

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE KALIÑA AND LOKONO PEOPLES V. SURINAME**

**JUDGMENT OF NOVEMBER 25, 2015**

***(Merits, Reparations and Costs)***

In the case of the *Kaliña and Lokono peoples*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Humberto Antonio Sierra Porto, President  
Roberto F. Caldas, Vice President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge, and  
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), delivers this Judgment, structured as follows:

# CASE OF THE KALIÑA AND LOKONO PEOPLES v. SURINAME

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## I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On January 28, 2014,<sup>1</sup> the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted the case of the *Kaliña and Lokono peoples* (hereinafter “the Kaliña and Lokono peoples”) against the Republic of Suriname (hereinafter “the State” or “Suriname”) to the jurisdiction of the Inter-American Court of Human Rights. According to the Commission, this case relates to the international responsibility of the State for a series of violations of the rights of the members of eight communities of the Kaliña and Lokono indigenous peoples of the Lower Marowijne River in Suriname, specifically, owing to the absence at this time of a legal framework that recognizes the legal personality of the indigenous peoples. This means that, to date, the Kaliña and Lokono peoples have not received this recognition. In addition, the State has not established a legal and regulatory framework that would permit recognizing the right to collective ownership of the lands, territories and natural resources of the Kaliña and Lokono indigenous peoples. This lack of recognition has been accompanied by the issue of individual property titles to non-indigenous persons; the granting of concessions and licenses to carry out mining operations; and the establishment and continuation of three nature reserves in part of their ancestral territory. The violations of the right to collective property resulting from this situation continue to this day. Furthermore, neither the granting of mining concessions and licenses nor the establishment and permanence to date of the nature reserves were subject to any consultation procedure aimed at obtaining the prior, free and informed consent of the Kaliña and Lokono peoples. All these facts have taken place in a context of lack of legal and judicial protection because Suriname has no effective remedies for the indigenous peoples to be able to claim their rights.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On February 16, 2007, the Commission received a petition lodged by eight traditional leaders on behalf of the Kaliña and Lokono peoples of the Lower Marowijne River; by the *Vererniging van Inheese Dorpschoufden in Suriname* (hereinafter “VIDS” in Dutch, or the Association of Indigenous Village Leaders in Suriname in English); and by the *Commissie Landrechten Inheemsen Beneden-Marowijne* (hereinafter “CLIM” in Dutch, and the Lower Marowijne Indigenous Lands Rights Commission, in English),<sup>2</sup> against Suriname owing to the violation of Articles 3, 21 and 25 of the American Convention, in relation to Articles 1 and 2 of this instrument, to the detriment of the Kaliña and Lokono indigenous peoples.<sup>3</sup>

b) *Admissibility Report.* On October 15, 2007, the Commission issued Admissibility Report No. 76/07 (hereinafter “the Admissibility Report” or “Report No. 76/07”), in which it concluded that it was competent to examine the petition and decided to admit it based on the presumed violation of Articles 3, 21 and 25 of the Convention, in relation to Articles 1 and 2 of this instrument.

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<sup>1</sup> On January 26, 2014, the Court received the brief submitting the case in Spanish, and this was forwarded in English two days later, that is, on January 28, 2014. The Court will consider this last date as that of the submission, since English is the official language of the case (merits file, folio 88).

<sup>2</sup> The Lower Marowijne Indigenous Lands Rights Commission (CLIM) subsequently changed its name to the Organization of Kaliña and Lokono Indigenous Peoples of Marowijne (KLIM) as indicated in an activities report prepared by VIDS and KLIM in relation to their participation in the case before the Inter-American Commission (evidence file, folio 2098).

<sup>3</sup> During the proceedings before the Commission, the legal representatives of the petitioners were Fergus MacKay, Senior Counsel, Forest Peoples Programme; David Padilla, assistant legal counsel, and Jacqueline Jubithana, assistant legal counsel (merits file, folio 9).

c) *Merits Report*. On July 18, 2013, the Commission adopted Merits Report No. 79/13, in accordance with Article 50 of the American Convention (hereinafter “the Merits Report” or “Report No. 79/13”), in which it reached a series of conclusions<sup>4</sup> and made several recommendations to the State; namely:

Conclusions:

- i) The State violated the right to recognition of juridical personality established in Article 3 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples;
- ii) The State violated the right to property, recognized in Article 21 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples by failing to adopt effective measures to recognize their right to the collective ownership of the lands, territories and natural resources that, traditionally and ancestrally, they have occupied and used;
- iii) The State violated the right to property recognized in Article 21 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples, by: (i) granting property titles to non-indigenous persons within the territory of the Kaliña and Lokono peoples; (ii) establishing and maintaining the Wia Wia, Galibi and Wane Kreek Nature Reserves, and (iii) granting a mining concession and authorizing mining operations within their traditional territory, all without conducting a consultation process aimed at obtaining their free, prior and informed consent in keeping with Inter-American standards, and
- iv) The State violated the right to judicial protection recognized in Article 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples by failing to provide them with effective access to justice to protect their fundamental rights.

Recommendations:

- i) Take the necessary legislative and regulatory measures to recognize the Kaliña and Lokono peoples as legal persons under Surinamese law;
- ii) Eliminate the legal provisions that impede protection of the right to property of the Kaliña and Lokono peoples and adopt in its domestic legislation, and through effective and fully informed consultations with the Kaliña and Lokono peoples and their members, such legislative, administrative, and other measures as may be necessary to protect, by special mechanisms, the territory in which [these peoples] exercise their right to communal property, in accordance with their customary land use practices, without prejudice to other tribal and indigenous communities;
- iii) Refrain from acts that could give rise to activities of third parties, acting with the State’s acquiescence or tolerance, that may affect the right to property or the integrity of the territory of the Kaliña and Lokono peoples, as established in the [Merits] Report;

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<sup>4</sup> In its Merits Report, the Commission indicated that, subsequent to the Admissibility Report, the petitioners alleged that the State’s failure to provide details of the precise dates on which land titles and leases were issued to non-indigenous persons over part of the traditional territory of the Kaliña and Lokono peoples, without justifying the refusal to provide this public information, violated Article 13 of the American Convention. In its Merits Report, the Commission considered this to be part of the facts of the case, and examined them in the context of the violation of the right to collective property of the Kaliña and Lokono peoples, recognized in Article 21 of the Convention.

iv) Review, through effective and fully informed consultations with the Kaliña and Lokono peoples and their members that respect their customary law, the land titles, leasehold titles and long-term leases issued to non-indigenous persons, the terms of the mining activities authorized within the Wane Kreek Nature Reserve, and the terms of the establishment and management of the Wia Wia, Galibi, and Wane Kreek Nature Reserves, to determine the [respective] modifications that must be made in the[ir] terms to ensure respect for the property rights of the Kaliña and Lokono over their ancestral lands, territories and natural resources in accordance with their customs and traditions;

v) Adopt all necessary measures, through effective and fully informed consultations with the Kaliña and Lokono peoples and their members that respect their customary law, to delimit, demarcate and grant collective title to the Kaliña and Lokono peoples over the lands and territories that they have traditionally occupied and used;

vi) Adopt all necessary measures to approve, in accordance with Suriname's constitutional procedures and the provisions of the American Convention, such legislative and other measures as may be needed to provide judicial protection and give effect to the collective and individual rights of the Kaliña and Lokono peoples in relation to the territory they have traditionally occupied and used, and

vii) Redress, individually and collectively, the consequences of the violation of the aforementioned rights. In particular, consider the damage caused to the members of the Kaliña and Lokono peoples as a result of the failure to grant them legal title to their ancestral territory, as well as the damage caused to the territory by the acts of third parties.

*d) Notice to the State.* The Merits Report was served upon the State on July 26, 2013; the latter was granted two months to report on compliance with the recommendations.

*e) Request for an extension and compliance report.* On September 26, 2013, the State requested an extension in order to comply with the recommendations, and the Commission granted a further three months and required the State to present a report on any progress made by January 15, 2014. The State presented a report on that date, but failed to provide information on compliance with each recommendation. On January 24, 2014, the State requested a further extension without presenting additional information on compliance with the recommendations.

*f) Submission to the Court.* On January 28, 2014, the Commission submitted this case to the Court's jurisdiction, "owing to the need to obtain justice," and in relation to all the facts and human rights violations described in the Merits Report.<sup>5</sup>

3. *The Inter-American Commission's requests.* Based on the above, the Commission asked that the Court declare the international responsibility of the State for the violations described in its Merits Report and that it order the State, as measures of reparation, to comply with the recommendations set out in that document (*supra* para. 2.c).

## **II PROCEEDINGS BEFORE THE COURT**

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<sup>5</sup> The Commission appointed Commissioner José de Jesús Orozco Henríquez and Executive Secretary Emilio Álvarez Icaza as its delegates and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, lawyer of the IACHR Executive Secretariat, as legal advisers.

4. *Notice to the State<sup>6</sup> and the representatives of the alleged victims.<sup>7</sup>* The Commission's submission of the case was notified to the State and to the representatives of the alleged victims (hereinafter "the representatives") on February 27, 2014.

5. *Brief with pleadings, motions and evidence.* On April 24, 2014, the representatives presented their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief").

6. *Response.* On October 3, 2014, the State submitted to the Court its response to the brief submitting the case, and with observations on the pleadings and motions brief (hereinafter "response").

7. *Summons to the hearing.* By an order of the President of the Court dated December 18, 2014,<sup>8</sup> it was decided, among other matters: (i) to require one alleged victim, one witness, and one expert witness proposed by the representatives, and one witness propose by the State,<sup>9</sup> to provide their testimony by affidavit; (ii) to summon the parties to a public hearing to receive the statements of two alleged victims and an expert opinion proposed by the representatives, as well as an expert opinion proposed by the Commission, and (iii) to transfer to this case the expert opinions of Mariska Muskiet and Magda Hoever-Venoaks presented in the case of the *Saramaka People v. Suriname*. The affidavits were received on January 27, 2015.

8. *Public hearing.* The public hearing was held on February 3 and 4, 2015, in San José, Costa Rica, during the Court's 107<sup>th</sup> regular session.<sup>10</sup> During the hearing, the Court received the testimony of the alleged victims Captain Ricardo Pané and Captain Jona Gunther, and of expert witness Victoria Tauli-Corpuz proposed by the representatives, and also of expert witness Jeremie Gilbert, proposed by the Commission. In addition, it received the final oral observations and arguments of the Commission, the representatives and the State. Furthermore, the representatives submitted a map establishing the approximate limits of the territory claimed by the Kaliña and Lokono peoples, as well as a copy of the 2014 draft bill on recognition of traditional authorities.

9. *Amicus curiae.* On February 18, 2015, under the provisions of Article 44(1) of the Court's Rules of Procedure, the Secretariat received an *amicus curiae* brief with two attachments submitted by the *Fundación Pro Bono-Colombia*.<sup>11</sup> These documents were submitted in Spanish; consequently, in a letter dated February 24, 2015, the Secretariat asked that the *amicus* brief be submitted in English, as this was the official language of the case. The brief was received in English on March 10, 2015.

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<sup>6</sup> For this case, the State was represented by Martin M. Misiedjan, Agent, and Dr. Jennifer Van Dijk-Silos, Deputy Agent (merits file, folio 96).

<sup>7</sup> For this case, the accredited representatives are Fergus MacKay, Senior Counsel, Forest Peoples Programme, and David Padilla, assistant legal counsel (merits file, folio 80).

<sup>8</sup> *Case of Kaliña and Lokono peoples v. Suriname*. Order of the President of the Inter-American Court of Human Rights of December 18, 2014. Available at: [http://www.corteidh.or.cr/docs/asuntos/kaliñaylokono\\_18\\_12\\_14.pdf](http://www.corteidh.or.cr/docs/asuntos/kaliñaylokono_18_12_14.pdf).

<sup>9</sup> On January 15, the Court asked the State to confirm whether Claudine Sakimin was a member of its delegation or a witness, since it was not possible for her to fulfill both functions (merits file, folio 327). On January 27, 2015, with the presentation of Claudine Sakimin's affidavit, the State tacitly declared that she was a witness (merits file, folio 486) and ratified this expressly in a communication received on January 29, 2015 (merits file, folios 507 and 508).

<sup>10</sup> There appeared at this hearing: (a) for the Inter-American Commission: James Louis Cavallaro, Commissioner, Silvia Serrano Guzmán, Jorge H. Meza Flores and Erick Acuña Pereda, Advisers; (b) for the representatives of the alleged victims: Fergus MacKay, David Padilla, Alancay Morales Garro and Max Ooft, as interpreter, and (c) for the State of Suriname: Martin P. Misiedjan, Asishkumar R. Lala, Robbin Mussendijk, Ajaj Piarelal, Grasella Jozefzoon, Armilia Tojosemito, and M. Pool, as interpreter.

<sup>11</sup> The *amicus curiae* brief was signed and submitted by Juliana Amaya Lamir, Director and Legal Representative of the *Fundación ProBono-Colombia* (merits file, folio 539).

10. *Final written arguments and observations.* On March 4, 2015, the State presented its final written arguments and annexes. On March 5, 2015, the representatives and the Commission presented their final written arguments and annexes, and their final written observations, respectively.

11. *Observations on the annexes.* On March 26, 2015, the Court's Secretariat forwarded the annexes to the final written arguments to the parties and the Commission, asking them for any observations they deemed pertinent. In a communication dated April 7, 2015, the Commission advised that it had no observations to make on these annexes. Subsequently, on April 13, 2015, the representatives presented comments on the annex sent by the State. The State did not submit observations on the annexes sent by the representatives.

12. *Helpful evidence.* On March 26, 2015, on the instructions of the President and pursuant to the provisions of Article 58(b) of the Court's Rules of Procedure, the Secretariat asked the State to present helpful evidence. This request was ratified on April 15, 2015. In a communication of April 29, 2015, the State forward some of the information requested.<sup>12</sup>

13. *Observations on the helpful evidence.* In communications of May 12 and 13, 2015, both the representatives and the Commission presented their observations on the helpful evidence submitted by the State that had been requested during the public hearing in this case and again on March 26 and April 15, 2015 (*supra* para. 12).

14. *On-site procedure in the Kaliña and Lokono communities* (hereinafter "the visit" or "the on-site procedure"). From August 17 to 19, 2015, a delegation from the Court conducted an on-site procedure in part of the territory claimed by the Kaliña and Lokono peoples in order to observe some of these areas, including some of the nature reserves, and to meet with the parties, the Commission, and various authorities and members of the communities.<sup>13</sup> This was recorded in a video made by the State. The following were the main activities: (a) on Monday, August 17, the delegation visited Paramaribo, where meetings were held with different authorities and delegations, including the recently appointed Minister for Foreign Affairs, and the representative of the National Assembly. In addition, meetings were held with the participation, among others, of representatives of the Kaliña and Lokono peoples, the Maroon communities, the Commission, and the State; (b) on Tuesday, August 18, a meeting was held with the representatives of Christiaankondre and Langamankondre and a brief visit was made to these villages where their

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<sup>12</sup> In this regard, in a letter of March 26, 2015, the Court's Secretariat recalled that the State had not sent the following information requested by the judges during the public hearing, and repeated the request: (a) the 1998 Nature Protection Resolution (the letter indicates 1992, but the correct year is 1998); (b) the draft bill on traditional authorities; (c) copies of the freehold and leasehold titles and long-term leases granted to indigenous and non-indigenous third parties, as well as information regarding how many of these titles had been awarded to non-indigenous third parties; (d) information on the alleged construction of a casino on the territory claimed by the indigenous peoples, and (e) information on the agreements reached between the State and the Kaliña and Lokono peoples so that the latter could have free access, use and enjoyment of their territories within the nature reserves. Accordingly, it granted the State until April 13, 2015, to present this information (merits file, folio 797). This request was reiterated on April 15, and the State was granted until April 29, 2015, to comply (merits file, folio 827). On that date, the State submitted some of the information that had been requested (merits file, folio 836), and indicated, without providing any evidence, that: (a) regarding the land titles and leases that it was still investigating and compiling these (merits file, folio 839), and (b) according to its research, there was no evidence of the construction of a casino in the territory claimed by the indigenous peoples (merits file, folios 840 and 868).

<sup>13</sup> The Court's delegation for the visit consisted of the President of the Court, Judge Humberto Antonio Sierra Porto; Emilia Segares, Deputy Secretary of the Court; Jorge Calderón Gamboa, the Secretariat's Coordinating Lawyer, and Cecilia La Hoz Barrera, Secretariat lawyer. The State was represented by Martin Misiedjan, State Agent; Robbin Mussendijk and Grasella Jozefzoon, State representatives, and the Inter-American Commission was represented by Tracy Robinson, Commissioner, and Erick Acuña, legal adviser of the Commission. In addition, the representatives were represented by Fergus MacKay, the translator Max Ooft, Loreen Jubitana, Captain Ronald Makosi, Capitan Theo Jubitana, and other members of the communities.



opinions were heard, following which the delegation was welcomed by the members of these communities, and (c) on Wednesday, August 19, a visit was made to the Galibi Nature Reserve; a meeting was held in Erowarte with representatives of six of the indigenous communities, namely: Erowarte, Tapuku, Pierrekondre, Marijkedorp (or Wan Shi Sha), Alfonsdorp and Bigiston, during which their opinions were heard. In addition, the delegation drove through these indigenous villages, with the exception of Alfonsdorp and Bigiston and, lastly, a visit was made to the Maroon village of Moengotapu, to the Wane Kreek Nature Reserve, and to the area of the mining concession.

15. *Observations on the visit and reception of videos.* On September 8, 2015, the Court received the observations on the visit of the Commission and of the representatives. On the same date, the Court received the videos of the on-site procedure sent by the State and contained on six DVDs in the edited and the unedited versions. In its communication, the State requested additional time to send its observations on the visit, and the Court agreed to this. These observations and some annexes were received on September 17 and 18, 2015, respectively.

16. *Helpful evidence requested following the visit.* During the on-site procedure, the Court's delegation gave the State a list of helpful evidence. In addition, on August 25, 2015, the Secretariat sent a letter reiterating and specifying this evidence to both the State and the representatives.<sup>14</sup> In this regard, on September 8, 2015, the Court received the annexes with helpful evidence sent by the representatives.<sup>15</sup> On September 17, 18, 22, 29 and 30, 2015, the annexes with helpful evidence sent by the State were received,<sup>16</sup> following a request for an extension of the deadline granted by the Court.

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<sup>14</sup> Letter of the Secretariat of the Inter-American Court of August 25, 2015 (merits file, folio 923). This letter requested the following as helpful evidence: (a) from the State, a list of the Maroon communities with the number of their inhabitants, in the territories claimed in this case; a list of the participants in the meeting held on September 27, 2013, during which three commissions were formed; lists of the participants in the meetings that took place on January 31 and February 28, 2003, with the Ministers of Regional Development and of Natural Resources, and copies of freehold land titles, and leasehold titles and long-term leases granted to both indigenous and non-indigenous persons in Tuinstad Albina; (b) from the representatives, information concerning the ancestral ties between the Barbakoea and Koriabo culture and that of the Kaliña and Lokono peoples; a recent map of the territory claimed in this case; a list of communities whose land is not being claimed, and the judgment of May 1998, in the case of *Celientje Martina Joeroeja-Koewie and Others v. Suriname*, as well as the judgment of May 1998 in the case of *Tjang A. Sjin v. Zaalman and Others*, and (c) from both parties, updated information concerning events following the submission of the draft bill on traditional authorities; the record of the constitution of the Galibi Nature Reserve Dialogue Commission, and information regarding activities that are underway; a communication of August 26, 1978, signed by Jr. F. C. Bubberman, Head of the State Forest Management Service, and A. C. Cirino, Chair of KANO; a list of participants in the 1986 meeting in Wan Shi Sha concerning the establishment of the Wane Kreek Nature Reserve, and documentation indicating when the mining operations in the Wane Kreek Nature Reserve began and ended.

