold their free, informed and prior consent, with regards to development or investment projects that may affect their territory".[12] Additionally, the Court ordered that the State "grant the members of the Saramaka people legal recognition of the collective juridical capacity, pertaining to the community to which they belong, with the purpose of ensuring the full exercise and enjoyment of their right to communal property, as well as collective access to justice, in accordance with their communal system, customary laws, and traditions".[13]

11. While there have been some advancements made in the implementation of the orders of the Inter-American Court, including the payment of the costs that the Court ordered be paid to the Saramaka communities, Suriname has not yet complied with the most substantive elements of the Court's judgment, including those parts requiring the demarcation and titling of the Saramaka communities' lands and the development of a law or procedure to carry out that process. In its judgment the Court required that State must

[6] Moiwana, paras. 163, 164.
[7] *Id.*, para. 209.
[8] *Id.*
[9] See, e.g. Case of Mayagna (Sumo) Awas Tingni Community. v. Nicaragua, 79 Inter-Am. C.H.R. Ser. C (2001); Case of the Indigenous Community Yakye Axa v. Paraguay, 125 Ser. C (2005); Sawhoyamaxa Indigenous Community v. Paraguay, 146 Inter-Am. Ct. H.R. Ser. C (2006).
[10] Saramaka, para. 214(5).
[11] *Id.*, para. 214(7).
[12] *Id.*, para. 214(8).
[13] *Id.*, para. 214(6).

begin the process of delimitation, demarcation and titling of traditional Saramaka territory within three months from the notification of the judgment, and must complete this process within three years from such date, which lapsed in December 2010. It is imperative that Suriname take steps to fully implement the judgment of the Court, in order to avoid a prolonged condition of international illegality.

12. While the *Moiwana* and *Saramaka* judgments specifically concerned the tribal communities involved in those cases, it is beyond question that the principles affirming indigenous land and resource rights articulated by the Court on the basis of the American Convention of Human Rights apply generally to the indigenous and tribal peoples of Suriname. Hence, these judgments of the Inter-American Court imply international legal responsibility on the part of Suriname in regard to all the indigenous and tribal peoples of the country under the American Convention.

B. Other International Instruments

13. Suriname's obligation to secure the rights of indigenous and tribal peoples also arises under other international treaties to which it is a party, including the International Covenant on Civil and Political Rights (ICCPR),[14] and the International Convention on the Elimination of All Forms of Racial Discrimination (Convention Against Discrimination).[15] In observations on Suriname, the Human Rights Committee, which monitors compliance with the ICCPR, expressed concern over "the lack of legal recognition and guarantees for the protection of indigenous and tribal rights to land and other resources", and stated that "it regrets that logging and mining concessions in many instances were granted without consulting or even informing indigenous and tribal groups, in particular the Maroon and Amerindian communities".[16] It recommended that Suriname guarantee the members of indigenous communities the full enjoyment of all the rights recognized by article 27 (rights of minorities) of the Covenant, and adopt specific legislation for this purpose.[17] It also recommended that "[a] mechanism to allow for indigenous and tribal peoples to be consulted and to participate in decisions that affect them should be established".[18]

[14] In regard to Article 27 (rights of minorities) of the ICCPR, the Human Rights Committee has stated "that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. […] The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them", CCPR/C/21/Rev.1/Add.5, para. 7 (1994). Also relevant is Article 1 of the Covenant, which states "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

[15] Interpreting the obligations of states under the Convention, the Committee on the Elimination of Discrimination has called upon states 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 those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories" A/52/18, annex V, para. 5.

[16] CCPR/CO/80/SUR, para 21 (4 May 2004).

[17] Id.