<sup>15</sup> Letter of the Secretariat of the Inter-American Court of September 11, 2015 (merits file, folio 978). The representatives sent 10 annexes, which contained the following: (a) an educational project to raise awareness of land rights under Suriname law and international law, entitled "Wi Gon Na Wi"; (b) maps of the Maroon territories and other occupied indigenous areas; (c) Gazon Matodja's correspondence with regard to a dialogue process concerning land rights; (d) a judicial decision on a complaint filed by indigenous residents of Pierrekondre against the State of Suriname and Suriname Stone & Industries N.V; (e) receipts arising from representation expenses, and (f) a statement by the Ajintoena family in which they state that they live peacefully in the territories of the Lokono People and are on good terms with the traditional indigenous authorities (evidence file, folios 2867 to 2920). With regard to the documentation they were asked to provide, the representatives did not send the following because they did not have the information: (a) the list of participants in the 1986 meeting in Wan Shi Sha concerning the establishment of the Wane Kreek Nature Reserve, and (b) a communication of August 26, 1978, signed by Jr. F. C. Bubberman, Head of the State Forest Management Service, and A. C. Cirino, Chair of KANO (merits file, folio 945).

<sup>16</sup> Letters of the Secretariat of the Inter-American Court dated August 25, September 11 and 22 and October 5, 2015 (merits file, folios 923, 974, 1019 and 1080). These annexes contained: (a) a list of the Maroon settlements located in the area claimed by the indigenous peoples; (b) administrative decisions regarding pensions that the captains of the Kaliña and Lokono villages receive from the Government; (c) documentation concerning a series of meetings held in 2013 and 2014 between the State and representatives of the indigenous peoples aimed at resolving the problem of land ownership; (d) a document confirming the agreements made between the State and KANO; (e) regarding the Galibi Nature Reserve,

17. *Observations on the helpful evidence following the visit.* On September 30 and October 13, 2015, the representatives, the State and the Commission submitted their observations on the helpful evidence.

18. *Deliberation of the case.* The Court initiated the deliberation of this Judgment on November 17, 2015.

### **III JURISDICTION**

19. The Inter-American Court is competent to hear this case pursuant to Article 62(3) of the Convention because Suriname has been a State Party to the American Convention since November 12, 1987, and accepted the Court's contentious jurisdiction the same day.

### **IV EVIDENCE**

#### **A. Documentary, testimonial and expert evidence**

20. The Court received diverse documents presented as evidence by the Commission, the representatives and the State attached to their main briefs (*supra* paras. 2.f, 5 and 6) In addition, the Court received the affidavits made by: (1) the witnesses Claudine Sakimin and Loreen Jubitana, proposed by the State and the representatives, respectively; (2) the opinion of the expert witness, Dr. Stuart Kirsch,<sup>17</sup> proposed by the representatives; (3) the statement of the alleged victim Captain Grace Watamaleo, proposed by the representatives, and (4) the Court transferred to this case the expert opinions provided by Mariska Muskiet<sup>18</sup> and Magda Hoever-Venoaks<sup>19</sup> in the case of *the Saramaka People v. Suriname*. Regarding the evidence provided during the public hearing, the Court received the testimony of the alleged victims, Captain Ricardo Pané and Captain Jona Gunther, and of the expert witness, Victoria Tauli-Corpuz,<sup>20</sup> proposed by the representatives, and

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documents concerning the constitution of the Dialogue Commission, and information on the activities underway; (f) regarding the Wane Kreek Nature Reserve, documentation on a meeting between the State and indigenous representatives regarding establishment of the nature reserve (g) reports, documents and maps relating to the Wane Kreek mining concession, and to the rehabilitation of the area, and (h) a map of Albina and another of Tuinstad Albina, as well as copies of the Domains Office records with regard to the titles issued for "Tuinstad Albina" (evidence file, folios 2925 to 3077). Regarding the information requested, the State advised that it was unable to obtain the list of the participants in the 1986 meeting in Wan Shi Sha concerning the establishment of the Wane Kreek Nature Reserve. However, it wished to provide the Court with documentation on the creation of the Wane Kreek Nature Reserve, including reports of different meetings between KANO, the Forest Management Service, and the chiefs of the indigenous villages affected (evidence file, folio 3032).

<sup>17</sup> The expert opinion of Dr. Stuart Kirsch, Associate Professor of Anthropology of the University of Michigan, referred to the impact of the extraction of natural resources and other activities on the well-being and culture of the alleged victims, as well as on the nature of the mining operations on their land.

<sup>18</sup> The expert opinion of Mariska Muskiet referred to effective rights in Suriname, and domestic remedies in relation to the land claims of indigenous and tribal communities. *Cf. Case of Kaliña and Lokono peoples v. Suriname*. Order of the President of the Inter-American Court of Human Rights, *supra*, twenty-first considerandum and footnote 4.

<sup>19</sup> The expert opinion of Magda Hoever-Venoaks referred to the legal status of the provisions of the Suriname Mining Act and the Suriname Forestry Management Act that provide remedies to interested parties, as well as to other remedies available under the State's administrative and constitutional law. *Cf. Case of Kaliña and Lokono peoples v. Suriname*. Order of the President of the Inter-American Court of Human Rights, *supra*, twenty-first considerandum and footnote 4.

<sup>20</sup> The expert opinion of Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples of the United Nations, referred to international law and policy on protected areas and the sustainable conservation and use of biological diversity in relation to the rights of indigenous peoples, including in the Convention on Biological Diversity (CBD).

also the opinion of the expert witness Jeremie Gilbert,<sup>21</sup> proposed by the Commission.<sup>22</sup> The Court also received various documents as helpful evidence following the hearing in this case, as well as after it had conducted the on-site procedure (*supra* paras. 12, 15 and 16).

## **B. Admission of the evidence**

### **B.1 Admission of the documentary evidence**

21. In this case, as in others, the Court admits those documents presented by the parties and by the Commission at the appropriate procedural moment, or requested as helpful evidence by the Court or its President, which were not contested or opposed, and the authenticity of which was not challenged.<sup>23</sup> The documents requested by the Court that were provided by the parties following the public hearing and the on-site procedure are incorporated into the body of evidence in application of Article 58 of the Rules of Procedure (*supra* paras. 10, 12, 15 and 16).

22. Regarding the helpful evidence requested following the visit, the representatives objected to Annex 7(d) presented by the State, which consisted in photographs of the registration of titles in the Domain Office in Suriname, because parts of them were illegible and because they had been submitted in Dutch. Meanwhile, the State indicated that the map provided by the representatives that relates to the Maroon population in the territories claimed by the Kaliña and Lokono peoples had been drawn up unilaterally, and therefore did not “provide a correct depiction of the truth.” In addition, the State contested the map provided by the representatives during the hearing establishing the territory claimed by the Kaliña and Lokono peoples, because the information it contained was incorrect. The Court decides to admit these documents, taking into consideration the elements in them that have been contested (*infra* para. 27). None of the statements and affidavits submitted in this case were contested by the parties.

### **B.2 Admission of the testimonial and expert evidence**

23. The Court finds it pertinent to admit the testimony provided during the public hearing and by affidavit, as well as the statements offered and received as a result of the on-site procedure in the alleged territories of the Kaliña and Lokono peoples, insofar as they are in keeping with the purpose defined by the President in the order requiring them, as well as the purpose of this case and the visit that was made (*supra* paras. 14 and 20).

## **C. Assessment of the evidence**

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<sup>21</sup> The expert opinion of Jeremie Gilbert, Reader in Law of the University of East London, School of Law and Social Sciences, referred to: (a) the international standards and the standards of comparative law applicable to situations in which tension exists between the right to private property of non-indigenous persons and the right to collective property of the indigenous peoples, as well as to situations of real or apparent tension between the rights of indigenous peoples and environmental protection, offering elements of analysis regarding the scope of State obligations to elaborate and implement initiatives and policies in the area of environmental law; (b) the application of a model to analyze right restrictions that takes into consideration and grants specific effects to the right to property of the indigenous peoples, and (c) possible compensation measures that a State could implement in response to the result of his model for analyzing the restrictions of rights.

<sup>22</sup> The purpose of these statements is established in the President’s Order of December 18, 2014 (*supra* footnote 8).

<sup>23</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of López Lone et al. v. Honduras. Preliminary objection, Merits, Reparations and Costs.* Judgment of October 5, 2015. Series C No. 302, para. 31.

24. Based on its consistent case law concerning evidence and its assessment,<sup>24</sup> the Court will examine and assess the documentary probative elements submitted by the parties and the Commission, the statements, testimony and expert opinions, and also the helpful evidence requested and incorporated by this Court, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework, taking into account the body of evidence, and the arguments that have been submitted.<sup>25</sup>

25. Furthermore, pursuant to the Court's case law, the statements made by the alleged victims cannot be assessed in isolation, but rather within the body of evidence in the proceedings, insofar as such statements may provide further information on the presumed violations and their consequences.<sup>26</sup>

26. With regard to the on-site procedure (*supra* para. 14) aimed at obtaining additional information on the situation of the alleged victims and the places in which some of the facts alleged in the case took place, the statements, documents, and information received will be assessed bearing in mind the particular circumstances in which they were produced.<sup>27</sup> In this regard, the Court incorporated into the case file the video containing the recordings made by the State during the on-site procedure and forwarded a copy of this to the parties.

27. The Court notes that Suriname sent scanned copies of the title records of the Domains Office in Dutch (*supra* para. 22), and this evidence has been contested by the representatives. However, the Court underlines that, this information merely reveals, in some cases, the names of those who possess the said titles, and the location in the Tuinstad Albina subdivision project.<sup>28</sup> Thus, the Court will examine this information, provided it can clearly establish its usefulness. In addition, the Court will examine this information, as well all the documentation provide as helpful evidence, together with the observations of the parties on the visit, bearing in mind the rules of sound judicial discretion and insofar as they comply with the specific purpose of the information.<sup>29</sup>

## V FACTS

28. In this chapter, the Court will establish the facts of this case, based on the factual framework submitted to the Court's consideration by the Commission, taking into account the body of evidence in the case and the arguments of the representatives and the State. These facts will be described in the following sections: (1) the Kaliña and Lokono peoples; (2) Maroon settlements in the territory

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<sup>24</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of López Lone et al., supra*, para. 40.

<sup>25</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of López Lone et al., supra*, para. 40.

<sup>26</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of López Lone et al., supra*, para. 41.

<sup>27</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of June 27, 2012. Series C No. 245, para. 49, and *Case of the Garífuna Community of Punta Piedra and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2015. Series C No. 304, para. 79.

<sup>28</sup> The Court requested information on the titling of lands in favor of third parties on three occasions (*infra*, para. 264). Finally, the State provided this, in Dutch, and in a way that was unclear, imprecise and unintelligible, because it provided scanned copies of the handwritten records of the Domains Office, many of which could not be seen clearly owing to the quality of the image. Also, some of them only permitted the name of the titleholder and the location of the lot within the Tuinstad Albina Project to be identified. Similarly, the map of this project sent by the State, the numbers on which are mentioned in the title records, appears to show that the land has been divided into 73 lots (evidence file, annexes 7b, 7c and 7d, folios 3078 to 3230).

<sup>29</sup> Cf. *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 80.

claimed as ancestral by the Kaliña and Lokono peoples; (3) the indigenous peoples under the Suriname legal system; (4) the steps taken by the indigenous peoples to obtain recognition of their rights; (5) the creation of the nature reserves, and (6) the urban subdivision project known as "Tuinstad Albina" ("Garden City Albina"). Any facts that took place prior to Suriname's ratification of the contentious jurisdiction of the Court (on November 12, 1987) will only be referred to as part of the background to the case submitted to the Court.

### **A. The Kaliña and Lokono peoples**

29. The area of the Lower Marowijne River, located in the extreme northeast of Suriname, which borders on French Guiana, has been territory used and occupied ancestrally by indigenous peoples, particularly of the Kaliña and Lokono peoples.<sup>30</sup> The Kaliña and Lokono peoples are two of the four indigenous peoples with the largest population in Suriname, and are known as the "Lower Marowijne Peoples."<sup>31</sup>

30. The Kaliña and Lokono communities consist of eight villages that are parties to this case; of these six are Kaliña and two are Lokono. The villages of the Kaliña people are Christiaankondre, Langamankondre, Pierrekondre, Bigiston, Erowarte and Tapuku; while the two villages of the Lokono people are Marijkedorp (or Wan Shi Sha) and Alfonsdorp.<sup>32</sup> According to the oral history of the elders, the main area inhabited by the Kaliña was along the coast and on the banks of the Marowijne River, while the Lokono tended to set up their villages in the interior, alongside streams or creeks.<sup>33</sup> The representatives indicated that the ancestral territory of the Kaliña and Lokono peoples covered around 133,945 hectares (hereinafter "ha").

31. Regarding the population, according to domestic records, in 2005, the eight communities consisted of around 2,026 persons distributed as follows: 800 between Christiaankondre and Langamankondre; 125 in Erowarte; 129 in Tapuku; 150 in Pierrekondre; 287 in Marijkedorp (Wan Shi Sha); 285 in Alfonsdorp, and 250 in Bigiston.<sup>34</sup> In addition, according to the Suriname General Directorate of Statistics, in 2015, 1,673 indigenous persons lived in the Lower Marowijne region, distributed mainly between the sub-district (*ressorten*) of Galibi, with 677 indigenous persons, and Albina, with 915.<sup>35</sup>

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<sup>30</sup> Cf. The historical use and occupation by Indigenous peoples and communities of the Lower Marowijne River region of Suriname, dated June 25, 2006, prepared by Caroline de Jong (evidence file, folio 5); Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono: A Surinamese case study in the context of article 10(c) of the Convention on Biological Diversity, dated February 17, 2006, prepared by Henry Zaalman, Georgette Kumanajare, Louis Biswane, Grace Watamaleo, Michael Barend, Sylvia Oeloekanamoe, Steven Majarawai, Harold Galgren, Ellen-Rose Kambel and Caroline de Jong (evidence file, folio 40), and Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 448).

<sup>31</sup> Cf. International Work Group for Indigenous Affairs (IWGIA), *The Indigenous World 2012: Suriname* (evidence file, folio 13).

<sup>32</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 40), and The historical use and occupation by indigenous peoples and communities of the Lower Marowijne River region of Suriname, *supra* (evidence file, folio 5).

<sup>33</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 40).

<sup>34</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 40).

<sup>35</sup> Cf. Final written observations of the State of March 2, 2015 (merits file, folio 583).

32. The main subsistence activities of the Kaliña and Lokono peoples are agriculture,<sup>36</sup> fishing,<sup>37</sup> hunting,<sup>38</sup> and gathering non-timber forest products, such as fruits.<sup>39</sup>

33. In addition, the Kaliña and Lokono peoples of the Lower Marowijne area have a special physical and spiritual relationship with their lands and natural resources. They consider that all the animals, plants, fish, stones, streams and rivers are interconnected living beings that have protective spirits.<sup>40</sup>

34. Regarding this spiritual relationship, the Court underscores that, based on their world vision, the indigenous peoples restrict the entry into certain areas, the logging of certain trees – such as the *takini*, *kumaka*, *uremari* and *kwasini*<sup>41</sup> – and the hunting or capture of some animals and fish, such as boa constrictors, manatees, dolphins and turtles.<sup>42</sup> They also have two general rules that guide the extraction and use of natural resources, namely: (i) the prohibition to hunt or cut down young specimens, and (ii) to use only what they need.<sup>43</sup>

35. The indigenous peoples of the area have a strong spiritual relationship with the Marowijne River, which is an essential element of their cultural identity and traditions; thus they consider that they belong to this place in the same way that it belongs to them. In addition, the Kaliña and Lokono peoples take care of their lands, not only because they and their future generations need a place to live, but also because the culture and customs that their ancestors have instilled in them are based on a profound respect for the environment, which includes both living beings and inanimate objects.<sup>44</sup>

36. Hence, for the Kaliña and Lokono peoples it is vitally important to maintain the balance between man and nature, and this task is the responsibility of the shamans, known as *piay* or

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<sup>36</sup> In this regard, the following is worth noting: (i) the main crop is tapioca; (ii) both men and women take part in the activity, and (iii) each community has a common area for agriculture where each resident may grow his own crops. *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folios 74, 81 and 82).

<sup>37</sup> In this regard, the following is worth noting: (i) on average, the inhabitants of the communities carry out fishing activities three or four times a week; (ii) the fish are caught for personal consumption and for trading purposes, and (iii) both men and women take part in the activities. *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 92).

<sup>38</sup> In this regard, the following is worth noting: (i) ancestrally, hunting was one of the main subsistence activities, but nowadays it is less frequent; (ii) even though each community has its own hunting ground, indigenous people are free to hunt wherever they wish, and (iii) traditionally, the bow and arrow were used, but today almost all hunters use rifles. *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folios 84 and 87-89).

<sup>39</sup> *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 100).

<sup>40</sup> *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 128).

<sup>41</sup> It is said that these trees harbor evil spirits who will harm anyone who cuts them down; although, the *takini* in particular is used by the *piays* (shamans) for their rituals. Consequently, they are not cut down and crops are not grown near them. *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 133).

<sup>42</sup> It is said that the spirit of the boa will haunt the person who kills it and will kill his whole family, and that the ancestor of the sea turtles, considered the guardian of the sea, will become angry and inflict disease on anyone who kills a turtle, and also on his family. It is also said that dolphins and manatees were human beings in the past and they help and take care of anyone who falls in the water. *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folios 131 and 132).

<sup>43</sup> *Cf.* Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 128).

<sup>44</sup> *Cf.* Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folios 444 and 448).

*semechichi*. According to their world vision, the *piay* is able to discover if anyone has negatively altered the balance between men and nature through the guardians or guiding spirits, known as *jakoewa*.<sup>45</sup>

37. Within the ancestral land of the Kaliña and Lokono peoples certain areas are considered sacred or spiritual sites to which the indigenous peoples themselves restrict entry based on their world vision. The following are among the most important in the areas near Galibi and the Marowijne River: Kumakande; Korotoko yume; Sek´seki sabana; Alakoerieserie bate; Masjipe Itjoeloe, and Kanawa. While, near Alfonsdorp and Wane Kreek the following are important: Dede Betre; Balakaiman, and Awaradaja. Lastly, in the area of Bigiston the most important are Jorka-creek and Zwampoe.<sup>46</sup>

38. The eight indigenous communities of the Lower Marowijne area have their own authorities, which consist of a village “captain” or “chief,” known as *yopoto* or *wakorokoro*, and an average of two assistants, known as *basyas* or *yopoto petjore*. Traditionally, the authorities are responsible for keeping peace and order in the community and for representing it in matters relating to the Government and to third parties from outside the community. Owing to their functions, the State provides them with a monthly stipend.<sup>47</sup>

39. In addition, as verified previously by this Court in the *case of the Moiwana Community v. Suriname*, the internal conflict in Suriname, which began in 1986, had a particular impact in the eastern part of the country, where the territory claimed by the Kaliña and Lokono peoples is located. The armed group known as the “Jungle Command,” headed by Maroons and opposed to the military regime, had its headquarters on Stoelmans Island in the Marowijne River, so that most confrontations occur in that area. In 1986 and 1987, approximately 15,000 persons fled from the combat zone to the capital city, Paramaribo, and another 8,500 escaped to French Guiana; of these, around 1,000 were indigenous people.<sup>48</sup> Thus, the events that occurred between 1986 and 1992 had a direct impact on the lives of the Kaliña and Lokono peoples in the region, because houses, schools, health clinics and State offices were sacked, set fire to, and destroyed. However, the 1992 Lelydorp Peace Accord that ended the conflict resulted in many of the former inhabitants returning to the Albina area, together with new residents, as well as an increase in tourism in the region.<sup>49</sup>

## ***B. Maroon settlements in the territory claimed as ancestral by the Kaliña and Lokono peoples***

40. When presenting its final written arguments, the State advised the Court that Maroon communities also inhabited the territory claimed by the Kaliña and Lokono peoples in this case.<sup>50</sup> Thus, during the on-site procedure the Court verified that, in different areas, the territory claimed

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<sup>45</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 128).

<sup>46</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folios 135 - 137).

<sup>47</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 45).

<sup>48</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, paras. 86.12 and 86.13.

<sup>49</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 44), and Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 445).

<sup>50</sup> According to the information provided by the State in its final written arguments, approximately 13,103 Maroons reside in Marowijne District (merits file, folio 582).

by the Kaliña and Lokono peoples adjoins settlements of the N'djuka Maroon tribe.<sup>51</sup> In this regard, in the *case of the Moiwana Community v. Suriname*, the Court observed that the traditional lands of the N'djuka Maroons are located alongside the Tapanahoni and the Cottica Rivers.<sup>52</sup>

41. In this regard, the State indicated during the on-site procedure and in its corresponding written observations that, in the area claimed by the Kaliña and Lokono peoples, there were Maroons living in the following settlements: 1) Albina; 2) Papatam; 3) Mankele Kampu; 4) Maria Kondre; 5) Eduard Kondre; 6) Bamboesie; 7) Onikai Kondre; 8) Manja Bong; 9) Kronto Kondre; 10) Boni Kondre or Baa Joebe kampoe; 11) Moengo Tapu; 12) Adjuma Kondre; 13) Nengre Kriki; 14) Bilo Kondre; 15) Akoloikondre; 16) Baajoebkampu; 17) Solegakampu, and 18) Brunswijkkampu. It also asserted that more Maroon settlements existed within the territory claimed, but they could not be indicated because the map provided by the representatives during the public hearing was imprecise.

42. In this regard, in their written observations on the on-site procedure, the representatives affirmed that the land to the south of Anjoemara Creek and to the north of Aloemada Creek<sup>53</sup> did not form part of the claim in this case. In this regard, the representatives provided a list of the relevant settlements that were within the limits indicated and that, consequently, were not part of the territory over which the Kaliña and Lokono peoples allege their right to ancestral property; namely: 1) Albina; 2) Papatam; 3) Mankilikampoe; 4) Mariakondre; 5) Eduardkondre; 6) Akoloikondre; 7) Bamboesi and 8) Koni. The representatives also indicated that the Maroon settlements of 9) Mongo Tapu and 10) Adjoemakondre are near the Lokono community of Alfonsdorp; however, those settlements were located outside the indigenous ancestral territory claimed.<sup>54</sup>

43. In addition, the representatives clarified the situation of several Maroon families who live in the territories of the Lokono community of Alfonsdorp; of a Maroon settlement called 11) Bilokondre, which is between the communities of Marijkedorp (Wan Shi Sha) and Pierrekondre, and of the Maroon settlements of 12) Krontokondre, 13) Soke, 14) Pakirakondre and 15) Mopikondre located in the Kaliña community of Bigiston.

44. Regarding the Lokono community of Alfonsdorp, the representatives affirmed that one family of Maroons who had the permission of the Alfonsdorp captain, and three families of Maroons who did not have this captain's authorization, lived within the territory claimed.

45. With regard to the communities of Pierrekondre and Marijkedorp (Wan Shi Sha), particularly in the area known as Tuinstad Albina (*infra* paras. 96 to 99), there was a Maroon settlement called Bilokondre.<sup>55</sup> However, the captains of Marijkedorp (Wan Shi Sha) and Pierrekondre explained that

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<sup>51</sup> Cf. Statements made on August 17, 2015, during the on-site procedure, by M. Misindjan, President of the Land Rights Commission and the State agent in this case; by T. Sondrejoe, Marowijne District Commissioner, and by Fergus MacKay, representative of the alleged victims (merits file, folio 973).

<sup>52</sup> Cf. *Case of the Moiwana Community, supra*, para. 86.4.

<sup>53</sup> The Anjoemara Creek marks the boundary between the community of Marijkedorp (Wan Shi Sha) and Albina. The Aloemada Creek also marks the boundary with the Kaliña community of Bigiston. Cf. Brief of the representatives of September 8, 2015, para. 19 (merits file, folio 953).

<sup>54</sup> In addition, the representatives indicated that the houses built in Alfonsdorp for the survivors of the Moiwana massacre were inhabited sporadically, without specifying by whom, and that the N'djuka Maroon village of Moiwana was outside the land claimed by the Kaliña and Lokono peoples. Cf. Brief of the representatives of September 8, 2015, paras. 14, 15 and 19 (merits file, folios 951 to 954).

<sup>55</sup> Cf. Statement made on August 19, 2015, during the on-site procedure, by Jona Gunther, Captain of Erowarte (merits file, folio 973).



they were not opposed to the Maroon settlement of Bilokondre remaining in the place it currently occupies.<sup>56</sup>

46. In relation to the Kaliña community of Bigiston, the Court takes note of the representatives' comment that several Maroon settlements exist in and around that community, namely: Krontokondre, Soke, Pakirakondre and Mopikondre. In this regard, according to Marchiano Aroepa, Assistant to the Kaliña Captain of Bigiston, these groups have coexisted in harmony with the Kaliña of Bigiston for a long time, under the authority of the Bigiston Captain. Thus, Marchiano Aroepa indicated that an eventual recognition of the right to ancestral land of the indigenous community of Bigiston over the territory claimed would not affect the harmonious relationship with these Maroon settlements.<sup>57</sup> However, according to the State, these Maroon villages have their own traditional authorities. Nevertheless, the Court observes that, in a letter addressed to the Maroon leader of Krontokondre, Da Gazon Matodja, the Paramount Chief (Gaaman) of the N'djuka Maroons, referred to conflicts that the Maroons had had with the indigenous peoples in 2009, and indicated that the territory in question was owned by the indigenous peoples.<sup>58</sup> Consequently, the Court lacks probative elements to determine the situation of the Maroon settlements in Bigiston.

47. Based on the foregoing, the Court notes that the land located to the south of the Anjoemara Creek and to the north of the Aloemada Creek, is excluded from the territories claimed. In addition, the following Maroon settlements are also excluded from the territories claimed: 1) Albina; 2) Papatam; 3) Mankelekampu; 4) Mariakondre; 5) Eduardkondre; 6) Akoloikondre; 7) Bamboesi; 8) Koni; 9) Moengotapu, and 10) Adjoemakondre.

48. However, the Court has insufficient information to clarify the arguments related to several Maroon settlements. Regarding the Maroon settlements of: 1) Bilokondre, located between the communities of Pierrekondre and Marijkedorp (Wan Shi Sha); 2) Krontokondre; 3) Soke, 4) Pakirakondre, and 5) Mopikondre, which are located near the Kaliña community of Bigiston, the Court observes that the representatives have not explained whether the Kaliña and Lokono peoples claim rights to ancestral indigenous ownership over the land on which these Maroon settlements are located, while the State did not refer to the settlements of Soke, Pakirakondre and Mopikondre.

49. The State also referred to the Maroon settlements of: 1) Onikaikondre; 2) Manjabong; 3) Bonikondre or Baajoebekampu; 4) Nengrekriki; 5) Solegakampu and 6) Brunswijkkamp, but the representatives made no reference to them. Thus, the Court is uncertain about their location and whether the territories in which these Maroon settlements are located are included in the claims of the Kaliña and Lokono peoples.

### ***C. The indigenous peoples under the Suriname legal system***

50. It is an undisputed fact that the laws of Suriname do not recognize the possibility that the indigenous peoples may be constituted as legal persons and, consequently, they lack standing to hold collective property titles. In this regard, during the public hearing in this case, the State asserted that "the laws of Suriname only grant [legal personality] to natural and legal persons, and not [...] to the indigenous and tribal peoples." This was reaffirmed by the indigenous representatives to the National Assembly of Suriname during the on-site procedure in this case.

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<sup>56</sup> Cf. Statement made on August 19, 2015, during the on-site procedure, by Grace Watamaleo, Captain of Marijkedorp (Wan Shi Sha) (merits file, folio 973), and Brief of the representatives of September 8, 2015 (merits file, folio 954).

<sup>57</sup> Cf. Statement made on August 19, 2015, during the on-site procedure, by Marchiano Aroepa, Assistant to the Captain of Bigiston, (merits file, folio 973), and Brief of the representatives of September 8, 2015 (merits file, folio 954).

<sup>58</sup> Cf. Letter from Gaaman Da Gazon Matodja, Paramount Chief of the N'djuka Maroons, dated April 9, 2009 (evidence file, folio 2884).

51. In addition, the Court notes that, under the 1992 Lelydorp Peace Accord, the State undertook to establish legal mechanisms to provide protection to the lands of the indigenous and tribal peoples. In this regard, article 10 of the Accord established, among other matters, that “[t]he Government shall endeavor that legal mechanisms be created under which citizens who live and reside in tribal settlements will be able to secure a real title to land requested by them in their areas of residence [*woongebieden*]. 2. The demarcation and size of the respective residential areas, referred to in the first paragraph, shall be determined on the basis of a study carried out with respect thereto by the Council for the Development of the Interior [...]” However, the State has not taken any measure to implement this provision.<sup>59</sup>

52. This situation was analyzed by the Court previously in the *case of the Moiwana Community v. Suriname*, in which it established as a proven fact that “[e]ven though the individual members of the indigenous and tribal communities are recognized as persons in the Suriname Constitution, the laws of the State do not recognize these communities as legal entities. Also, domestic law does not establish collective property rights.”<sup>60</sup>

53. Also, in the *case of the Saramaka People v. Suriname*, the Court concluded that “the State’s legal framework merely grants the members of the Saramaka people a privilege to use the land, which does not guarantee their right to control and own their territory without any type of outside interference.”<sup>61</sup>

54. In addition, on September 27, 2013, a meeting was held between State authorities and representatives of indigenous and Maroon communities during which three commissions were created in order to develop legislation on traditional authorities, awareness-raising campaigns, and prior and informed consultation.

55. On January 6, 2014, the State hired a team of consultants to draft a bill on traditional authorities.<sup>62</sup> The document of June 3, 2014, entitled “Draft Bill on Traditional Authorities” established, among other matters, that a Minister responsible for matters relating to traditional authorities would appoint a group of dignitaries to serve as intermediaries between the Government and the indigenous and/or Maroon communities and to be responsible for keeping peace and order in the communities. To this end, these intermediaries would work a normal working day and be paid by the State.<sup>63</sup> It should be noted that the Court has verified that this bill did not include the recognition of the indigenous and tribal peoples as juridical persons or their rights to lands, resources and communal lands.

56. In this regard, a letter that Martin Misiedjan, President of the Land Rights Bureau, and State agent for this case, addressed to indigenous and Maroon communities indicated that the draft bill had been prepared without the contribution of indigenous and Maroon communities and they were therefore invited to a meeting to discuss the draft.<sup>64</sup> Nevertheless, the Court has no information regarding to whom the invitation was addressed, whether the meeting was held, and the results.

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<sup>59</sup> Article 10 (right to land) of the Lelydorp Accord. Cf. Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folios 431 and 432).

<sup>60</sup> *Case of the Moiwana Community, supra*, para. 86.5.

<sup>61</sup> *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 115.

<sup>62</sup> Cf. Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 433), and Professional services contract dated January 6, 2014 (evidence file, folio 2997).

<sup>63</sup> Cf. Articles 1, 2, 5, 7 and 8, *Draft Bill on Traditional Authorities* of June 3, 2014 (merits file, folios 848 to 850).

<sup>64</sup> Cf. Letter dated July 30, 2014, Ref.: 038-14/KB/BG (evidence file, folio 3000).

57. The Court also takes note that, on October 1, 2014, Martin Misiedjan sent a letter to the Executive Director of Conservation International Suriname requesting funding for future meetings with the indigenous and Maroon communities in relation to the draft bill.<sup>65</sup> However, the Court has no further information concerning this request.

#### ***D. The steps taken by the indigenous peoples to obtain recognition of their rights***

58. In the following section, the Court will refer to diverse social protests, and administrative petitions and judicial proceedings filed before the State authorities in relation to the land claimed in this case, by which the Kaliña and Lokono peoples demanded recognition of their rights by domestic law and practice.

##### ***D.1 Steps taken prior to the acceptance of the Court's jurisdiction (November 12, 1987)***

59. The steps taken by the Kaliña and Lokono peoples to obtain recognition of their rights began prior to the independence of the State of Suriname, which was achieved November 25, 1975. In 1972, they filed various petition before the Independence Commission in which they denounced, among other matters, that classifying indigenous territory as State-owned lands was unjust.<sup>66</sup>

60. In 1975 and 1976, they filed three cases before domestic courts to claim their rights to ancestral lands, which were rejected, citing lack of legal grounds.<sup>67</sup>

61. In 1976, the Kaliña and Lokono peoples took part in a 142-kilometer march from Albina to Paramaribo to protest against the violation of their land rights by the creation of the Galibi Nature Reserve in 1969, as well as the sub-division and parceling of the villages of Erowarte, Marijkedorp (Wan Shi Sha), Tapuku and Pierrekondre. The State's response was that the indigenous peoples had no land rights and, therefore, no objection was admissible.<sup>68</sup> Also, in 1978, the Kaliña and Lokono peoples, together with other indigenous peoples and Maroons, adopted the Santigrón Declaration in which they demanded participation in the plans for, and recognition of the property rights over, their territory.<sup>69</sup>

##### ***D.2 Steps taken following the acceptance of the Court's jurisdiction (November 12, 1987)***

62. As a result of the ending of the internal conflict in Suriname in 1992 by the Lelydorp Peace Accord, the Kaliña and Lokono peoples began to return to their territories and to reconstruct their communities. At the same time, they tried to recover the land that the State had granted to third parties. In this context, Tjang A. Sjin, owner of a vacation home located in the community of Marijkedorp (Wan Shi Sha), filed a complaint in the domestic sphere against Lokono Captain Erick Zaalman because he and the residents of the communities had prevented Tjang A. Sjin from

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<sup>65</sup> Cf. Letter dated October 1, 2014, Ref.: 057/14/KB/BG (evidence file, folios 3001 and 3002).

<sup>66</sup> Cf. Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 431).

<sup>67</sup> Namely: *Case of No. 165, Association of Indigenous Peoples v. Suriname*, March 17, 1975; *Association of Indigenous Peoples v. Suriname*, A.R. No. 754180, September 26, 1975; and *Association of Indigenous Peoples v. Suriname*, A.R. No. 753160, January 13, 1976. Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 445).

<sup>68</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 445); Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 431);

<sup>69</sup> Cf. Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 428)

rebuilding his house, which had been destroyed during the internal conflict. This case was known as *Tjang A Sjin v. Zaalman and Others*.<sup>70</sup>

63. In this regard, in 1998, in protest for the complaint filed against Captain Zaalman, members of the Kaliña and Lokono peoples, together with indigenous peoples from other regions of Suriname, held a vigil in front of the Supreme Court of Justice of Suriname in Paramaribo for several days.<sup>71</sup> However, the judgment delivered by the Cantonal Court of the First Canton of Paramaribo on May 21, 1998, established that the indigenous community should respect the right to property of Tjang A. Sjin, because he was the legitimate owner of the land according to the respective property title. The Court referred to this domestic judicial proceeding in the case of the *Saramaka People v. Suriname*.<sup>72</sup>

64. On December 24, 2002, the residents of the community of Pierrekondre filed a complaint against the State seeking that the judge revoke a sand mining concession that had been granted on land on which the residents of the indigenous community had a logging license. This case was known as *Celientje Martina Joeroeja-Koewie and Others v. Suriname & Suriname Stone & Industries N.V.* The State's defense counsel indicated that the argument that the residents of the community had inhabited the disputed territory for centuries was grossly exaggerated; that domestic law did not establish recognition of ancestral territories, and that the area where the petitioners resided had not been demarcated. On July 24, 2003, the Cantonal Court of the First Canton of Paramaribo handed down judgment denying the application because the members of the indigenous community had no legal standing as a collective entity and, therefore, lacked competence to request the cancellation of the mining concession.<sup>73</sup>

65. Furthermore, on January 31, 2003, March 22, 2004, and September 25, 2005, the captains of the Kaliña and Lokono peoples presented formal petitions to the President of Suriname, Ronald Venetiaan, under the provisions of article 22 of the 1987 Constitution.<sup>74</sup> In these petitions, the captains requested the recognition of the right to their ancestral territories; they indicated that the laws of Suriname did not include recognition of their legal personality or the obligation to consult them on situations that affected their lands and culture, and they contested the creation of three nature reserves and the granting of mining concessions and logging permits in their ancestral territory.<sup>75</sup> The State did not respond to these petitions.<sup>76</sup>

66. On January 31 and February 28, 2003, meetings were held with the Ministers of Regional Development and of Natural Resources to discuss the concerns of the Kaliña and Lokono peoples, but without reaching any specific agreements.<sup>77</sup>

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<sup>70</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folios 445 and 446).

<sup>71</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 446) and Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 350).

<sup>72</sup> Cf. *Case of the Saramaka People, supra*, para. 180; Affidavit made by Mariska Muskiet on April 30, 2007 (merits file, folio 455), and Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 446).

<sup>73</sup> Cf. Judgment of July 24, 2003, handed down by the Cantonal Court, First Canton, Paramaribo, in the case of *Celientje Martina Joeroeja-Koewie and Others v. Suriname & Suriname Stone & Industries N.V.* (evidence file, folios 2900 to 2903), and Affidavit made by Mariska Muskiet on April 30, 2007 (merits file, folios 452 and 453).

<sup>74</sup> Article 22 of the 1987 Constitution establishes the following: "1. Everyone has the right to submit written petitions to the competent authority. 2. The law regulates the procedure for handling them" (evidence file, folio 294).

<sup>75</sup> Cf. Briefs of January 31, 2003 and March 22, 2004 (evidence file, folios 402 to 407).

<sup>76</sup> Cf. Communication dated October 7, 2007 (evidence file, folio 332).

<sup>77</sup> Cf. Communication dated October 7, 2007 (evidence file, folio 333).

67. In December 2004, CLIM, on behalf of the Kaliña and Lokono peoples, submitted a note to the State Lands Office requesting the suspension of the issue of titles in the area known as "Tuinstad Albina" (*infra* paras. 96 to 99).<sup>78</sup> In addition, on May 22, 2006, CLIM presented a note to the Minister of Spatial Planning, Land and Forest Policy requesting the suspension of any activity that might affect their ancestral territory while the claims that had been presented in this regard were dealt with and decided.<sup>79</sup> Neither of the notes obtained a response.

68. On October 7, 2007, the captains of the eight Kaliña and Lokono villages submitted a communication to the President of Suriname contesting the construction of a home, a filling station, and a shopping mall in the community of Pierrekondre,<sup>80</sup> without obtaining any answer from the State.<sup>81</sup>

69. On January 28, 2013, the captains of Marijkedorp (Wan Shi Sha), Pierrekondre, Tapuku and Erowarte presented a communication to the President of the Republic protesting against the construction of a casino in the community of Marijkedorp (Wan Shi Sha) without holding the corresponding consultations with the indigenous peoples in the area.<sup>82</sup> However, the State did not respond to this protest.

### **E. Creation of the nature reserves**

70. Three nature reserves were created within the territory that is in dispute in this case, namely: (i) the Wia Wia Nature Reserve in 1966; (ii) the Galibi Nature Reserve in 1969, and (iii) the Wane Kreek Nature Reserve in 1986.<sup>83</sup> There is no dispute between the parties that the Wia Wia Nature Reserve covers approximately 36,000 ha, the Galibi Nature Reserve, 4,000 ha, and the Wane Kreek Nature Reserve, 45,000 ha.

71. According to the representatives, approximately 10,800 ha of the Wia Wia Nature Reserve, 4,000 ha of the Galibi Nature Reserve, and 45,000 ha of the Wane Kreek Nature Reserve are located within the ancestral territory of the Kaliña and Lokono peoples. Thus, together, the three reserves cover approximately 59,800 ha of the 133,945 ha claimed in this case.

72. The nature reserves were established based on the 1954 Nature Protection Act.<sup>84</sup> This act, following the amendments made in 1980 and 1992, establishes that the President of Suriname is authorized to designate, by order, lands and water that are State property as a nature reserve.<sup>85</sup>

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<sup>78</sup> Cf. Communication of December 2004 (evidence file, folio 326).

<sup>79</sup> Cf. Communication dated May 22, 2006 (evidence file, folios 329 and 330).

<sup>80</sup> Cf. Communication dated October 7, 2007 (evidence file, folio 332).

<sup>81</sup> Cf. Statements made on August 19, 2015, during the on-site procedure by Louise Biswane, Assistant of the Captain of Pierrekondre, and Leni Landveld, Marijkedorp (Wan Shi Sha) elder (merits file, folio 973).

<sup>82</sup> Cf. Communication dated January 28, 2013 (merits file, folio 879).

<sup>83</sup> Cf. Order of April 22, 1966, "Wia Wia Nature Protection Order" (evidence file, folio 2758); Order of May 23, 1969, "Galibi Nature Protection Order", (evidence file, folio 2764), and Order of August 26, 1986, "Wane Kreek Nature Protection Order" (evidence file, folio 2746).