[18] *Id.*

14. The Committee on the Elimination of Racial Discrimination, in review of Suriname's compliance with the Convention Against Discrimination, has urged the Government to "[e]nsure legal acknowledgement 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; [and] strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions".[19] In this connection, in its most recent report on Suriname, the Committee welcomed information provided by the Government in 2008 that it had requested technical assistance of the Special Rapporteur towards this end, noting that it "encourages continuing dialogue and collaboration with the Special Rapporteur […] regarding technical support for a draft framework law on indigenous peoples' rights".[20]

15. Adding to the forgoing is the United Nations Declaration on the Rights of Indigenous Peoples, which summarizes and elaborates upon standards that have been recognized elsewhere in international instruments and decisions. The Declaration, which was adopted by the United Nations General Assembly in 2007 with the affirmative vote of Suriname, represents a broad international consensus about the content of the rights of indigenous peoples and, by implication, of tribal peoples as well.

16. The Declaration provides extensive recognition of indigenous peoples' individual and collective rights under the overarching thrust of the human rights to equality and self-determination. It affirms a number of rights in areas of special significance to indigenous peoples, such as rights to self-government and participation, including consultation and consent; cultural and spiritual heritage; lands, territories and natural resources; and development and social services. Specifically in relation to the rights of indigenous and tribal peoples to lands and resources, the Declaration affirms that "Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired".[21] The Declaration requires States to "give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned".[22]

III. Recommendations regarding the development of domestic legislation to protect the rights of indigenous peoples

17. It is evident from the foregoing that Suriname must adopt measures to secure the rights of indigenous and tribal peoples, and that these measures should comply with international standards and the legally binding judgments of the Inter-American Court of Human Rights. The Special Rapporteur is pleased that the Government has expressed its commitment to developing new legislation in this area of concern and to implementing the Court's judgments, and that it has taken some initial steps toward that end.

18. The Special Rapporteur takes note of the proposal of indigenous representatives, which he understands has been accepted by the Government, to have a framework law that broadly addresses indigenous and tribal peoples and their rights, which would include or be accompanied by specific legislative provisions or regulations regarding land and resources. In this section of the note the Special Rapporteur first offers observations and

[19] CERD/C/DEC/SUR/2, para. 4 (18 August 2005).
[20] CERD/C/SUR/CO/12, para. 8 (3 March 2009).
[21] Declaration, art. 26.
[22] *Id.*

recommendations regarding the process toward adopting such legislation, and then he makes suggestions about the contents of the legislation.

A. The process forward

1. The need for consultations with indigenous and tribal peoples

19. Any legislation or administrative regulation to secure the rights of indigenous and tribal peoples in the country should be the outcome of a process involving adequate consultations with these peoples. As stated by the Declaration on the Rights of Indigenous Peoples, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them".[23] In its judgment in the *Saramaka* case, the Inter-American Court of Human Rights emphasized the need for consultation with indigenous and tribal peoples on development projects within or affecting their traditional lands. It is clear that consultations with these peoples, through procedures meeting certain minimum criteria, are also required in the drafting and adoption of legislation or administrative regulations that concern them.

20. While there is not one specific formula for carrying out consultations with indigenous peoples that applies to all countries and in all circumstances, the basic elements that consultation procedures should include have been described with some level of specificity by various international bodies, including the International Labour Organisation; regional human rights institutions, especially the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights; and United Nations treaty monitoring bodies. The Special Rapporteur provided an overview of these principles in his 2009 annual report[24] and in his report on the process of consultation in connection with constitutional reforms in Chile.[25] These required elements of consultations include that they must: be distinct from consultations that may involve the general public or ordinary political processes; take place at the earliest possible stage; be a genuine dialogue and more than just the provision of information; be in good faith with the objective of obtaining agreement or consent; be carried out with due regard for indigenous peoples' traditional decision-making institutions in the appropriate languages; provide the time necessary for the indigenous peoples to make decisions, taking into account their customary ways of decision-making; and provide information sufficient to allow indigenous peoples to make decisions that are informed.

2. Formation of a joint commission or other platform for consultations on new legislation

21. Keeping these basic elements in mind, some formally structured platform and corresponding procedure should be established to advance the consultations with indigenous and tribal peoples on the development of legislation and any related measures to secure their rights. A proposal that arose in the context of the Special Rapporteur's discussions during his visit to Suriname was the formation of a joint commission, made up of both Government representatives and representatives of indigenous and tribal peoples, with adequate financial and technical support, to collaboratively develop a text that is agreeable to the Government and indigenous and tribal representatives alike.

[23] Declaration, art. 19.
[24] A/HRC//12/34 (2009).
[25] A/HRC/12/34/Add.6, appendix 1.

22. Indigenous and tribal peoples should be permitted to name their own representatives to such a joint commission. In this connection, indigenous and tribal peoples should, in order to avoid confusion or slow down the process, propose individuals to represent them in the joint commission in accordance with their traditional decision-making procedures. This has already been contemplated by indigenous and Maroon communities in a resolution adopted unanimously at the 2006 Diitabiki meeting of indigenous and tribal chiefs in Suriname.[26] At that meeting it was agreed that indigenous and tribal groups would form a delegation of indigenous and Maroon peoples tasked with "conduct[ing] talks and negotiations on behalf of the interior [peoples], with institutions eligible for that and the further elaboration of measures concerning Land Rights of Indigenous and tribal peoples in Suriname".[27] Further, the Government should allow the indigenous representatives to be counseled independently by their own legal experts or technical advisers.

23. Other countries in the region have used specially constituted commissions to assist in the development of laws to secure indigenous peoples' rights, particularly land and resource rights. For example, in order to assist with the development of a demarcation and titling law for the indigenous peoples of the Atlantic Coast of Nicaragua, a "Coordinating Commission on Territorial Demarcation (CCDT)" was formed. The Coordinating Commission was made up of indigenous leaders, as well as representatives from indigenous universities and non-governmental organizations. Over a period of several months the commission met with the "Committee on Ethnic and Indigenous Affairs" of the National Assembly (the country's legislative body) to discuss a draft demarcation law, which was eventually presented to the National Assembly and adopted. Also attending the meetings of the commission were a representative of the Proyecto de Ordenamiento de la Propiedad (PRODEP), the World Bank's Land Administration Project in Nicaragua, and the Adviser for the Atlantic Coast to then President Enrique Bolaños.

3. Mandate of the joint commission

24. As its first task, a joint commission of the kind suggested should establish an agreed-upon timetable, as well as clear and measurable benchmarks by which progress for development of the relevant legislation and any related regulatory measures may be assessed. These benchmarks should relate to the development of the specific documents to be drafted, including the draft text of the proposed framework law and drafts of any supplemental legislation or regulation regarding, in particular, a procedure for demarcating and titling of indigenous and tribal lands, and a procedure to follow for consultations with indigenous and tribal peoples on resource extraction and other activities affecting their lands and resources (see paras. 29-38, infra, on the framework law and supplemental legislation). The joint commission also should be tasked with reviewing relevant constitutional provisions and existing laws, policies and natural resource concessions, and should propose any amendments necessary to harmonize these with the new legislation being developed to secure indigenous and tribal peoples' right (see paras. 39-40, infra).

25. Once draft legislation and possibly also administrative regulations have been developed by the joint commission, the commission or the Government, through the relevant ministry such as the Ministry of Regional Development, should carry out a consultation process with the broader indigenous and tribal communities. This consultation

[26] The resolution is attached as Appendix A. Ed. note – appendices have not been included with the present version of this report, although they were transmitted to the Government in April 2011.

[27] 2006 Diitabiki resolution, art. 9.

process should itself be in line with relevant international standards.[28] At the conclusion of the community-level consultations, the commission would finalize any revisions to the draft texts that followed from those consultations. The final phase of the process would be submission of the draft text or texts to the Government and parliamentary authorities for their consideration and final action. Provision should be made for indigenous peoples to be consulted in this final stage through special legislative arrangements.

4. Technical and financial assistance by international experts and institutions

26. In order to generate confidence in the process of developing laws to secure indigenous and tribal peoples' rights to lands and resources and related rights, and to ensure that this process is carried out in accordance with relevant international standards, it is advisable to involve international experts and international institutions in the process, as the Government has already done by requesting the technical assistance of the Special Rapporteur. Furthermore, once a joint commission or other platform for consultations is formed, the Special Rapporteur is willing to provide more specific comments or input on the draft laws or administrative procedures to be developed.