<sup>84</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 351), and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 477).

<sup>85</sup> Cf. The 1954 Nature Protection Act, Article 1: "To protect and preserve the natural resources present in Suriname, after hearing the Council of State, the President may designate by order lands and waters part of the State Property as a nature reserve" (evidence file, folio 2743).

73. Furthermore, article 5(c) of this act stipulates that hunting and fishing are forbidden within a nature reserve.<sup>86</sup> In this regard, Ferdinand Baal, Bryan Drakenstein and Claudine Sakimin, who were Directors of the Nature Conservation Division from 1978 to date, have indicated that the 1954 Nature Protection Act did not include the recognition of rights to the indigenous peoples in relation to their customs and traditions.<sup>87</sup>

### ***E.1 The Wia Wia and Galibi Nature Reserves***

74. The Wia Wia and Galibi Nature Reserves were established by the Governor of Suriname on April 22, 1966,<sup>88</sup> and May 26, 1969,<sup>89</sup> respectively, during the Dutch colonial administration, in order to protect the nesting beaches of the sea turtles.<sup>90</sup> The nearest communities to these reserves are Christiaankondre and Langamankondre; however, they are known locally as Galibi.<sup>91</sup>

75. The former Directors of the Nature Conservation Division, Ferdinand Baal and Bryan Drakenstein, affirmed that there were no indigenous peoples' settlements in the territory designated as nature reserves and that no indigenous person was displaced in the context of the establishment or the permanence of the reserves.<sup>92</sup>

76. However, both expert witness Stuart Kirsh and Captain Ricardo Pané, leader of the community of Christiaankondre, contradicted this version. In this regard, Mr. Kirsh indicated that some agricultural plots and houses that were located inside the nature reserves had to be relocated.<sup>93</sup> While Captain Pané affirmed that he had witnessed situations in which the police had forcibly removed the indigenous people who lived in the territories covered by the reserves when these were established.<sup>94</sup>

77. In addition, when the reserves were established, the Government authorities reached an agreement with the residents of the communities of Christiaankondre and Langamankondre under which the residents were authorized to extract turtle eggs for their personal consumption, which formed part of their traditions, and also to sell eggs under the supervision of the State authorities.<sup>95</sup>

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<sup>86</sup> Cf. Nature Protection Act, Article 5: "In a nature reserve it is prohibited to hunt, fish, and to have oneself with a dog, a firearm or any hunting or trapping device without an authorization from the Head of the State Forest Management Service" (evidence file, folio 2743).

<sup>87</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 351), and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 480).

<sup>88</sup> Cf. The Wia Wia Nature Protection Order of April 22, 1966 (evidence file, folio 2759).

<sup>89</sup> Cf. The Galibi Nature Protection Order of May 26, 1969 (evidence file, folio 2765).

<sup>90</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 351); Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 142), Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 351).

<sup>91</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 352); Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 481), and Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 49).

<sup>92</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 351).

<sup>93</sup> Cf. Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 351).

<sup>94</sup> Cf. Testimony of Captain Ricardo Pané during the public hearing held on February 3, 2015.

<sup>95</sup> Cf. Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 352).

78. During the internal conflict in Suriname (*supra* para. 39), prohibitions were in force that prevented access to the Galibi Nature Reserve owing to the increase in the theft of turtle eggs, and military checkpoints were established in the access areas.<sup>96</sup>

79. On April 30, 1998, a Dialogue Commission was established in Galibi with representatives of the Nature Conservation Division of Suriname, the Foundation for Nature Conservation in Suriname (STINASU), the Marowijne District Commissioner, the Fisheries Service, and residents of Christiaankondre and Langamankondre.<sup>97</sup> Under this Commission, it was agreed to limit the extraction of turtle eggs, allowing this only for the traditional consumption of the communities of Christiaankondre and Langamankondre, and not for sale. It was also agreed to share the benefits of the increase in tourism in the Galibi Nature Reserve by authorizing the community organization known as STIDUNAL to transport tourists to and from the Galibi Nature Reserve.<sup>98</sup> At the present time, the Dialogue Commission is inactive because the communities do not participate in the meetings.<sup>99</sup>

80. In addition, in 2012, the State demarcated an area in front of the coast of Galibi in which the fishing activities of third parties was prohibited. However, this prohibition has not been effective, because there is no real supervision or monitoring, and this affects the indigenous peoples from the area, jeopardizing sea turtle conservation.<sup>100</sup>

## **E.2 The Wane Kreek Nature Reserve**

81. The Wane Kreek Nature Reserve was established on August 26, 1986, by the 1986 Wane Kreek Nature Protection Order. The territory designated for the reserve is owned by the State of Suriname, and extends over approximately 45,400 ha. The reserve has nine unique ecosystems and was created to protect and conserve them.<sup>101</sup>

82. The International Union for the Conservation of Nature and Natural Resources designated the Wane Kreek Nature Reserve a category IV protected area, which defines it as an area management of which requires active interventions to address the requirements of particular species and to maintain habitats.<sup>102</sup>

83. The fourth article of the 1986 Nature Protection Order established that the traditional rights of the tribal villages and communities located within the reserve would be respected.<sup>103</sup> In this

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<sup>96</sup> Cf. Statements made on August 19, 2015, during the on-site procedure by Captain Ricardo Pané, and Roy Ho Tsoi, Section Head of the Suriname Forest Management Service (merits file, folio 973).

<sup>97</sup> Cf. Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 478).

<sup>98</sup> Cf. Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 479); Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 352), and Affidavit made by Rudy Emanuel Strijk on September 11, 2008 (evidence file, folio 355).

<sup>99</sup> Cf. Statement made by Roy Ho Tsoi, Section Head of the Suriname Forest Management Service, on August 18, 2015 (merits file, folio 973).

<sup>100</sup> Cf. Testimony of Captain Ricardo Pané during the public hearing held on February 3, 2015, and Statement made on August 18, 2015, during the on-site procedure by Shak Aridamai, indigenous member of Galibi (merits file, folio 973).

<sup>101</sup> Cf. Article 3 of the Nature Protection Order of August 26, 1986 (evidence file, folio 2748); Environmental Sensitivity Analysis of the Wane 4 Concession dated July 4, 2005 (merits file, folios 395 and 405); Affidavit made by Ferdinand Baal and Bryan Drakenstein on September 12, 2008 (evidence file, folio 351), and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 480).

<sup>102</sup> Cf. Environmental Sensitivity Analysis of the Wane 4 Concession dated July 4, 2005 (merits file, folio 395).

<sup>103</sup> Article 4 of the Nature Protection Order of August 26, 1986, establishes that: "Insofar as, on the effective date of this Government Regulation, plots of land in the areas designated as nature reserves by this Government Regulation have been issued as allodial and hereditary titles, leasehold, rent, use, license or concession, or villages and settlements of tribal

regard, the explanatory note to this order, prepared by the Minister of Natural Resources and Energy, established that the area chosen for the reserve was claimed by the communities who lived around it as part of their ancestral territory.<sup>104</sup>

84. The territory of the Wane Kreek Nature Reserve forms part of the ancestral territories claimed by the Kaliña and Lokono peoples.<sup>105</sup> In this regard, they indicated that the area of the reserve is their main hunting and fishing ground, and is also used to extract medicinal plants, clay and kaolin. Furthermore, the Kaliña and Lokono peoples have always had camps and settlements in the area and it contains ancient villages and sacred sites that they consider fundamental to their origins and identity.<sup>106</sup> The area also has significant archaeological value, as numerous Pre-Columbian artefacts have been found.<sup>107</sup>

### **E.2.1 Consultation process**

85. Prior to the establishment of the Wane Kreek Nature Reserve several meetings were held with the participation of authorities of the State Forest Management Service, an indigenous people's organization called "KANO," community leaders and some residents.<sup>108</sup> According to the State, KANO was founded in 1969 and was composed of Kaliña and Lokono indigenous peoples. However, the representatives indicated that KANO was composed of indigenous individuals from different parts of Suriname who were not traditional authorities or legitimate representatives of the alleged victims in this case. Also KANO ceased to exist in 1980; in other words, six years before the creation of the Wane Kreek Nature Reserve.

86. In this regard, according to a communication dated August 26, 1978, the State Forest Management Service and KANO representatives reached the following agreements during a meeting held on August 21, 1978:

- The rights and claims of the traditional inhabitants will be respected.
- Representatives of KANO and of the State Forest Management Service will visit several nature reserves. KANO will provide detailed information to local residents about the meeting held with the State Forest Management Service and will consult the local residents in this regard.
- KANO will make an active contribution to the formulation of the social aspects of future nature conservation policies.<sup>109</sup>

87. Nevertheless, according to Captains Watamaleo and Gunther, the only meeting they are aware of was held in 1986 in Marijkedorp (Wan Shi Sha) and, during this, the indigenous peoples emphatically rejected the proposal to create the Wane Kreek Nature Reserve.<sup>110</sup> Consequently, the

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communities of inhabitants of the interior are located therein, the rights derived therefrom will be respected" (evidence file, folio 2752).

<sup>104</sup> Cf. Explanatory note on the Nature Protection Order of August 26, 1986 (evidence file, folio 2756).

<sup>105</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 446); and Statement made on August 19, 2015, during the on-site procedure, by Margariet Biswane, Captain of Alfonsdorp (merits file, folio 973).

<sup>106</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 447); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015; Statement made on August 19, 2015, during the on-site procedure, by Margariet Biswane, Captain of Alfonsdorp (merits file, folio 973), and Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 89).

<sup>107</sup> Cf. Wane Environmental Sensitivity Analysis dated July 4, 2005 (merits file, folio 409).

<sup>108</sup> Cf. Explanatory note on the Nature Protection Order of August 26, 1986 (evidence file, folio 2757) and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 483).

<sup>109</sup> Cf. Communication dated August 26, 1978 (evidence file, folio 3005), and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 483).

<sup>110</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 447); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015.



Kaliña and Lokono peoples were unaware that the reserve had been established until, in 1997, they realized that mining operations were underway in the area.<sup>111</sup> In addition, regarding the prior steps taken by KANO, the representatives of the Kaliña and Lokono peoples have indicated that, at no time, did KANO either consult or represent them.<sup>112</sup>

### ***E.2.2 Bauxite mining activities<sup>113</sup>***

88. On January 28, 1958, before Suriname's independence from the Netherlands, the State granted a concession to a mining company called "Suralco," a subsidiary of the Aluminum Company of America (ALCOA), to extract bauxite in the eastern part of Suriname, which included the territory of Wane Kreek.<sup>114</sup> The concession was granted for 75 years, and will therefore expire in 2033.<sup>115</sup> In 1997, Suralco began extraction operations from bauxite deposits in Wane Hills.<sup>116</sup> In 2003, the joint-venture known as BHP Billiton-Suralco took over mining exploitation in Wane Kreek.<sup>117</sup>

89. Among the preparatory activities carried out in the mid-1990s, a highway was built to access the mine and transport the bauxite. The highway was also used for logging activities (*infra* para. 94), and the indigenous people in the region were forbidden to use it to enter the area of the concession to hunt and fish.<sup>118</sup>

90. Typically, bauxite is found near the surface, so that extraction requires strip-mining over large tracts of land.<sup>119</sup> The mining exploitation project was divided into several sections, four of which were located within the Wane Kreek Nature Reserve. Bauxite extraction was carried out in the Wane 1 and Wane 2 sections over an area of from 100 to 144 ha, while the Wane 3 and Wane

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<sup>111</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 447); Statement made on August 19, 2015, during the on-site procedure, by Margariet Biswane, Captain of Alfonsdorp (merits file, folio 973), and Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 354).

<sup>112</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 447); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015, and Statement made on August 19, 2015, during the on-site procedure, by Leni Landveld, Marijkedorp (Wan Shi Sha) elder (merits file, folio 973).

<sup>113</sup> "[T]he term "bauxite" shall mean those ores containing hydrated aluminum oxide, which Suralco uses or can use as raw material for the manufacture of alumina, or which Suralco can sell to the aluminum, chemical, abrasive, refractories, cement or any other industry consuming such ores, and from which an average of at least 32% of alumina can be recovered." Cf. Article 3 of Government Ordinance No. 10 of January 28, 1958 (evidence file, folio 3061).

<sup>114</sup> According to the Bauxite Institute of Suriname, in Marowijne District, Suralco has a concession for the exploitation of bauxite over an area of 48,406 ha, of which approximately 2,626 ha were located within the Wane Kreek Nature Reserve. However, according to Stuart Kirsh, the concession was granted over an area of 123,000 ha. Cf. Memorandum dated August 27, 2015, of the Director of the Bauxite Institute of Suriname (evidence file, folios 3070 and 3071), and Affidavit made by Stuart Kirsh on January 20, 2015 (merits file, folio 354).

<sup>115</sup> Cf. Article 8 of Government Ordinance No. 10 of January 28, 1958 (evidence file, folio 3061). However, the Court takes note that, according to the expert opinion of Stuart Kirsh, the concession was granted for 60 years, and would therefore expire in 2018. Also, the Bauxite Institute of Suriname indicated that, within the territories conceded to Suralco in the Marowijne District, there is a concession that expires in 2030, and another that expires in 2032. Cf. Memorandum dated August 27, 2015, of the Director of the Bauxite Institute of Suriname (evidence file, folios 3070), and Affidavit made by Stuart Kirsh on January 20, 2015 (merits file, folio 354).

<sup>116</sup> Cf. Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 357); Environmental Sensitivity Analysis of the Wane 4 Concession dated July 4, 2005 (merits file, folio 396); Affidavit made by Glen Renaldo Kingswijk on September 10, 2008 (evidence file, folio 362) and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folios 483 and 484). However, the Court takes note that, according to the Bauxite Institute of Suriname, exploitation of the section known as Wane 1 started in 1998, and of the section known as Wane 2 in 1999. Cf. Memorandum dated August 27, 2015, of the Director of the Bauxite Institute of Suriname (evidence file, folio 3071).

<sup>117</sup> Cf. Affidavit made by Glen Renaldo Kingswijk on September 10, 2008 (evidence file, folio 362).

<sup>118</sup> Cf. Affidavit made by Glen Renaldo Kingswijk on September 10, 2008 (evidence file, folio 362).

<sup>119</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folio 356).

4 sections were not exploited.<sup>120</sup> However, it should be noted that exploration activities were carried out in Wane 4, and these also caused significant environmental impact in the area.<sup>121</sup>

91. The first environmental impact assessment (Environmental Sensitivity Analysis of the Wane 4 Concession) was made in 2005 by a private consultant hired by BHP Billiton, with the intention of starting extracting activities in Wane 4.<sup>122</sup> The assessment determined that the Wane 1 and Wane 2 sections had suffered considerable environmental damage as a result of the strip-mining of bauxite. Among other matters, the consultant made the following recommendations to the company; that it should: "(1) Commit irrevocably to not mining Wane 3 and 4 and avoid further disturbances of these hills; (2) Rehabilitate damage to Wane 4 caused by the exploration programme [...]; (3) Complete all mining of Wane 1 and 2 as soon as possible," and (4) Rehabilitate the damage caused in Wane 1 and 2 by the exploitation operations.<sup>123</sup>

92. Regarding the adverse impact of the mining operations in the nature reserve, the hunting and fishing activities, which were traditional in the area, have declined considerably. In this regard, the noise and vibrations caused by the trucks and the dynamite explosions, the contamination of land and streams, and the destruction of fruit-bearing trees caused the wildlife to flee that the indigenous peoples hunted and fished to feed the members of the local communities.<sup>124</sup> Also, access to the area of the mining concessions was prohibited to the indigenous peoples and to any other unauthorized person.<sup>125</sup>

93. The bauxite extraction operations in the Wane Kreek Nature Reserve ended in 2009, and nowadays the area is being reforested by the companies who carried out the mining operations.<sup>126</sup> In this regard, the Bauxite Institute of Suriname indicated that the Wane 1 and Wane 2 sections had already been rehabilitated.<sup>127</sup> However, the members of the local indigenous communities disagree, particularly with the species that are being used to reforest.<sup>128</sup> Moreover, during the on-site procedure, the Court observed that the scenery has been radically altered in the areas that had been exploited.

### ***E.2.3 Other natural resource extraction activities***

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<sup>120</sup> Cf. Wane Environmental Sensitivity Analysis dated July 4, 2005 (merits file, folio 388); Affidavit made by Glen Renaldo Kingswijk on September 10, 2008 (evidence file, folio 362) and Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folio 484). However, the Court takes note that, according to the Bauxite Institute of Suriname, the Wane 1 and Wane 2 sections cover an area of 144 ha. Cf. Memorandum dated August 27, 2015, of the Director of the Bauxite Institute of Suriname (evidence file, folios 3071).

<sup>121</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folio 358).

<sup>122</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folios 357 and 358), and Environmental Sensitivity Analysis of the Wane 4 Concession dated July 4, 2005 (merits file, folio 388).

<sup>123</sup> Cf. Wane Environmental Sensitivity Analysis dated July 4, 2005 (merits file, folio 390).

<sup>124</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 448); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015, and Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 359).

<sup>125</sup> Cf. Affidavit made by Glen Renaldo Kingswijk on September 10, 2008 (evidence file, folio 362) and Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 449).

<sup>126</sup> Cf. Communication of the Director of the Bauxite Institute of Suriname dated August 27, 2015 (evidence file, folio 3071).

<sup>127</sup> Cf. August 2015 report prepared by the Bauxite Institute of Suriname on rehabilitation of Wane 1 and Wane 2 (evidence file, folio 3076).

<sup>128</sup> In this regard, the trees planted have grown very little and are of no use to feed the animals because they no longer provide fruits and seeds. Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 449) and Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folios 360 and 361).

94. One of the consequences of the construction of the highway to extract bauxite was the implementation of legal and illegal logging activities, poaching, and the mining of sand, gravel and kaolin.<sup>129</sup>

95. In the case of the logging activities, in 2008 the State granted a logging permit to members of the indigenous community of Alfonsdorp.<sup>130</sup> However, according to Captain Watamaleo, the non-indigenous persons who took part in the logging activities are responsible for the destruction of the forest, because they do not cut down the trees in a way that would allow the saplings to grow. Furthermore, the paths that were traditionally used by the indigenous peoples for hunting are being eliminated.<sup>131</sup> And, non-indigenous persons have indiscriminately logged trees that are sacred according to the world vision of the Kaliña and Lokono peoples.<sup>132</sup>

#### **F. The urban subdivision project called "Tuinstad Albina" ("Garden City Albina")**

96. It is an undisputed fact that, in 1975, the State began an urban subdivision project called "Tuinstad Albina" ("Garden City Albina") along the Marowijne River near the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp (Wan Shi Sha).<sup>133</sup>

97. According to the State, the area where the subdivision project is being executed was not inhabited by indigenous peoples. However, statements made by several members of the indigenous communities affected affirm the contrary. Thus, Captain Watamaleo stated that the State had divided up parts of the villages into individual parcels even though indigenous persons were living on those lands at the time.<sup>134</sup> In addition, Captain Gunther stated that members of his community were forced to leave their land.<sup>135</sup> Similarly, Max Sabajo, a Lokono from Marijkedorp, indicated that the indigenous peoples of the area were displaced from the banks of the Marowijne River when the State began to grant parcels to wealthy individuals from the city.<sup>136</sup>

98. The land for which titles have been issued to third parties has been used mainly for the construction of vacation homes, which are located very near the homes of the members of the indigenous communities, and the Court was able to verify this during the on-site procedure.<sup>137</sup> In this regard, the vacation homes have restricted the direct access of the indigenous peoples to certain parts of the Marowijne River, which adjoin their villages. This situation has been particularly difficult because the local indigenous peoples have a strong spiritual relationship with the

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<sup>129</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folios 353 and 360).

<sup>130</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folio 355).

<sup>131</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folios 448 and 450).

<sup>132</sup> Cf. Statement made on August 19, 2015, during the on-site procedure, by Louis Biswane, Assistant of the Captain of Pierrekondre (merits file, folio 973).

<sup>133</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 443); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015; Affidavit made by Max Sabajo on September 25, 2008 (merits file, folio 161), and Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 141). In this regard, the representatives asserted that, between 1976 and 2008, approximately 20 titles were issued to non-indigenous persons.

<sup>134</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 443).

<sup>135</sup> Cf. Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015.

<sup>136</sup> Cf. Affidavit made by Max Sabajo on September 25, 2008 (merits file, folio 161).