27. Apart from whatever further involvement he may have, the Special Rapporteur recommends that the Government seek the assistance of the Inter-American Commission on Human Rights to help facilitate and orient initial negotiations. The Inter-American Commission has played an important role in taking the *Moiwana* and *Saramaka* cases to the Inter-American Court, and has on ongoing role in to play in the full implementation of the Court's judgments in those cases. Additionally, the Commission has a mandate under the American Convention on Human Rights "to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request".[29] Technical advisory assistance could also be sought from other international institutions, such as the United Nations Development Programme, International Labor Organization, the World Bank, and the Inter-American Development Bank (IDB). Such support has been invaluable in the experience of other countries, especially during the phases of implementation of the process of demarcating and titling indigenous lands. For example, in Nicaragua, the Proyecto de Ordenamiento de la Propiedad (PRODEP), the World Bank's Land Administration Project in Nicaragua, has provided important financial and technical assistance for the demarcation of Miskito and Mayagna lands on the Atlantic Coast of Nicaragua. That effort has, so far, resulted in the demarcation and titling of nine indigenous territories, spanning more than 10,000 km^2.[30]

28. Furthermore, in order to ensure adequate financing and technical assistance for the process of developing legislation, the Government should seek funding from external sources such as the World Bank or the IDB. In this connection, the Government should include in its proposed country strategy with the IDB—which the Special Rapporteur understands is currently being developed—support for the process of developing a law or laws to secure indigenous and tribal peoples' rights, including land and resource rights.

[28] See Inter-American Commission on Human Rights, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II. Doc. 50/09 (30 December 2009), paras. 302-322, at: http://cidh.org/countryrep/Indigenous-Lands09/Ancestral-Lands.ENG.pdf.

[29] American Convention on Human Rights, art. 41(e).

[30] Information on PRODEP and indigenous land demarcation and titling available at : http://web.worldbank.org/external/projects/main?Projectid=P056018&theSitePK=40941&piPK=73230&pagePK=64283627&menuPK=228424; and http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:22301553~menuPK:4754051~pagePK:51236175~piPK:437394~theSitePK:73154,00.html

Other countries have similarly relied on the assistance of multi-lateral lending agencies for developing and implementing laws and policies to secure indigenous and tribal land rights.

B. The legislation to be developed and its basic content

1. The 2005 draft proposal: a starting point for the discussions

29. The Special Rapporteur is aware that efforts to draft a framework law on the rights of indigenous and tribal peoples have already been underway, and takes note particularly of the efforts of indigenous and tribal organizations in this regard. The Special Rapporteur finds especially interesting the "Proposal for legal provisions recognizing indigenous and tribal peoples' rights in the laws of Suriname" [31], which was developed in 2005 by indigenous and tribal leaders and their advisers. This proposal was supported in the 2006 Diitabiki resolution, the resolution adopted unanimously during the 2006 meeting of all indigenous and tribal chiefs. This 2005 proposal, which is appended to this report, would be a useful starting point for the discussions within a joint commission or other appropriate platform for consultations on legislation to secure the rights of indigenous and tribal peoples, given both the substantive content of the draft and its origins in indigenous peoples' own deliberative and internal consultation processes.

30. The 2005 proposal includes draft amendments to the Constitution of Suriname and a draft "Organic Law on the Rights of Indigenous and Tribal Peoples". Building upon the draft constitutional amendments, the draft organic law contains general provisions related to the rights of indigenous and Maroon peoples in its Chapter I, including provisions recognizing the rights of indigenous and Maroon peoples to non-discrimination and equal protection (art. 1); juridical personality and access to remedies (art. 2); indigenous and tribal identity and participation in national affairs (art. 3); self-determination and security over means of subsistence (art. 4); indigenous and tribal development (art. 5); and linguistic and cultural rights (art. 6). The draft law's Chapter II provides protections for the right of indigenous and Maroon peoples in Suriname to regulation and control over internal affairs (art. 7), and Chapter III concerns indigenous and tribal peoples' "Rights to Traditional Lands, Territories, and Resources". The final substantive chapter relates to indigenous and tribal peoples' rights to health and education.

31. A second draft text for a framework law was developed by the indigenous organization VIDS more recently, and during his visit the Special Rapporteur was informed that this draft has been presented to the Ministry of Regional Development for its consideration. In large part this draft mirrors the United Nations Declaration on the Rights of Indigenous Peoples. In the view of the Special Rapporteur, this second draft framework law is an important initiative towards the advancement of the rights of indigenous and Maroon people in Suriname. It would certainly be a significant accomplishment if Suriname were to adopt a law that enshrines the principles of the Declaration into the country's internal law, and this would set a good example for the Latin American and Caribbean region. However, standing alone this draft may be too general to provide the guidance on indigenous and tribal land rights needed in the country.

32. In the view of the Special Rapporteur it is preferable that Suriname proceed as a matter of priority to develop a framework law that is more practically oriented and closely linked to the reality in the country, such as the 2005 proposed organic law, which is appended hereto. In addition to being more relevant to the specific context in Suriname, the

[31] Attached as Appendix B. Editorial note – appendices have not been included with the present version of this report, although they were transmitted to the Government in April 2011.

2005 draft has an important degree of legitimacy, given that it was adopted by way of resolution during a high level meeting of indigenous and tribal representatives. Thus, the appended 2005 proposal provides the best place to begin negotiations, in the view of the Special Rapporteur. If indigenous and tribal communities or others feel that it is necessary or desirable to refer specifically to rights enshrined in the Declaration, the framework law could incorporate the provision of the Declaration by reference in a preamble or preliminary article.

2. Other laws or regulations to be developed

33. As indicated above, the appended 2005 draft organic law provides recognition of indigenous and tribal peoples' rights over a range of matters. Additionally, it includes provisions that would mandate subsidiary legislation for implementing indigenous and tribal regulation and control over internal affairs (art. 10), demarcation and titling of indigenous lands (art. 11(5)), consultations with indigenous and tribal peoples over development projects affecting them (art. 13(2)(a)(i)), impact studies for such projects (art. 13(2)(b)(i)), and special measures to protect cultural heritage and traditional knowledge (art. 14(4)). An alternative to subsidiary legislation on these matters would be to amplify the framework legislation or organic law to include in that same law the needed supplemental protections, either in separate chapters or sub-chapters, or in schedules to the law. Consideration should also be given to providing the supplemental protections through regulations to be adopted by the relevant ministries or executive authority.

34. In any case, the Special Rapporteur is agreement that, in whatever form, legislative provisions or regulations should be developed that would provide adequately specific and concrete protections and procedures to secure the rights recognized in a framework law. As with the framework law, such supplemental legislation or regulations should be developed by the joint commission or other appropriate platform established for consultations with indigenous and tribal peoples.

35. In light of the *Moiwana* and *Saramaka* judgments, the Special Rapporteur is of the opinion that priority should be placed on developing specific legal provisions for (1) a procedure to identify and title indigenous and tribal lands; and (2) a procedure to follow for consulting with and seeking consent of indigenous and tribal peoples for resource extraction and other activities affecting their lands and resources. The following comments are offered to help orient the discussions in this regard.

Land titling procedure

36. The fundamental goal of a land titling procedure is to provide security for land and resource rights in accordance with indigenous and tribal peoples' own customary laws and traditional land and resource tenure. There is some flexibility in how the demarcation and titling procedure could be developed; and the specific procedures should be sorted out in the relevant negotiations and in consultation with indigenous and tribal peoples. It could be expected, nonetheless, that the procedure for land demarcation and titling would contain, at a minimum, the following components: (a) identification of the area and rights that correspond to the indigenous or tribal community, or group of communities, under consideration; (b) resolution of conflicts over competing uses and claims; (c) delimitation and demarcation; and (d) issuance of title deed or other appropriate document that clearly describes the nature of the right or rights in lands and resources. In order to assist with the demarcation and titling process, it may be helpful to form a land commission, either within

or independent from an existing appropriate ministry, with a specific mandate to facilitate the securing of indigenous and tribal land rand resource rights.[32]