<sup>137</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015, and Statement made on August 19, 2015, during the on-site procedure, by Louis Biswane, Assistant of the Captain of Pierrekondre (merits file, folio 973).

Marowijne River, which is an essential element in their cultural identity and traditions.<sup>138</sup> Also, the members of the communities use the river to moor their boats, and for fishing, bathing, and washing their clothes.<sup>139</sup>

99. In addition to the construction of vacation homes, in 2008, an attempt was made to build an aircraft hangar in Marijkedorp (Wan Shi Sha), and, currently, a hotel/casino is being built, which the Court observed during the on-site procedure. In addition, in 2007, a lot was cleared in Pierrekondre in order to build a gas station and a shopping mall.<sup>140</sup> Based on the foregoing, the members of the indigenous communities are faced with persistent legal uncertainty because they could be expelled from the land on which they are presently living.<sup>141</sup>

## VI MERITS

100. Based on the rights of the Convention argued in this case, the Court will make the following analysis: (1) Right to juridical personality in relation to Articles 21, 25, 1(1) and 2 of the American Convention; (2) Right to collective property and the Right to participate in public affairs in relation to Articles 1(1) and 2 of the American Convention, and (3) Right to judicial protection in relation to Articles 1(1), 2 and 13 of the American Convention. It should be noted that, pursuant to the Court's case law, the references made to standards concerning the rights of indigenous peoples are also applicable to tribal peoples.

### VI-I

#### **RIGHT TO RECOGNITION OF JURIDICAL PERSONALITY (ARTICLE 3) IN RELATION TO ARTICLES 1(1), 2, 21 AND 25 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS**

##### ***A. Arguments of the Commission and of the parties***

101. The **Commission** concluded that Suriname had violated the right of the Kaliña and Lokono peoples to recognition of their juridical personality based on Article 3 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, because, as in the case of the *Saramaka People*, Suriname law does not recognize the right of the indigenous peoples to juridical personality, even though the State has declared that it is in the process of recognizing indigenous rights. Therefore, the Commission concluded that, in this respect, there is no real dispute, but rather a persistent violation of Article 3 of the Convention, because, starting with the *Saramaka case*, the Court has declared that the State of Suriname must recognize the juridical personality of the indigenous and tribal peoples.

102. The **representatives** agreed, in general, with the Commission. They indicated that, because the Kaliña and Lokono peoples are denied the right to be recognized as persons before

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<sup>138</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444), and statements made on August 19, 2015, during the on-site procedure by Harold Malbons, Assistant of the Captain of Tapuku, Louis Biswane, Assistant of the Captain of Pierrekondre, and Leni Landveld, Marijkedorp elder (merits file, folio 973).

<sup>139</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 141).

<sup>140</sup> Cf. Communication dated May 22, 2006 (evidence file, folio 329); Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015; Affidavit made by Max Sabajo on September 25, 2008 (merits file, folio 160); Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 428); and Statement made on August 19, 2015, during the on-site procedure, by Leni Landveld, Marijkedorp elder (merits file, folio 973).

<sup>141</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 445); Testimony of Captain Jona Gunther during the public hearing held in this case on February 3, 2015; Affidavit made by Max Sabajo on September 25, 2008 (merits file, folio 160).

the law, they are also denied the ability to maintain, exercise and seek the protection of their collective property and other rights under domestic law and in the courts. The representatives also argued that the State had failed to comply with the ruling in the *case of the Saramaka People* that it adopt administrative and legislative measures to recognize the legal personality of the indigenous and tribal peoples. Consequently, Suriname had violated Article 3 of the Convention in relation to Articles 1 and 2 of this instrument.

103. The **State** argued that it was aware that, under international law and jurisprudence, and specifically under the Inter-American system for the protection of human rights, indigenous peoples had the right to recognition of collective legal personality. However, the State indicated that "Surinamese law was unfamiliar with the concept of attributing legal personality to ethnic groups as a collectivity." It also indicated that the law indicates, precisely, the entities that may have access to recognition of legal personality, and recognizes this to natural persons and legal persons such as associations, foundations, and certain companies, but not to ethnic groups. The State indicated that the concept of legal personality in relation to the Kaliña and Lokono peoples meant "that each member of the community was considered fully as a bearer of rights and duties." Thus, the State concluded that although there were no specific provisions regarding recognition of the collective personality of the Kaliña and Lokono indigenous peoples, domestic law in no way curtailed the rights of their members as legal subjects within the territory of Suriname.

104. Nevertheless, the State indicated that, in accordance with its treaty obligations, Suriname had initiated a process to examine the impact that the recognition of collective rights would have on its legal system. Also, it was formulating legislation concerning the legal relationship between the traditional authorities and the Government, and envisaged recognizing in the legislation the traditional authorities as the legitimate representatives of the indigenous and tribal peoples before the central Government, especially on issues related to their traditions and in circumstances in which it was necessary to consult the peoples. The State considered that the adoption of this new law would provide an acceptable solution to the issue of the recognition of collective legal personality. In its final arguments, the State indicated that it was aware that the indigenous and tribal peoples had the right to recognition of legal personality under international law, specifically, the Inter-American system for the protection of human rights. Added to this, the State indicated that, at this time, conflicting positions existed in Parliament as to whether property titles issued to the indigenous and tribal peoples should be individual or collective.

## ***B. Considerations of the Court***

105. The Court notes that the dispute in this section consists in determining the alleged failure of the State to comply with respect for collective recognition of legal personality to the indigenous and tribal peoples, especially the Kaliña and Lokono peoples.

106. The Court points out that, in the *case of the Moiwana Community v. Suriname*, the Court emphasized that domestic law guaranteed individual rights to the members of the indigenous and tribal communities, but did not recognize such communities as legal entities or establish collective rights to property.<sup>142</sup>

107. Subsequently, in the *case of the Saramaka People v. Suriname*, the Court noted that other communities in Suriname had been denied their rights owing to lack of legal standing and considered that "the right that the State recognize their juridical personality is one of the special measures that should be granted to the indigenous and tribal groups in order to ensure that they may enjoy their territories according to their traditions. This is the natural consequence of the

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<sup>142</sup> Cf. *Case of the Moiwana Community*, *supra*, para. 86.5.

recognition of the right of the members of the indigenous and tribal groups to enjoy certain rights collectively.”<sup>143</sup> Thus, the Court found that this recognition could be achieved by adopting legislative or other measures that recognized and took into account the specific way in which a tribal people sees itself as able to exercise and to enjoy the right to property collectively. Consequently, the State should establish the necessary legal and administrative conditions to ensure the possibility of recognition of their juridical personality, by means of consultations, fully respecting their customs and traditions, and in order to ensure them the use and enjoyment of their territory in accordance with their system of communal ownership, as well as the right of access to justice and equality before the law.<sup>144</sup>

108. Thus, the Court indicated that although “the recognition of [the] juridical personality of the individual members of the community was necessary for the enjoyment of other rights, such as the right to life and to personal integrity, this individual recognition did not take into account the way in which the members of the indigenous and tribal peoples in general, and [...] in particular, enjoy and exercise one right in particular; namely, the right to use and enjoy property collectively in accordance with their ancestral traditions.”<sup>145</sup>

109. Nevertheless, “the recognition of juridical personality is one way, although not the only way, to ensure that the community as a whole may enjoy and exercise fully the right to property, in accordance with their system of communal ownership, as well as the right to equal judicial protection against any violation of this right.”<sup>146</sup>

110. The Court also notes that, in the 1992 Lelydorp Peace Accord, the State undertook to create legal mechanisms to protect the lands of the indigenous and tribal peoples (*supra*, para. 51).

111. Meanwhile, this Court takes note of the observations made by various international agencies, such as: the Committee for the Elimination of Racial Discrimination of the United Nations<sup>147</sup> (hereinafter “UN”), the UN Human Rights Committee<sup>148</sup> and also the UN Special Rapporteur on the rights of indigenous peoples,<sup>149</sup> which have indicated that the legislative framework of Suriname does not recognize the legal personality of the indigenous peoples that would enable them to protect their territories and natural resources.

112. In this case, it is an undisputed fact that, currently, the laws of Suriname do not recognize the legal personality of the indigenous peoples and, consequently, they are unable to hold collective property titles. This was corroborated by the State during the hearing and by the indigenous

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<sup>143</sup> *Case of the Saramaka People, supra*, para. 172.

<sup>144</sup> *Cf. Case of the Saramaka People, supra*, para. 174.

<sup>145</sup> *Cf. Case of the Saramaka People, supra*, para. 168.

<sup>146</sup> *Cf. Case of the Saramaka People, supra*, para. 171.

<sup>147</sup> *Cf. International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Consideration of reports submitted by States Parties under Article 9 of the Convention, Concluding observations on Suriname (sixty-fourth session, 2004), UN Doc. CERD/C/64/CO/9, 28 April 2004, para. 11. Available at: <http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F64%2FCO%2F9&Lang=en>.*

<sup>148</sup> *Cf. Human Rights Committee, Consideration of reports submitted by States Parties under Article 40 of the Covenant, Concluding observations on Suriname (eightieth session, 2004), UN Doc. CCPR/CO/80/SUR, 4 May 2004, para. 21. Available at: <http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2F80%2FSUR&Lang=en>.*

<sup>149</sup> *Cf. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2002/65 (fifty-ninth session), UN Doc. E/CN.4/2003/90, 21 January 2003, para. 21. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/44/PDF/G0310544.pdf?OpenElement>.*

representatives to the Suriname National Assembly during the visit made to the National Assembly by the Court's delegation in the course of the on-site procedure.

113. The foregoing is particularly serious owing to the provisions of the judgment in the *case of the Saramaka People* of November 28, 2007 (*supra* para. 107),<sup>150</sup> which were reiterated to the State for the effects of that case, in the order on monitoring compliance of November 23, 2011.<sup>151</sup>

114. In conclusion, since the domestic laws of Suriname do not recognize the collective exercise of the juridical personality of the indigenous and tribal peoples, this Court finds that the State has violated Article 3 of the American Convention, to the detriment of the Kaliña and Lokono peoples, in relation to Article 2 of this instrument. In addition, for the effects of the instant case, the failure to recognize the juridical personality of the Kaliña and Lokono peoples has an impact on the violation of other rights recognized in Articles 1(1), 21 and 25 of the Convention, as will be examined below.

## VI-II

### **RIGHT TO COLLECTIVE PROPERTY (ARTICLE 21) AND POLITICAL RIGHTS (ARTICLE 23) IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION**

#### ***A. Arguments of the Commission and of the parties***

115. The **Commission** argued that the State of Suriname had violated the right to property established in Article 21 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples, by failing to adopt effective measures to recognize their right to collective ownership of the lands, territories and natural resources that they had traditionally and ancestrally occupied and used. Added to this, the Commission argued that the State had violated the Kaliña and Lokono peoples' right to property by: (i) granting property titles to non-indigenous persons within their traditional territory; (ii) establishing and maintaining the Wia Wia, Galibi and Wane Kreek Nature Reserves, and (iii) granting a mining concessions and authorizing mining operations within their traditional territory, all without conducting a prior, free and informed consultation process in accordance with the Inter-American standards, without a social and environmental impact assessment, and without granting them a reasonable share of the benefits derived from the concession.

116. In particular, the Commission argued that the continued granting of titles to non-indigenous third parties has meant that the rights of the Kaliña and Lokono peoples remain unprotected. It also asserted that some of the third parties had obtained court rulings in favor of their property rights, thus excluding the rights of the Kaliña and Lokono peoples. Regarding the nature reserves, the Commission affirmed that there was no rational connection between the protection of the environment and restrictions on the use and enjoyment of the territories and resources by indigenous peoples, because the latter contributed to its protection. The Commission also underlined the need to initiate a free and informed consultation with the communities to discuss the possibility of eliminating the reserves or retaining them under a co-management model that incorporated the full participation of the Kaliña and Lokono peoples. With regard to the mining concessions, the Commission indicated that the State had not consulted the communities affected when the mining operations were planned or commenced, and had failed to include any type of protection for the indigenous peoples. Also, the concessions had adversely affected activities in the traditional territory of the Kaliña and Lokono peoples by contamination of resources, deforestation, and habitat destruction, which had result in the decline of the wildlife they hunted.

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<sup>150</sup> Cf. *Case of the Saramaka People*, *supra*, para. 194.

<sup>151</sup> Cf. *Case of the Saramaka People v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 23, 2011, operative paragraph 3.b).

117. The **representatives** agreed with the Commission that the State had not recognized or guaranteed the right of the indigenous peoples to collective property. They also indicated that Suriname's acts and omissions were all the more egregious given the relationship between the recognition, guarantee and protection of the right to property and the victims' survival and well-being, as well as respect for other interrelated and interdependent rights. They added that, by failing to recognize and secure the rights of the alleged victims to their territory, Suriname had violated the right to property of the Kaliña and Lokono peoples, allocating areas of the lands to third parties and issuing individual titles in four of the victims' communities (Erowarte, Tapuku, Pierrekondre and Marijkedorp [Wan Shi Sha]); establishing nature reserves in their territory, and unilaterally granting concessions to exploit the natural resources.

118. In particular, the representatives argued that granting titles to non-indigenous third parties, despite the objections of the community, violated the State's obligation to ensure the effective enjoyment of the right to property. Regarding the nature reserves, they added that it was neither necessary nor proportionate to deny the indigenous peoples the right to property and other rights within the reserves, because conservation objectives could be achieved using less harmful means. Specifically, they affirmed that the State had, on the one hand, permitted mining concessions in nature reserves while, on the other hand, it had justified the denial of the alleged victims' rights to hunt and fish. The representatives also indicated that the Kaliña and Lokono peoples had not been consulted as regard the 1997 process to granting mining permits that authorized mining activities. In addition, no environmental impact assessment had been made before the start-up of these operations, and the Kaliña and Lokono peoples had not benefited from, or otherwise been compensated for, the use of their territory for mining activities. The representatives argued that, to the contrary, the mining and logging operations in the traditional territory of the alleged victims took place without any meaningful regulation or supervision by the State and prejudiced their traditional food sources, environment, and cultural and spiritual values. Furthermore, the representatives indicated that the State had failed to ensure that such activities would not cause significant damage to the traditional lands of the victims or lead to severe environmental degradation.

119. The **State** indicated that, in about 1975, the Government had "initiated a project called "Tuinstad Albina," to parcel out an area in the vicinity of the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp (Wan Shi Sha), in which titles of ownership, long-term lease and leasehold were granted to a number of non-indigenous and indigenous individuals."<sup>152</sup> The State argued that the area, which constituted the suburbs of Albina, was not inhabited by the Lower Marowijne Indigenous Peoples when the land was subdivided, or during the years that preceded the start-up of these activities, and indicated that the town of Albina, the capital of the district of Marowijne, had been a nucleus of social, economic and cultural activities in the Lower Marowijne region for centuries. It also indicated that although the Kaliña and Lokono peoples had taken part in these activities, they did not consider Albina to be part of their ancestral territory over which they could claim ownership rights. In this regard, the State indicated that these peoples never protested against the project, because the site on which it was carried out was not part of the land with which they had a special relationship. In addition, the State declared that part of the villages claimed, in which the indigenous peoples live, are shared with members of Maroon tribes.<sup>153</sup> During

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<sup>152</sup> According to the State, the public records show that, indeed, titles for a limited number of parcels were issued to non-indigenous persons, but also to indigenous persons such as Cornelis Pierre who requested and obtained a long-term lease on two lots in Erowarte, Tuinstad Albina.

<sup>153</sup> The State argued that the land claimed by the Kaliña and Lokono peoples is under the jurisdiction of three administrations: Galibi, Albina and Patamacca. Galibi comprises 677 indigenous persons and 5 Maroons; Albina 915 indigenous persons and 3,082 Maroons, and Patamacca, to the south of Marowijne District, comprises 412 Maroons, but has no records of indigenous peoples living in the area (merits file, folio 583).



the visit, it added that the area claimed includes around 18 communities in which Maroons reside (*supra* para. 41).

120. Regarding the nature reserves, the State affirmed that they had been established to advance nature conservation efforts and that they responded to a higher interest that prevailed over the property rights of the Kaliña and Lokono peoples. It also argued that it had never restricted access or use of resources within the reserves to these peoples, and it had encouraged their participation in the management of the reserves.<sup>154</sup> However, the State explained that it opposed the indigenous peoples managing the “nature reserves on their own.” The State also argued that the restitution of the lands that are now part of the reserves would pose a threat to its obligations towards its citizens and could jeopardize the balance of a system that had proved able to keep the peace, owing to the legal, social, economic, ethnic and racial implications that this restitution could signify. Similarly, the State affirmed that it was unable to share the management of the natural resources, because if all indigenous and Maroon peoples claimed control over such resources in their ancestral territories, it would be disastrous for Suriname’s economy.<sup>155</sup>

121. Regarding the bauxite mining concessions, the State affirmed that the indigenous peoples did not live in or near the mining area and that the distance between this and the nearest indigenous village (Alfonsdorp) was approximately 6.3 km. The State also indicated that, currently, there were no exploration or exploitation activities in the area; however, Suralco intended to reinitiate exploration activities, and an exploration team would be collecting bauxite samples from the area. Similarly, the State argued that the mining activities had had no harmful effects on the community and that, in any case, the alleged victims had been compensated for any possible damage that they might have been caused by the mining concessions, because they had benefited from the possibility of using the road that existed for their logging activities and to transport timber.

## **B. Considerations of the Court**

### **B.1 Interpretation of the right to collective property and participation in public affairs of the indigenous peoples in this case**

122. As established by this Court in 2007 in the *case of the Saramaka People v. Suriname*, the domestic laws of Suriname do not recognize the right to communal property of the members of its tribal peoples and it has not ratified ILO Convention No. 169.<sup>156</sup> However, Suriname has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the International

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<sup>154</sup> The State argued that the indigenous people may make free use of the resources in the three nature reserves in the Lower Marowijne area, because the restrictions in force for the other Surinamese inhabitants, such as official fishing and hunting licenses, do not apply to them (merits file, folio 587). It also affirmed that the State had given priority to the participation of the members of the Kaliña and Lokono peoples in the management of the reserves in the Lower Marowijne region, respecting and including their traditional knowledge. As an example, the State mentioned the promotion of activities such as tourism in the Galibi Nature Reserve, where members of the Kaliña and Lokono peoples were hired on a full-time basis or seasonally to help monitor the sea turtles. In addition, the State affirmed that it rents boats and lodges from the local community (merits file, folio 588). *Cf.* Affidavit made by Claudine Sakimin on January 27, 2015 (merits file, folios 479 and 480).

<sup>155</sup> The State emphasized that 85% of the economy was dependent on natural resources; thus State control was required because it was a matter of national security (merits file, folio 604).

<sup>156</sup> *Cf.* International Labour Organization (ILO), Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted on 27 June 1989, and in force since 5 September 1991. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314). Nevertheless, the United Nations Declaration on the Rights of Indigenous Peoples was adopted with the support of the State of Suriname, and its article 32 recognizes the right to consultation. *Cf. Case of the Saramaka People, supra*, para. 131, footnote 128, and United Nations (UN), United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, 107th plenary meeting of the General Assembly, 13 September 2007. Available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

Covenant on Economic, Social and Cultural Rights<sup>157</sup> (ICESCR), and voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples. The Committee on Economic, Social and Cultural Rights, which is the body of independent experts that monitors the implementation of the ICESCR by the States Parties, has interpreted Article 1 common to both Covenants as applicable to indigenous peoples.<sup>158</sup> In this regard, based on the right to self-determination of the indigenous peoples pursuant to the said Article 1, such peoples may “freely pursue their economic, social and cultural development” and may “freely dispose of their natural wealth and resources” to ensure that they are not “deprived of [their] own means of subsistence.”<sup>159</sup> According to Article 29(b) of the American Convention, this Court is unable to interpret the provisions of Article 21 of this instrument in a sense that would limit the enjoyment and exercise of the rights recognized by Suriname in these covenants.<sup>160</sup>

123. Furthermore, the Human Rights Committee has examined the obligations of the States Parties to the ICCPR, including Suriname, under Article 27 of that instrument, and noted that “persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, [which] may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.”<sup>161</sup>

124. The preceding analysis supports an interpretation of Article 21 of the American Convention that requires recognition of the right of the members of indigenous and tribal peoples to freely determine and enjoy their own social, cultural and economic development, which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied. Consequently, in this case, the right to property protected by Article 21 of the American Convention, and interpreted in light of the rights recognized in Article 1 common to the two Covenants, and Article 27 of the ICCPR which cannot be restricted when interpreting the American Convention in this case, confer on the members of the Kaliña and Lokono peoples the right to the enjoyment of their property in keeping with their community-based tradition.<sup>162</sup>

125. Applying this criteria to the present case, the Court concludes that, as indigenous peoples, the Kaliña and Lokono peoples are protected by international human rights law which guarantees the right to the collective territory they have used and occupied traditionally, derived from the use and occupation of the land and of the resources necessary for their physical and cultural survival

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<sup>157</sup> Suriname ratified both instruments on December 28, 1976. *International Covenant on Civil and Political Rights*, 19 December 1966, 99 U.N.T.S. 171, Can T.S. 1976 No. 47, 6 I.L.M. 368 (entry into force 23 March 1976), and *International Covenant on Economic, Social and Cultural Rights* (entry into force 3 January 1976).

<sup>158</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding observations on the Russian Federation (thirty-first session)*. UN Doc. E/C.12/1/Add.94, 12 December 2003, para. 11, in which the Committee expressed concern “about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant.”

<sup>159</sup> Article 1(1), common to the ICCPR and the ICESCR, establishes that “[a]ll 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.”

<sup>160</sup> Cf. Article 29 of the American Convention on Human Rights. Cf. *Case of the Saramaka People*, *supra*, paras. 93 *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 37, and *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 113 to 115 (affirming an interpretation of international human rights instruments that takes into account the progressive development of the *corpus iuris gentium* of international human rights law over time and also present-day conditions).

<sup>161</sup> *Case of the Saramaka People*, *supra*, para. 94. UN, Human Rights Committee, *General Comment No. 23. Article 27 (Rights of Minorities)* (fiftieth session, 1994), UN Doc. CCPR/C/21/Rev.1/Add.5, 4 August 1994, paras. 1 and 3.2.

<sup>162</sup> Cf. *Case of the Saramaka People*, *supra*, para. 95

and, also, that the State has the obligation to adopt special measures to recognize, respect, protect and guarantee to their members the right to communal ownership of this territory.<sup>163</sup>

126. In addition, the Court considers it important to emphasize that even though the parties have not argued the violation of Article 23 of the Convention during the proceedings before this Court, it finds it pertinent to apply the *iura novit curia* principle, which “allows it to examine the possible violation of provisions of the Convention that have not been alleged in the briefs presented by the parties, provided the parties have had the opportunity to express their respective positions in relation to the facts that substantiate this.”<sup>164</sup> Accordingly, the Court will rule on this right.

127. Based on the above, in light of the arguments of the parties, the Court finds that the violations that have been alleged relate to four main disputes: (a) the failure to recognize the right to collective property and the absence of delimitation, demarcation and land-titling of the ancestral lands of the Kaliña and Lokono indigenous peoples; (b) the granting of land titles and leases to non-indigenous persons within the territory claimed by the Kaliña and Lokono peoples; (c) the adverse effects on use and enjoyment of the parts of the nature reserves that fall within the alleged traditional territories, and (d) the absence of effective participation, by means of a consultation process, with regard to the mining concessions within one of the nature reserves in the ancestral territory.

128. The Court notes that, even though the State has acknowledged the establishment of nature reserves and the granting of mining concessions, these events occurred prior to Suriname’s ratification of the Convention in 1987. Although the State has not filed a preliminary objection in this regard, the Court will take into account its competence *ratione temporis* in relation to the disputes indicated in the preceding paragraph.

## **B.2 The failure to recognize the right to collective property of the Kaliña and Lokono indigenous peoples**

### **B.2.1 The right to collective ownership and the obligation to delimit, demarcate, grant title to, and ensure the use and enjoyment of the collective territory**

129. The Court recalls its case law in this regard in the sense that Article 21 of the American Convention protects the close relationship that the indigenous peoples have with their lands, as well as with the natural resources within those lands, and the incorporeal elements that are derived from them. “Among the indigenous peoples there is a communal tradition as regards the collective ownership of the land, in the sense that the ownership is not centered on an individual, but rather on the group and its community. This notion of ownership and possession of land does not necessarily conform to the classic concept of property, but the Court has established that it deserves equal protection under Article 21 of the American Convention. Disregard for specific versions of the use and enjoyment of property arising from the culture, uses, customs and beliefs of each people, would be tantamount to holding that there is only one way of using and disposing

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<sup>163</sup> Cf. *Case of the Saramaka People*, *supra*, para. 96.

<sup>164</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 163, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No.282, para. 305. The State made no comment on the alleged violation of the right of access to information during the merits stage before the Commission, even though it had been advised that the representatives had made these allegations; consequently, the State had the opportunity to state its position with regard to these facts. Also, during the on-site procedure, the State argued that, in Suriname, access to the public records was not denied.

of property, which, in turn, would render protection under that provision illusory for these communities.”<sup>165</sup>

130. The Court has considered that, owing to their very existence, the indigenous peoples have a right to live freely in their territories. In addition, the close relationship that the indigenous peoples have with the land should be recognized and understood as the essential basis of their culture, spiritual life, integrity and economic system. “For the indigenous communities, the relationship with the land is not merely a question of possession and production, but rather a material and spiritual element that they should be able to enjoy fully, including to preserve their cultural legacy and transmit it to the future generations.”<sup>166</sup> The culture of the members of the indigenous communities corresponds to a particular way of being, seeing and acting in the world, based on their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are a component of their world vision, their religious beliefs and, consequently, their cultural identity,<sup>167</sup> so that the protection and guarantee of the right to use and enjoyment of their territory is necessary in order to safeguard not only the survival of these communities, but also their development and evolution as a people.<sup>168</sup>

131. Throughout its case law on this matter, the Court has stressed the relevance of ensuring the protection of the collective nature of indigenous property (*supra* para. 129). In this regard, in the cases against Paraguay of the *Yakye Axa*, *Sawhoyamaxa* and *Xákmok Kásek* communities, the Court established that: (a) the traditional possession by the indigenous peoples of their lands had equivalent effects to the full title granted by the State, so that the area possessed in practice was equal to their property; (b) the members of the indigenous peoples who, for reasons beyond their control, had left or lost possession of their traditional lands retained the right to property over them, even in the absence of legal title, unless the lands had been lawfully transferred to third parties in good faith, and (c) the members of the indigenous peoples who had involuntarily lost the possession of their lands, and these had been transferred lawfully to innocent third parties, had the right to recover them or to obtain other lands of the same size and quality.<sup>169</sup>

132. Meanwhile, with regard to the guarantees of use and enjoyment of property, in the *case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, the Court indicated that States must ensure the effective ownership of the indigenous peoples and refrain from taking steps that could lead to State agents, or third parties acting with their acquiescence or tolerance, adversely affecting the existence, value, use or enjoyment of their territory.<sup>170</sup> In the *case of the Saramaka People v. Suriname*, the Court established that State must ensure the right of the indigenous peoples to control and to own their territory without any type of outside interference by third

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<sup>165</sup> Cf. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C. 146, para. 120, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 165.

<sup>166</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Judgment of August 31, 2001. Series C No. 79, para. 149, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 166.

<sup>167</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 135, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 166.

<sup>168</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, paras. 124, 135 and 137, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 166.

<sup>169</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, paras. 131 and 137; *Case of the Sawhoyamaxa Indigenous Community, supra*, para. 128, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 109.

<sup>170</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community, supra*, paras. 153 and 164.

parties.<sup>171</sup> In *Sarayaku v. Ecuador*, the Court established that States must ensure the right of the indigenous and tribal peoples to control and to use their territory and natural resources.<sup>172</sup>

### **B.2.1.1 The failure to delimit, demarcate and grant title in this case**

133. The Court has established that, based on the principle of legal certainty, the land rights of the indigenous peoples must be formalized by the adoption of the administrative and legislative measures required to create an effective mechanism for delimitation, demarcation and the granting of titles that recognizes these rights in the practice.<sup>173</sup> This is because the recognition of the right to indigenous communal property should be ensured by granting a formal property title, or other similar form of State recognition, that provides legal certainty concerning the indigenous ownership of land in the face of actions of third parties or of agents of the State itself, and that the “mere abstract or legal recognition of indigenous lands, territories or resources has almost no meaning if the property is not physically [delimited and demarcated].”<sup>174</sup>

134. In this regard, the Court already determined in the *Saramaka* case that the legal framework of the State of Suriname “merely grant[ed] the members of the [...] people a privilege to use the land, which d[id not guarantee them the right to own and to control their territory without any outside interference. [...] Therefore,] to obtain such title, the territory traditionally used and occupied by the members of the [...] people must first be delimited and demarcated in consultation with such people and other neighboring peoples.”<sup>175</sup>

135. The Court points out that Article 10 of the 1992 Lelydorp Peace Accord established the State’s undertaking to the indigenous and tribal peoples that it would demarcate and grant legal title to their territories (*supra* para. 51).

136. The evidence in the case file, as well as the on-site procedure conducted by the Court’s delegation, reveal that, at the present time, Suriname still does not recognize the right to collective property of indigenous and tribal peoples, nor do mechanisms or procedures exist to delimit the traditional territories. Consequently, the Kaliña and Lokono peoples have no type of guarantee or title with regard to the territory and habitat they have occupied traditionally, or to the land they possess currently. In addition, the State has not taken any steps to delimit, demarcate or grant title to the traditional territory, or to ensure to the Kaliña and Lokono peoples the use and enjoyment of their territory in relation to third parties.

137. Regarding the area of the traditional territory and the occupation by other tribal people (Maroons), in this case the representatives have indicated that the traditional territory covers an area of around 133,945 ha and have provided a map with the approximate areas covered by this territory (*supra* paras. 8 and 30).

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<sup>171</sup> Cf. *Case of the Saramaka People*, *supra*, para. 115.

<sup>172</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 146.

Additionally, in the case of the *Garífuna Community of Punta Piedra and its members*, in which the community already had title to the land, the Court established that the State must ensure the effective use and enjoyment of indigenous or tribal property and, to this end, various measures were required, including, “regularization, [which] consists of a process arising from the State’s obligation to remove any type of interference in the territory in question [...] so that the Community [concerned] may, peacefully and effectively, use and enjoy full ownership of the collective property.” *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 181.

<sup>173</sup> Cf. *Case of the Mayagna (Sumo) Awás Tingni Community*, *supra*, para. 153 and 164, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 14, 2014. Series C No. 284, para. 119.

<sup>174</sup> *Case of the Yakye Axa Indigenous Community*, *supra*, para. 143, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 169.

<sup>175</sup> Cf. *Case of the Moiwana Community*, *supra*, para. 210, and *Case of the Saramaka People*, *supra*, para. 115.

138. The Court has established that the territorial rights of the indigenous peoples “encompass a different and broader concept that is related to their collective right to survival as an organized people with control of their habitat as an essential condition for the reproduction of their culture, for their very survival, and to implement their life projects.”<sup>176</sup> “Ownership of the land ensures that the members of indigenous communities conserve their cultural heritage.”<sup>177</sup>

139. It should be clarified that, in order to delimit, demarcate and grant title to the traditional territory in this case, the Court finds that the right to property of the indigenous and tribal peoples includes full guarantees over the territories they have traditionally owned, occupied and used in order to ensure their particular way of life, and their subsistence, traditions, culture, and development as peoples.<sup>178</sup> Nevertheless, there may be other complementary or additional traditional areas to which they have had access for their traditional or subsistence activities (which may have other purposes), regarding which they should be ensured, at least, the necessary access and use.

140. In addition, the Court has verified that, within the territory that the Kaliña and Lokono peoples allege is theirs traditionally, there are at least 10 Maroon settlements that are excluded from their claims, namely: 1) Albina; 2) Papatam; 3) Mankelekampu; 4) Mariakondre; 5) Eduardkondre; 6) Akoloikondre; 7) Bamboesi; 8) Koni; 9) Moengotapu, and 10) Adjoemakondre (*supra* para. 47). However, the Court has insufficient information to clarify the arguments relating to possible Maroon settlements in: 1) Bilokondre; 2) Krontokondre; 3) Soke; 4) Pakirakondre; 5) Mopikondre; 6) Onikaikondre; 7) Manjabong; 8) Bonikondre or Baajoebekampu; 9) Nengrekriki; 10) Solegakampu, and 11) Brunswijkkamp (*supra* paras. 48 and 49).

141. Notwithstanding the above, since it is the State’s obligation to delimit the traditional territories,<sup>179</sup> the State must, following a consultation process and using the necessary administrative and legal measures in keeping with the relevant international standards, first delimit the territories that correspond to the Kaliña and Lokono peoples, in accordance with paragraph 139 of this Judgment, and then proceed to demarcate and title them, guaranteeing their use and enjoyment. To this end, the State must also respect the rights of the tribal peoples or their members in the area. Thus, the State must, in agreement with the indigenous and Maroon communities, draw up rules for peaceful and harmonious coexistence in the territory in question.<sup>180</sup>

142. Based on the above, the State’s failure to delimit, demarcate and grant title to the territories of the Kaliña and Lokono peoples has violated the right to collective property, recognized in Article 21 of the American Convention, and the obligation to adopt domestic legal provisions established in Article 2 of this instrument, to the detriment of these peoples.

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<sup>176</sup> *Case of the Yakye Axa Indigenous Community, supra*, para. 146, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members, supra*, para. 143.

<sup>177</sup> *Case of the Yakye Axa Indigenous Community, supra*, para. 146.

<sup>178</sup> Similarly, article 26 of the United Nations Declaration on the Rights of Indigenous Peoples recognizes the right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, as well as the right to own, use, develop and control these lands; thus, States must give legal recognition and protection to these lands, respecting the customs, traditions and land tenure systems of the indigenous peoples concerned. UN, United Nations Declaration on the Rights of Indigenous Peoples, *supra*.

<sup>179</sup> *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra*, para. 153, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members, supra*, para. 119.

<sup>180</sup> *Cf. Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 326.

### **B.2.2 The right to request the restitution of the territory, because individual titles have been granted to non-indigenous and non-tribal third parties**

143. In this section, the Court will examine the alleged effects arising from the granting of titles to third parties in the territory that the Kaliña and Lokono peoples claim is theirs traditionally and, on this basis, will determine whether they have the right to claim its restitution. To this end, the Court will consider the existence of such titles, the ownership of the land claimed, the validity of the claim, and will also weigh the right to private property against the right to collective property.

144. The Court has verified that, traditionally, several Kaliña villages and the Lokono village of Marijkedorp (Wan Shi Sha) are located on the banks of the Marowijne River, as indicated in the oral history told by the elders.<sup>181</sup> According to different statements (*supra* paras. 30 and 33), the Kaliña and Lokono peoples have maintained a strong physical and spiritual relationship with the river, and are recognized in Suriname as the “Lower Marowijne Peoples” (*supra* para. 29).

145. In addition, the Court has established that it is an undisputed fact that, in 1975, the State initiated an urban subdivision project called “Tuinstad Albina” (Garden City Albina) parallel to the Marowijne River, near the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp (Wan Shi Sha), and that some of the lots were granted to non-indigenous persons, by the issue of freehold titles, and leasehold titles and long-term leases until at least 2013, over part of the traditional lands of the Kaliña and Lokono peoples (*supra* paras. 96 to 98).

146. Even though the Court does not have precise information on the number, location, area and date of issue of the property titles or leases, the helpful information submitted by the State reveals, at least, the existence of several titles registered in the Suriname Domains Office, all of them located within the Tuinstad Albina project (*supra* para. 27). Some of them refer to private property, and others to short- and long-term leases granted to private individuals on lands allegedly owned by the State. Furthermore, the body of evidence in the case includes a partial list with the names of approximately 17 non-indigenous persons who own title to land in the territories of the indigenous peoples of Pierrekondre and Marijkedorp (Wan Shi Sha).<sup>182</sup> The Court is unaware of the type of title granted (ownership or leasehold).

147. Furthermore, during the on-site procedure, the Court’s delegation was able to verify the existence of several buildings on the territory of Pierrekondre and Marijkedorp (Wan Shi Sha), located on the banks of the Marowijne River, which are presumably vacation homes of third parties.<sup>183</sup> These buildings have security devices preventing entry, thus restricting access to the river. In addition, the delegation observed the construction of a small building that, according to the representatives, consisted in a hotel-casino.<sup>184</sup> Thus, the Court has verified that some of the

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<sup>181</sup> Cf. Traditional use and management of the Lower Marowijne area by the Kaliña and Lokono, *supra* (evidence file, folio 40). In addition, Grace Watamaleo indicated that her village, Wan Shi Sha, was located on the left bank of the Marowijne River, between Albina and the indigenous village of Pierrekondre. Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 442).

<sup>182</sup> Cf. Partial list of non-indigenous persons who hold titles within the indigenous territory of the Lower Marowijne (file of annexes to the Merits Report, folio 365). These persons are: (a) in Pierrekondre: 1. Mr. Ramlal; 2. Mr. Findlay; 3. Mrs. Ramdath; 4. Mr. Tjon Tjin Joe; 5. Mr. Tjon a Tjoen; 6. Mr. Tjoe a Long; 7. Mr. Hee On; 8. Mr. De Vries; 9. Mr. Quartier, and 10. Mr. Ferreira, and (b) in Marijkedorp (Wan Shi Sha): 11. Mr. Tjon a Tjoen; 12. Mr. Tjon a Tjoen; 13. Mr. Tjanga-sin; 14. Mr. Liesdeck; 15. De Surinaamse Bank; 16. Mr. Tjon Sienki, and 17. Mr. Dinesh Boekha.

<sup>183</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 443) and Testimony of Captain Jona Gunther during the public hearing held in this case.

<sup>184</sup> Although the Court delegation verified the construction of the building, it was unable to verify from the evidence in the case file before the Court or from the on-site procedure, whether this construction was destined to be a hotel or a casino.

land claimed by the Kaliña and Lokono peoples is owned by non-indigenous third parties. However, despite this, the members of these peoples “still, today, consider that those lands belong to them.”<sup>185</sup>

148. During the on-site procedure, the Court also corroborated that the residential area of the villages of Erowarte, Tapuku, Pierrekondre and Marijkedorp (Wan Shi Sha) is only a few meters away from the buildings of the local indigenous peoples.<sup>186</sup>

149. In this regard, the Court’s consistent case law has established that indigenous and tribal peoples who have lost their traditional lands involuntarily have the right to request restitution, or to obtain other lands of the same size and quality, when those lands have been transferred legally to innocent third parties.<sup>187</sup>

150. Likewise, as established in the cases of the communities of *Moiwana*, *Yakye Axa*, *Sawhoyamaxa* and *Xákmok Kásek*, the physical and spiritual foundations of the identity of the indigenous peoples are based mainly on their unique relationship with their traditional lands, so that, while this relationship exists, the right to request the restitution of those lands remains valid. If this relationship should have extinguished, that right would also extinguish.<sup>188</sup> Accordingly, the Court will analyze the right of the Kaliña and Lokono peoples to request the restitution of their traditional territories.

151. To determine the existence of the relationship of the indigenous peoples with their traditional land, the Court has established that: (i) this may be expressed in different ways, according to the indigenous people in question and their specific circumstances, and (ii) the relationship with the land must be possible. The ways in which this relationship is expressed could include traditional use or presence by spiritual or ceremonial ties; sporadic settlements or crops; seasonal or nomadic hunting, fishing or gathering; use of natural resources connected to their customs, and any other element characteristic of their culture.<sup>189</sup> The second element means that the members of the indigenous peoples are not prevented, for reasons beyond their control, from carrying out those activities that reveal the persistence of the relationship with their traditional territories.<sup>190</sup>

152. In this case, the Court observes that the relationship of the members of the Kaliña and Lokono peoples with their traditional territory is revealed, *inter alia*, by the fact that they conduct their traditional activities within the lands claimed (*supra* paras. 33 and 34), as well as by their

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<sup>185</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444).