Consultation procedure

37. In addition to putting in place an adequate land titling procedure, it is necessary to have clarity on the steps and specific responsibilities of the Government and third parties for consultations with indigenous and tribal peoples in relation to development and other activities affecting their lands. It is important to note that neither international law as applicable to indigenous and tribal peoples generally, nor the judgments of the Inter-American Court of Human Rights that apply specifically to groups in Suriname, preclude development projects on or affecting indigenous and tribal lands or territories. What is required, however, is that such projects fully respect the rights of indigenous and tribal peoples within their territories and that, when implemented by Government or third parties, the projects follow certain overarching standards of consultation and free, prior and informed consent. Again, no one formula exists for adherence to the relevant standards, and hence the consultation procedure to be adopted for development projects affecting indigenous and tribal lands or territories in Suriname could be developed in various ways. As noted earlier, the Special Rapporteur provided an exposition of the international standards regarding consultation and consent in his annual report to the United Nations Human Rights Council.[33] Recall the very succinct summary of the relevant criteria in paragraph 20 above.

38. The Special Rapporteur is willing to give more concrete orientation on specific elements to incorporate into the land titling and consultation procedures, once a joint commission or other structured mechanism has been put in place to advance with discussions with indigenous and tribal peoples on the development of legislation and related measures to secure their rights.

3. Harmonizing the Constitution and existing laws and policies

39. Finally, it will be necessary for the Government to review existing laws and the Constitution to ensure their consistency with the protections for indigenous and tribal peoples to be enacted. This was required by the Inter-American Court in the *Saramaka* decision, which ordered that Suriname to "remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people".[34] Proposed amendments to the Constitution are included in the appended 2005 proposal. In addition to possible amendments to the Constitution, the process of harmonizing existing legal provisions with indigenous and tribal rights may include revisions of the Mining Decree of 1986 (and the draft revised Mining Act of 2004), the Forest Management Act of 1992, and legislation concerning national parks and protected areas, among other laws to be identified. The Special Rapporteur recommends that the joint commission or other appropriate platform established for consultations with indigenous and tribal peoples be tasked with identifying the laws and policies that will need to be amended, as well as with developing amendments to propose to the relevant government authorities. Indigenous and tribal people should be consulted in this process to ensure that appropriate and satisfactory arrangements are made.

[32] Such was the approach under Nicaragua's Law 445, which established the administrative bodies responsible for titling communal lands: the National Commission for Demarcation and Titling ('CONADETI') and three 'intersectoral' commissions of demarcation and titling ('CIDT').

[33] A/HRC/12/34.

[34] Saramaka, para. 214(7).

40. There should also be a review of existing concessions and other third party interests in lands to be demarcated and titled in favor of indigenous and tribal peoples, as required by the Inter-American Court in the *Saramaka* case.[35] Furthermore, in order to avoid further complications of the land tenure situation and minimize the possibility that indigenous and tribal land rights may be violated, it is advisable that no new concessions be issued within the lands used and occupied by indigenous and tribal peoples until their rights can be clarified and protected, and unless pursuant to the affected groups' free, prior and informed consent. This limitation on new concessions is currently required within the Saramaka territory under the judgment of the Inter-American Court, which ordered that "[u]ntil [the] delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people".[36]

IV. Conclusions

41. The Special Rapporteur is grateful to the Government of Suriname and the indigenous and tribal peoples of the country for the opportunity to provide comments on the steps that, in his view, are essential to moving forward with securing the rights of indigenous and tribal peoples to lands and resources, and related rights. As has been highlighted throughout this document, at this stage, the Special Rapporteur is convinced that it necessary for the Government to establish a clear, workable process to develop the laws and administrative measures needed to comply with its legal obligations. The Special Rapporteur welcomes the opportunity to maintain a continued dialogue with the Government of Suriname and indigenous and tribal organizations in the country, and to provide further technical and advisory assistance as necessary in the implementation of the foregoing recommendations.

[35] Id., para. 214(5).
[36] Id.