<sup>186</sup> In her affidavit, alleged victim Grace Watamaleo indicated that she wanted to be “very clear that the houses [of third parties were] in [their] villages and right next to where [the indigenous people had] their houses. [It was] like someone built a house in [their] back yard. Many of the people in [her] community look out of their windows or front doors and see th[o]se houses. [They were] meters away from many of [their] houses and not in some uninhabited part of [their] lands.” Similarly, alleged victim Captain Jona Gunther testified during the public hearing that the houses of third parties had been built from five to ten meters from the indigenous homes. Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444) and Testimony of Captain Jona Gunther during the public hearing held in this case.

<sup>187</sup> Cf. *Case of the Sawhoyamaxa Indigenous Community*, *supra*, para. 128, and *Case of the Garifuna Community of Punta Piedra and its members*, *supra*, para. 173.

<sup>188</sup> Cf. *Case of the Moiwana Community*, *supra*, para. 131 and 133; *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 131, 135, 137 and 154; *Case of the Sawhoyamaxa Indigenous Community*, *supra*, paras. 127, 130 and 131, and *Case of the Xákmok Kásek Indigenous Community*, *supra*, para. 112.

<sup>189</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 154, and *Case of the Sarayaku Indigenous People*, *supra*, para. 148.

<sup>190</sup> Cf. *Case of the Sawhoyamaxa Indigenous Community*, *supra*, para. 132, and *Case of the Sarayaku Indigenous People*, *supra*, para. 148.



intrinsic and physical relationship with the Marowijne River, which is an essential element of their cultural and traditional identity and a source of their survival (*supra* para. 35). Indeed, the river is used by the members of these peoples to moor their boats, to fish, to bathe, and to wash their clothes (*supra* para. 98). In addition, Captain Grace Watamaleo stated that they “have a strong spiritual connection to the Marowijne River, which has a central place in [their] cultural identity and traditions, and through which [they] understand that [they] belong to [that] place as much as [they] believe that it belongs to [them].”<sup>191</sup> However, the testimony of several members of the Kaliña and Lokono peoples (*supra* para. 98) was consistent in indicating that the owners of the buildings have restricted direct access to the Marowijne River, and this was corroborated during the on-site procedure.

153. In addition, the Court has already established that Suriname does not recognize the right to collective property; hence, the Kaliña and Lokono peoples have not been able to obtain the delimitation, demarcation and titling of the territories they claim, even though the State undertook to ensure this right and to demarcate the indigenous residential lands in the 1992 Lelydorp Peace Accord (*supra* para. 51). To the contrary, Suriname has issued individual land titles to non-indigenous persons in the territories claimed. In view of this situation, and owing to the absence of a remedy to obtain the protection of their rights (*infra* paras. 249 and 258), the Kaliña and Lokono peoples have filed several actions to achieve the recognition of their right to collective property and a halt to the granting of land titles. In this regard, the Court has verified several claims filed between 1972 and at least 2013, in relation to the presence of third parties in their territories<sup>192</sup> (*supra* paras. 59 to 69). Consequently, the Court finds that the State was aware of the territorial claims of the Kaliña and Lokono peoples and, despite this, without responding to any of their petitions, continued to issue private land titles that prejudiced them, even though they had claimed that the said area was part of their ancestral territory. Thus, the State failed to secure the use and enjoyment of their territory without any outside interference.<sup>193</sup>

154. Based on the above, the Court concludes that the direct access of these peoples to the Marowijne River has been restricted and, consequently, the use and enjoyment of the traditional lands adjoining the river. Nevertheless, the Court finds that the right of the Kaliña and Lokono peoples to require the restitution of their traditional lands, which are currently owned and in the possession of non-indigenous third parties, remains valid.<sup>194</sup>

155. However, the Court reiterates its case law that both the property of private individuals and the collective property of the members of the indigenous communities are protected by Article 21 of the American Convention.<sup>195</sup> In this regard, the Court has indicated that, when there is a conflict of interests in relation to indigenous claims, or a real or apparent conflict between the right to

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<sup>191</sup> Cf. Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 444).

<sup>192</sup> These include: (a) petitions to the Independence Commission in 1972; (b) the filing of three claims before domestic courts in 1975 and 1976; (c) the 142-kilometer march to Paramaribo to protest against the subdivision project; (d) claims owing to the existence of private properties and concessions in cases such as *Tjang A Sjin v. Zaalman and Others* and *Celientje Martina Joeroeja-Koewie and Others v. Suriname & Suriname Stone & Industries N.V.*; (e) formal petitions submitted to the President of Suriname on three occasions (2003, 2004 and 2005) based on article 22 of the Constitution (right of petition) to obtain recognition of their territory; (f) meetings with senior authorities in 2003, and (g) petitions filed by CLIM on behalf of the peoples, and by the captains of the eight peoples of the Lower Marowijne on four occasions (2004, 2006, 2007, 2013) requesting the suspension of the issue of titles in the area of Tuinstad Albina or any other activity that would affect their territory, as well as contesting the construction of a house, a filling station, a shopping mall, and a casino.

<sup>193</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, para. 153, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 233.

<sup>194</sup> Cf. *Case of the Xákmok Kásek Indigenous Community*, *supra*, paras. 115 and 116.

<sup>195</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 143, and *Case of the Saramaka People*, *supra*, para. 89.

indigenous communal property and the property of private individuals, the legality, necessity, proportionality and attainment of a legitimate objective in a democratic society<sup>196</sup> (public utility and social interest) must be assessed on a case-by-case basis, in order to restrict the right to property, on the one hand, or the right to traditional lands, on the other,<sup>197</sup> without the restriction of the latter preventing the survival of the members of the indigenous communities as a people.<sup>198</sup> The Court has defined the content of each of these parameters in its case law (*case of the Yakye Axa Indigenous Community*<sup>199</sup> and subsequent cases).

156. In this regard, it is not for this Court to decide whether the right to collective property of the Kaliña and Lokono peoples should take precedence over the right to private property, because the Inter-American Court is not a domestic court of law that decides disputes between private individuals. This task corresponds exclusively to the State,<sup>200</sup> which must execute it without any discrimination and taking into account the above-mentioned criteria and circumstances, including the special relationship that the indigenous peoples have with their lands.<sup>201</sup>

157. Furthermore, the Court considers that the fact that the lands claimed are in the hands of private individuals does not constitute, *per se*, a sufficient reason to deny *prima facie* the indigenous claims.<sup>202</sup> This would place the indigenous peoples in a vulnerable situation where the rights to individual property can prevail over the rights to communal property,<sup>203</sup> owing merely to the existence of titles in favor of the former, to the detriment of the latter, as in cases such as *Tjang A Sjin v. Zaalman and Celientje Martina Joeroeja-Koewie and Others v. Suriname & Suriname Stone & Industries N.V.* (*supra* paras. 62 to 64).

158. The foregoing does not mean that whenever there is a conflict between the territorial interests of the State or of private individuals and the territorial interests of the members of the

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<sup>196</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 144 and 146, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 156. Regarding the assessment of proportionality, see: *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 51, and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2013. Series C No. 265, para. 127 and *ff.*

<sup>197</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 144 and 145, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 156.

<sup>198</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 146 to 148, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 156.

<sup>199</sup> Article 21(1) of the Convention stipulates that: “[t]he law may subordinate [the] use and enjoyment [of property] to the interest of society.” The need for legal restrictions will depend on such restrictions being designed to meet an essential public interest, and it is insufficient to prove, for example, that the law fulfills a useful or timely purpose. The proportionality is rooted in the fact that the restriction must be closely adapted to the achievement of a legitimate purpose, interfering as little as possible in the effective exercise of the restricted right. Lastly, in order to be compatible with the Convention, the restrictions must be justified by collective objectives that, owing to their importance, have a clear precedence over the need for the full enjoyment of the restricted right. Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para.145 and *ff.*

<sup>200</sup> Cf. *Case of the Sawhoyamaxa Indigenous Community*, *supra*, para. 136 and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 144.

<sup>201</sup> States must take into account that indigenous territorial rights encompass a different and broader concept that is related to the collective right to survival as an organized people with control of their habitat as an essential condition for the reproduction of their culture, for their very survival, and to implement their life projects. The ownership of the land ensures that the members of the indigenous communities conserve their cultural heritage. Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 146, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, paras. 145 and 146.

<sup>202</sup> To the contrary, the right to restitution would be meaningless without providing a real possibility of recovering the traditional lands, and would merely involve relying on the willingness of the actual owners, forcing the indigenous peoples to accept alternative lands or monetary compensation. Cf. *Case of the Sawhoyamaxa Indigenous Community*, *supra*, para. 138, and *Case of the Xákmok Kásek Indigenous Community*, *supra*, para. 310.

<sup>203</sup> Cf. *Case of the Saramaka People*, *supra*, para. 173.

indigenous communities, the latter prevail over the former.<sup>204</sup> Thus if, for objective, specific and justified reasons, the State is unable to take measures to return the traditional territory and the communal resources to the Kaliña and Lokono peoples<sup>205</sup> - after the possibility of expropriating<sup>206</sup> the property of third parties has been adequately assessed as indicated in this Judgment - the State may offer alternative lands of the same or greater size and quality or payment of fair compensation, or both, by mutual agreement with the peoples concerned<sup>207</sup> (*infra* para. 281).

159. Notwithstanding the above, the State must establish, by mutual agreement with the Kaliña and Lokono peoples and the third parties, rules for peaceful and harmonious coexistence in the lands in questions, which respect the uses and customs of these peoples and ensure their access to the Marowijne River (*infra* para. 283).

160. Based on the above, the Court concludes that the State of Suriname was aware of the claims for restitution of lands of the Kaliña and Lokono peoples and continued to issue property titles and leases to private third parties, at least until 2013, despite these specific claims. Furthermore, the Court reiterates that the failure to delimit, demarcate and grant title in favor of the Kaliña and Lokono peoples, made it possible to continue issuing land titles, without these peoples having a domestic remedy that would allow them to achieve the protection of their rights. This violates the obligation to ensure the right protected by Article 21 of the American Convention, in relation to Article 1(1) thereof.

### ***B.3 Nature reserves in the traditional territory***

161. Regarding the nature reserves in the territory that is allegedly traditional, the Court observes that the arguments are related, on the one hand, to the creation of the reserves and the absence of consultation regarding their establishment and their perpetuation and, on the other hand, to certain restrictions for the Kaliña and Lokono peoples within the reserves. Accordingly, the Court will now delimit its jurisdiction.

162. In relation to the creation of the nature reserves of Wia Wia (1966), Galibi (1969) and Wane Kreek (1986), the Court reiterates that it will not rule with regard to their establishment and other facts that occurred prior to the acceptance of its jurisdiction. However, it will rule on “new facts” that have taken place following the date on which Suriname accepted the Court’s contentious jurisdiction, “as well as with regard to violations that, although they started prior to that date, have continued or remained following it”;<sup>208</sup> in other words, the alleged persistence of the reserves and their negative impact.

#### ***B.3.1 The alleged persistence of the nature reserve and the claims***

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<sup>204</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 149.

<sup>205</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 149, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 325.

<sup>206</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 217, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 324.

<sup>207</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 149 and 151, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 325.

<sup>208</sup> *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 27, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 30.

163. The Court has indicated that, together, the three nature reserves cover around 59,800 ha of the 133,945 ha claimed in this case, and this represents approximately 45% of the total territory claimed by the Kaliña and Lokono peoples (*supra* para. 71).

164. The Court has established that the relationship with the land and the natural resources that the indigenous and tribal peoples have used traditionally, and which are necessary for their physical and cultural survival, as well as for the development and continuation of their world vision, must be protected under Article 21 of the Convention. The purpose of this protection is to ensure that the indigenous and tribal peoples may continue to enjoy their traditional way of life and that their cultural identity, social structure, economic system, customs, beliefs and distinctive traditions are respected, guaranteed and protected by the States.<sup>209</sup> Hence, the indigenous peoples are entitled to the natural resources that they have traditionally used within their territory because, without them, their economic, social and cultural survival are at risk.<sup>210</sup>

165. In addition, the Court has examined, in light of its case law, the right to claim collective lands that are in the hands of private individuals or subject to State interests. In this regard, it has indicated that the State must assess whether the restrictions in force in the traditional territory comply with the requirements of legality, necessity, proportionality and due purpose (*supra*, para. 155). Thus, for example, in the case of the *Xákmok Kásek*, the Court established that: “[...] the State must adopt the necessary measures to ensure that [its domestic law concerning a protected area] does not represent an obstacle to the return of the traditional lands to the members of the Community.”<sup>211</sup> It should be noted that, in that case, the protected area was established at a time when the Court had jurisdiction.

166. Regarding the alleged violation owing to the persistence of the nature reserves to date, the Court specifies that, owing to its lack of jurisdiction to examine their creation, it is prevented from examining aspects related to the process that led to the technical determination of the dimensions, limits, and areas established as nature reserves. Furthermore, the violations that have been verified owing to the failure to recognize the property of the Kaliña and Lokono peoples, as well as the failure to delimit their territory, do not allow this Court to know the precise dimension of their traditional territory that is within these reserves, and which has already resulted in the violation of the right to collective property (*supra* para. 142). Consequently, the Court does not have any reliable evidence concerning the total area of the nature reserves claimed, which could correspond to the traditional territory possessed, occupied and used; in particular by the villages that adjoin the reserves, namely: Christaankondre and Langamankondre, with a population of around 1,000 persons, and Alfonsdorp with around 300 persons.

167. However, the Court has verified that, mainly in the Galibi and Wane Kreek nature reserves, there has been a continuous relationship between the Kaliña and Lokono peoples and certain areas that they use for their way of life; for example, hunting, fishing, gathering traditional medicinal plants, cultural centers, and sacred sites (*supra* paras. 37 and 84). In particular, at least six sacred sites were indicated within the Galibi Nature Reserve and three within the Wane Kreek Nature Reserve (*supra* para. 37). The Court has no information related to the traditional use and relationship with the Wia Wia Nature Reserve; hence, it will not rule in that regard.

168. Based on the above, in light of the Court’s case law, the Kaliña and Lokono peoples have the right to claim the possible restitution of the parts corresponding to their traditional territory

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<sup>209</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 124, 135 and 137, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 167.

<sup>210</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 135 and 137, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, paras. 165 to 167 and 172.

<sup>211</sup> Cf. *Case of the Xákmok Kásek Indigenous Community*, *supra*, para. 313.

adjoining the nature reserves under domestic law and, in this regard, the State must assess the rights involved (*supra* paras. 155 and 165). In this case, the State must weigh the collective rights of the Kaliña and Lokono peoples against the protection of the environment as part of the public interest. Consequently, it must determine this when implementing the delimitation, demarcation and titling of the corresponding traditional territories (*supra* para. 139).

### **B.3.2 Alleged restrictions for the indigenous peoples in the nature reserves**

169. First, the Court takes note of the Suriname State's commitment to, and interest in, environmental protection as revealed by the creation of several nature reserves within its territory, and the measures taken to maintain them. However, according to the representatives and the Commission, the State has restricted the rights of the Kaliña and Lokono peoples within the reserves in order to protect the natural resources and wildlife within them.

170. In this regard, given the existence of the reserves, the Court will assess whether the alleged restrictions imposed on the indigenous peoples were proportionate, in light of the relevant standards. To this end, it will analyze: (a) the compatibility of the right of the indigenous peoples with the protection of the environment, and (b) the restrictions imposed and their application to this case.

#### **B.3.2.1 Compatibility of the rights of the indigenous peoples and the protection of the environment**

171. Regarding environmental protection as a justification for public interest, in the *Salvador Chiriboga* case, the Court established that, in a democratic society, the protection of the environment by the creation of a metropolitan park was a legitimate reason to restrict the right to property established in Article 21 of the Convention.<sup>212</sup>

172. In addition, the Court has emphasized the importance of the protection, conservation and improvement of the environment contained in Article 11 of the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights "Protocol of San Salvador,"<sup>213</sup> as an essential human right related to the right to a dignified life derived from Article 4 of the Convention in light of the existing international *corpus iuris* on the special protection required by members of indigenous communities "in relation to the general obligation to ensure rights contained in Article 1(1), and to the obligation to achieve the full recognition of the rights progressively, contained in Article 26 thereof."<sup>214</sup> Nevertheless, as indicated in the *case of the Xákmok Kásek Indigenous Community*, the Court has determined that "[...] the State must adopt the necessary measures to ensure that [its domestic laws concerning the protected area] do not represent an obstacle to the return of traditional lands to the members of the Community."<sup>215</sup>

173. The Court considers it important to refer to the need to ensure the compatibility of the safeguard of protected areas with the adequate use and enjoyment of the traditional territories of indigenous peoples. In this regard, the Court finds that a protected area consists not only of its

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<sup>212</sup> Cf. *Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits*. Judgment of May 6, 2008. Series C No. 179, para. 76

<sup>213</sup> Article 11 of this instrument stipulates that: "1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment." Suriname ratified the Protocol of San Salvador on February 28, 1990. The Protocol entered into force internationally on November 16, 1999.

<sup>214</sup> Cf. *Case of the Yakye Axa Indigenous Community supra*, para. 163, and *Case of the Xákmok Kásek Indigenous Community, supra*, para. 187.

<sup>215</sup> Cf. *Case of the Xákmok Kásek Indigenous Community, supra*, para. 313.

biological dimension, but also of its socio-cultural dimension and that, therefore, it requires an interdisciplinary, participatory approach.<sup>216</sup> Thus, in general, the indigenous peoples may play an important role in nature conservation,<sup>217</sup> since certain traditional uses entail sustainable practices and are considered essential for the effectiveness of conservation strategies.<sup>218</sup> Consequently, respect for the rights of the indigenous peoples may have a positive impact on environmental conservation. Hence, the rights of the indigenous peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights.<sup>219</sup>

174. In this regard, in her expert opinion, the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, indicated to the Court that:

“International environmental law and international human rights law should not be considered separate, but rather interrelated and complementary, bodies of law. Indeed, the States Parties to the Convention on Biological Diversity (CBD) have incorporated respect for the related international rights and obligations into their decision on protected areas in relation to indigenous peoples. [...] The CBD, and its authorized interpretation by the Conference of the Parties, defends fully the rights of the indigenous peoples in relation to the protected areas and requires that these are established and managed in full compliance with the State’s international obligations. This permits the application of the whole range of the State’s human rights obligations as defined by the American Convention on Human Rights and established in the UN Declaration. It is also the consensus reflected in the main international policy norms and best practice. [...] The [UN] Rapporteur has adhered to these same basic principles affirmed by the Human Rights Committee and the Committee for the Elimination of Racial Discrimination. [...]”<sup>220</sup>

175. Meanwhile, expert witness Jeremie Gilbert testified before the Court concerning the mechanisms for weighing the rights in play in this type of case, and indicated that:

[Regarding the criterion of necessity,] the indigenous peoples are part of the natural protection; there is no need to expel the indigenous peoples in the name of protecting nature. [...] Regarding their legitimacy, the protection of nature is legitimate, but based on [what has been said,] the indigenous peoples are part of the protection of nature, so there is no legitimate reason to eliminate these peoples

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<sup>216</sup> Cf. Secretariat of the Convention on Biological Diversity (2004), Addis Ababa Principles and Guidelines for the Sustainable Use of Biological Diversity (CBD Guidelines), Montreal: Secretariat of the Convention on Biological Diversity, Practical principle 9, p. 16. Available at: <https://www.cbd.int/doc/publications/addis-gdl-en.pdf>, and Durban Accord and Action Plan adopted at the Vth World Parks Congress, Durban, South Africa, 2003, p. 25. During this Congress, organized by the International Union for Conservation of Nature (IUCN) and the World Commission on Protected Areas, a new protected area paradigm was adopted that superseded the consideration of a nature reserve as a mere national conservation space and introduced scientific, economic and cultural claims and implemented management and funding policies involving different stakeholders. Available at: <http://www.danadeclaration.org/pdf/durbanactioneng.pdf>.

<sup>217</sup> Cf. Rio Declaration on Environment and Development, Principle 22, adopted at the United Nations Conference on Environment and Development held in Rio de Janeiro from June 3 to 14, 1992, which Suriname adhered to without any reservations. Available at: <http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>; World Conference on Indigenous Peoples, high-level plenary meeting of the General Assembly of the United Nations, in which Suriname took part, Resolution adopted by the General Assembly on September 22, 2014, paras. 22, 26, 34 and 35. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/468/28/PDF/N1446828.pdf?OpenElement>.

<sup>218</sup> Cf. WWF International, 2008. Indigenous Peoples and Conservation: WWF Statement of Principles. Gland, Switzerland: WWF International, pp. 5 and 9. Available at: <http://www.worldwildlife.org/publications/wwf-statement-of-principles-on-indigenous-peoples-and-conservation>.

<sup>219</sup> Cf. International Union for Conservation of Nature and WWF-International, *Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Cases Studies*. IUCN, Gland, Switzerland, and Cambridge, UK, and WWF International, Gland, Switzerland, Principle 1. The principles, guidelines and case studies presented in this report respond to Resolution 1.53 on Indigenous Peoples and Protected Areas adopted at the IUCN World Conservation Congress in Montreal, in October 1996.

<sup>220</sup> Expert opinion provided by Victoria Tauli-Corpuz during the public hearing held on February 3 and 4, 2015 (transcript of the public hearing, p. 51).

who have been part of such resources. [Therefore], if we apply the law strictly, we can state that, in this situation, [States] are in error when they use public interest as justification."<sup>221</sup>

176. In addition, the Court takes note that the State has indicated its commitment to protecting the environment and explicitly emphasized its "obligations arising from the UN Convention on Biological Diversity [1992],<sup>222</sup> and the Ramsar Convention on Wetlands [1971]."<sup>223</sup> Also, the preamble to the 1998 Nature Protection Order (that amended the orders creating the Wia Wia and Wane Kreek Nature Reserves) expressly mentioned the State's commitment to the conservation and sustainable development of tropical forests, "as a result of Suriname's accession to several international conventions, such as: the World Heritage Convention [1972],<sup>224</sup> the Convention on Biological Diversity [1992], and the United Nations Framework Convention on Climate Change [1998],"<sup>225</sup> among other instruments applicable to Suriname in the matter.

177. In this regard, for example, Article 8(j) of the Convention on Biological Diversity indicates that each State shall "respect, preserve and maintain [...] practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, [...] and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." Article 10(c) of the same Convention indicates that the State shall "[p]rotect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements."

178. Thus, the Conference of the Parties to the Convention on Biological Diversity, the governing body of the Convention, has established "the obligations of Parties towards indigenous and local communities in accordance with Article 8(j) and related provisions [for] the establishment, management and monitoring of protected areas [that] should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations."<sup>226</sup>

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<sup>221</sup> Testimony of expert witness Jeremie Gilbert during the public hearing held in this case (transcript of the public hearing, pp.51 and 52).

<sup>222</sup> On May 22, 1992, the text of the Convention on Biological Diversity was adopted during the Conference of Nairobi, organized by the United Nations Development Programme (UNDP). The Convention, which entered into force on December 29, 1993, represented a significant step towards the conservation of biological diversity. Suriname ratified the Convention on January 12, 1996. Available at: <https://www.cbd.int/convention/text/default.shtml>.

<sup>223</sup> Ramsar Convention, Convention on Wetlands of International Importance especially as Waterfowl Habitat, signed at Ramsar, Iran, on January 18, 1971, which entered into force on December 21, 1975, and was ratified by Suriname on November 22, 1985.

<sup>224</sup> The Convention concerning the Protection of the World Cultural and Natural Heritage was adopted on November 16, 1972, during the General Conference of UNESCO held in Paris, from October 17 to November 21. The main characteristic of this Convention is that it assembles in one document the concepts of nature conservation and preservation of the cultural heritage. The Convention recognizes the way in which people interact with nature and the necessary principles to ensure the balance between both of them. Suriname acceded to the Convention on October 23, 1997. Available at: <http://whc.unesco.org/en/conventiontext/>.

<sup>225</sup> The United Nations Framework Convention on Climate Change was adopted on May 9, 1992, at the United Nations headquarters in New York, and entered into force on March 21, 1993. Its purpose was to consider the options for limiting the average increase in global warming and, therefore, climate change, as well as to confront the adverse effects when these were inevitable. Suriname ratified the Convention on October 14, 1997. Available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

<sup>226</sup> Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its seventh meeting, Decision VII/28, Protected Areas (Articles 8 (a) to (e), para. 22. Available at: <https://www.cbd.int/decision/cop/default.shtml?id=7765>.

179. Meanwhile, Principle 22 of the Rio Declaration on Environment and Development establishes that: “[i]ndigenous people and their communities [...] have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”<sup>227</sup>

180. Furthermore, Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples stipulates that these peoples “have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.” Article 25 of the Declaration underscores “the right to maintain and strengthen their distinctive spiritual relationship with their traditionally-owned or otherwise occupied and used lands [...] and other resources and to uphold their responsibilities to future generations in this regard.” And Article 18 establishes “the right to participate in decision-making in matters which would affect their rights, through representatives [...]”<sup>228</sup>

181. Based on the above, the Court reiterates that, in principle, the protection of natural areas and the right of the indigenous and tribal peoples to the protection of the natural resources in their territories are compatible, and it emphasizes that, owing to their interrelationship with nature and their ways of life, the indigenous and tribal peoples can make an important contribution to such conservation. Thus, the criteria<sup>229</sup> of a) effective participation,<sup>230</sup> b) access and use of their traditional territories,<sup>231</sup> and c) the possibility of receiving benefits from conservation<sup>232</sup> — all of the foregoing provided that they are compatible with protection and sustainable use (*supra* para.

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<sup>227</sup> Rio Declaration on Environment and Development, *supra*, Principle 22.

<sup>228</sup> This Declaration was widely accepted since it was adopted at the respective Conference with the signature of 144 States, including Suriname. Since its adoption, Australia, Nueva Zealand, Canada and the United States of America have changed their original decision and have adhered to the Declaration. Colombia and Samoa also changed their original position and have indicated their support. See also Article 23 of the Declaration.

<sup>229</sup> Articles 8.j) and 10 of the Convention on Biological Diversity, *supra*.

<sup>230</sup> For example, by participating in decisions that affect them or their natural resources. To this end, it is necessary to: (i) recognize the right of the indigenous peoples to use their own institutions and representatives to manage, administer and protect their traditional territories; (ii) ensure a decision-making system in which the indigenous peoples participate fully and effectively; (iii) seek agreements between the respective communities and the conservation agencies that establish the management, the commitments, the responsibilities, and the purposes of the area, and (iv) guarantee access to information regarding any measures taken in relation to these areas. *Cf.* articles 8 and 10 of the Convention on Biological Diversity, *supra*; Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its seventh meeting, decision VII/28, *supra*, para. 22; Rio Declaration on Environment and Development, *supra*, Principle 10, and article 4 of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, an international treaty that regulates the rights to public participation in environmental matters. Available at: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>. *Cf. Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs.* Judgment of September 19, 2006. Series C. No. 151, paras. 79 and 84.

<sup>231</sup> For example, so that they may use and enjoy the natural resources in their traditional territories that they require in order to ensure their survival by means of their traditional activities, accede to their traditional health system and other socio-cultural functions, and preserve their way of life, customs and language, as well as to accede to, maintain and protect their religious and cultural sites. In addition, the traditional practices of the indigenous peoples that contribute to the sustainable care and protection of the environment should be maintained, protected and promoted. Thus, it is pertinent to support the indigenous peoples’ knowledge, institutions, practices, strategies and management plans related to conservation. *Cf.* Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples, *supra*, and Decisions adopted by the Conference of the Parties to the Convention on Biological Diversity at its twelfth meeting, Decision XII/12, paras. 8 and 9.

<sup>232</sup> *Cf.* Article 8.j) of the Convention on Biological Diversity; UN, Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, of October 29, 2010. Articles 5 to 16 and 21, an international treaty based on and supporting the application of the CBD; in particular, one of its three objective, the fair and equitable sharing of the benefits arising from the use of genetic resources. Available at: <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>; Article 12 of the American Declaration on the Rights and Duties of Man. Available at: <https://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>.



177) – are essential elements to achieve this compatibility which should be evaluated by the State. Consequently, the State must have adequate mechanisms to implement these criteria as a means of guaranteeing the right to a dignified life and to cultural identity to the indigenous and tribal peoples in relation to the protection of the natural resources that are in their traditional territories. Thus, the Court will verify the existence of all these elements in the following section.

### ***B.3.2.2 The alleged impact in the Galibi and Wane Kreek Nature Reserves***

182. The Court takes note that the dispute subsists in relation to the following alleged impacts in the nature reserves: (1) the prohibition by State authorities to access the Galibi Nature Reserve; (2) the prohibition to hunt and fish in the nature reserves derived from the 1954 Nature Protection Act (*supra* para. 73); (3) the prohibition to access the area of the mining concession in the Wane Kreek Nature Reserve, and (4) the refusal to allow the indigenous peoples to monitor and manage the nature reserves. The Court will rule in this regard in the next three sections.

#### ***i) The impact in the Galibi Nature Reserve***

183. The Court takes note that, according to statements made when the delegation visited this reserve (*supra* para. 14), during the internal conflict, access to the Galibi Nature Reserve was prohibited owing to the increase in the theft of turtle eggs, and military checkpoints were established at the access sites (*supra* para. 78). In 2005, security checkpoints were also installed that limited access to the area and, in 2006, one of the guards fired a shot in the air. The Court has verified that, in 1998, the Dialogue Commission was established and agreement was reached on access to and use of the reserve, restricting the extraction of turtle eggs to the personal consumption of the members of the indigenous peoples and not for commercial purposes. In addition, ways for participating in the monitoring of the reserve were established, as well as measures to share the benefits of the increased tourism activity in the area. These measures were verified during the visit. It was also noted that the Dialogue Commission is no longer functioning. During the visit to the area, all the parties indicated that, at the present time, the neighboring communities continue to have access and participate in the benefits.

184. The Court lacks evidence about the circumstances of time, manner and place in which the alleged restrictions occurred and, if applicable, the specific impact on the neighboring communities, as well as the duration of such restrictions. Moreover, there is no evidence that any complaint was filed about these measures in the domestic jurisdiction. Also, the Court understands that the 1998 Dialogue Commission established agreements with the indigenous population in the area. It is worth noting that, in 2007, when the case was lodged before the Inter-American Commission, there was no evidence of any significant restriction in the area in question, so that, by then, the alleged impacts had already been resolved.

#### ***ii) The impact in the Wane Kreek Nature Reserve***

185. Regarding the Wane Kreek Nature Reserve, it was alleged that the indigenous peoples were not allowed to access their traditional sites in the area of the mining concession, and also that trees had been cut down during the mining operations, despite the provisions of the 1986 Nature Protection Order (*supra* para. 83).

186. In this regard, the Court observes that article 4 of the 1986 Order creating this reserve established that the traditional rights of the tribal communities and villages located within the

reserve would be respected. Also, its preamble established that these rights would be guaranteed as long as: (i) the national objective of the proposed nature reserves was not prejudiced; (ii) the traditional rights and interests remained valid, and (iii) it was part of the process of progressing towards a single Suriname citizenship.

187. In this regard, Captain Watamaleo testified that:

"The mining company [...] used to stop people from the community from entering the reserve. They put up a big sign that said: 'no hunting,' 'no fishing' and 'no plant collecting' and they would stop people from our communities going in there. At the same time, we could see company people and others that they let in there hunting and fishing, even using poison to kill a large number of fish. We know how to go there without them seeing us, but it is very hard to find food there anymore."

188. Meanwhile, Glenn Renaldo Kingswijk,<sup>233</sup> employee of BHP Billiton-Suralco, testified that, based on company policy, several practices were adopted including:

"For security reason: (i) no unauthorized person would have access to the mining areas (100 ha); (ii) use of the highway as access for hunting and fishing the area of the concession was refused, and there was a sign at the entry; (iii) the indigenous peoples who traditionally came to the reserve could continue to do so in their traditional way, and (iv) the indigenous peoples were never charged for using the highway."

189. Based on the above, the Court finds that the possible restriction to access certain specific areas where mining exploitation operations were being carried on could have been reasonable, mainly for safety reasons. The Court also observes that, in addition to the 100 ha of exploitation, other adjoining areas were available to the nearby communities, particularly the Lokono community of Alfonsdorp; therefore, for the effects of this case, it does not find that there was a disproportionate restriction in this regard.

### ***iii) Monitoring and management of the nature reserves***

190. The Court observes that the State has indicated that the indigenous peoples would not be capable of managing the reserve on their own, owing to lack of equipment and management systems, among other reasons<sup>234</sup> (*supra* para. 120). Meanwhile, the representatives and the Commission stated that the protection of nature is compatible with their way of life and these territories should be restored to them.

191. In this regard, the Court finds that, in light of the previously mentioned standards, the monitoring, access and participation in areas of a reserve by the indigenous and tribal peoples is compatible, but it is also reasonable that the State retain the supervision, access and management of areas of general and strategic interest, and for safety reasons, that allow it to exercise its sovereignty, and/or protect the borders of its territory.

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<sup>233</sup> Testimony of Glenn Renaldo Kingswijk before the IACHR (evidence file, folio 362).

<sup>234</sup> Among these, it argued that: (i) the Kaliña and Lokono peoples have a limited expert capacity to perform (scientific) management tasks in relation to the areas classified by the IUCN as category IV reserves, because these require a special expertise, which they are unable to provide (merits file, folio 589); (ii) the Kaliña and Lokono peoples are undergoing a process of acculturation and are more interested in modern activities than in traditional knowledge. Therefore, they are unable to adapt to changes in nature, such as floods and winds (merits file, folio 589); (iii) they do not possess the capacity to coordinate nature conservation efforts beyond the local level; they have insufficient knowledge to evaluate biological systems within the country as a whole; while, as established by law, the State does have this expertise (merits file, folios 589 and 590), and (iv) the State needs to position Suriname in the wider global nature protection system and discuss with a wide range of stakeholders the global agreements in the Convention on Biological Diversity, the Ramsar Convention and others (merits file, folio 590). Consequently, under no circumstances will the State leave the supervision of the three nature reserves to the indigenous peoples, despite respecting their rights to secure their livelihood and survival and, indeed, these groups are seen as a major actor in nature protection in Lower Marowijne (merits file, folio 590).

192. Therefore, since, in this specific case, the Court has not ruled on the creation and persistence of the nature reserves (*supra* para. 162), but rather, based on their existence, has analyzed the restrictions imposed, it finds that, for the effects of this case, from the moment the State made its domestic and international commitments (*supra* para. 176), it should have endeavored to ensure compatibility between the protection of the environment and the collective rights of the indigenous peoples, in order to: (a) ensure access to and use of their ancestral territories for their traditional ways of life in the nature reserves, and (b) provide the means for them to participate effectively in the objectives of the reserves; mainly in their care and conservation, and (c) to participate in the benefits derived from conservation (*supra* para. 181).

193. In this regard, the Court notes that, in the case of the Galibi Nature Reserve, agreements exist that have permitted access to the reserve, the limited participation of the Kaliña and Lokono peoples in its conservation, and the authorization to receive certain benefits (*supra* para. 79). However, these agreements have not been formally recorded in order to guarantee them over time and in keeping with all the applicable criteria, and the Dialogue Commission is inactive (*supra* paras. 79 and 183). In this regard, the representatives insisted that the law applicable to the Galibi Nature Reserve was the 1954 Act, which expressly prohibited hunting and fishing within the reserve.

194. The Court has verified that the 1954 Nature Protection Act prohibited hunting and fishing in the reserves. However, the 1986 Order recognized the protection of the indigenous and tribal peoples who live in certain nature reserves (*supra* para. 83) without referring expressly to the Galibi Nature Reserve. Nevertheless, the State made a brief reference to the fact that, with the implementation of the 1986 Order, the same protection had been applied in general for all the nature reserves. Nevertheless, this has not been substantiated by any evidence before the Court or during the on-site procedure. This reveals a situation of lack of legal certainty as regards the rights recognized in the said reserve.

195. Also, with regard to the Wane Kreek Nature Reserve, the State has not proved that it has effective mechanisms for the participation of the Kaliña and Lokono peoples (*infra* para. 200); rather, the State created the reserve without the participation of the neighboring Kaliña and Lokono communities.

196. In this regard, the Court recalls that Article 23 of the American Convention establishes that everyone must enjoy the rights and opportunities "to take part in the conduct of public affairs [...]." In this sense, the participation of the indigenous communities in the conservation of the environment is not only a matter of public interest, but also part of the exercise of their right as indigenous peoples "to participate in decision-making in matters which would affect their rights, [...] in accordance with their own procedures and [...] institutions"<sup>235</sup> (*supra* paras. 178 and 180).

197. Based on the above, the Court finds that, for the effects of this case, no violation has been constituted by the lack of exclusive management and monitoring of the nature reserves by the indigenous peoples. However, the absence of explicit mechanisms that guarantee the access, use and effective participation of the Kaliña and Lokono indigenous peoples in the conservation of the said nature reserves and the benefits these reserves yield constitutes a violation of the obligation to adopt the necessary provisions to make such measures effective in order to ensure the rights to collective property, to cultural identity, and to political rights, to the detriment of the Kaliña and Lokono peoples.

#### **iv) Conclusion on the restrictions in the nature reserves**

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<sup>235</sup> Cf. Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, *supra*.

198. In sum, the Court finds that the State has violated the victims' rights to collective property, cultural identity and participation in public matters, mainly by preventing their effective participation, and the access to part of their traditional territory and natural resources, in the Galibi and Wane Kreek nature reserves, as well as by failing to guarantee, effectively, the traditional territory of the communities that has been affected by the environmental degradation within the Wane Kreek Nature Reserve (*infra* paras. 217 to 222), which constitutes a violation of Articles 21, 2 and 23 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the Kaliña and Lokono peoples and their members.

#### ***B.4 The right to collective property in relation to the mining concession within the Wane Kreek Nature Reserve***

199. In this section, the Court will examine the alleged failure to comply with the safeguards of the right to collective property in relation to bauxite exploitation in the Wane Kreek Nature Reserve.

200. As previously noted, in 1958, Suriname granted Suralco a mining concession until 2033, for the extraction of bauxite in the eastern part of the country. In 1997, the company started up its operations to extract bauxite from deposits in an area of approximately 100 to 144 ha, within the Wane Kreek Nature Reserve, known as Wane Kreek 1 and 2 (*supra* para. 88 and 90). Preparatory work, such as the construction of a highway to reach the mine and transport the mineral, was initiated in the mid-1990s (*supra* para. 89). There is no dispute about the fact that the Kaliña and Lokono peoples played no part in any of these activities and that the corresponding environmental impact assessment was not made (*infra* para. 213). However, the Court does not have competence in relation to the award of the mining concession in 1958. Nevertheless, the Court is competent to examine measures taken following the entry into force of its jurisdiction; in particular, the extraction operations carried out as of 1997.<sup>236</sup>

201. In this regard, the Court has already established in the *case of the Saramaka People v. Suriname* that, under Article 1(1) of the Convention, in order to ensure that the restrictions imposed on the right to property of the indigenous and tribal peoples owing to the issue of concessions within their territory do not entail a denial of their survival, the State must comply with the following three guarantees: "first, it must ensure the effective participation<sup>237</sup> of the members of the [indigenous and tribal peoples], in accordance with their customs and traditions, with regard to any development, investment, exploration or extraction plans (hereinafter "development or investment plan") implemented within [their territory]. Second, the State must ensure that the members of the [indigenous and tribal peoples] receive a reasonable benefit from the plan implemented within their territory. Third, the State must ensure that no concession will be granted within their territory until independent and technically-qualified entities, under the

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<sup>236</sup> Cf. *Inter alia*, *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 30.

<sup>237</sup> In the *Saramaka* case, the Court indicated that "in ensuring the effective participation of members of [the indigenous and tribal peoples] in development or investment plans within their territory, the State has a duty to actively consult with said community according to their customs and traditions. This duty requires the State to receive and provide information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement. Furthermore, [these peoples] must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan [...]. Early notice provides time for internal discussion within the communities and for proper feedback to the State. The State must also ensure that the members of [the indigenous and tribal peoples] are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily. Lastly, consultation should take account of [their] traditional methods of decision-making." *Case of the Saramaka People*, *supra*, para. 133, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 178.

State's supervision, have conducted a prior social and environmental impact assessment. These safeguards are intended to preserve, protect and ensure the special relationship that the members of the [indigenous and tribal peoples] have with their territory, which, in turn, ensures their survival [as an indigenous people]."<sup>238</sup> In the instant case, the Court will analyze the State's alleged failure to comply with these safeguards in relation to the start-up of bauxite extraction operations in 1997.

202. Furthermore, the Court reiterates that Article 23 of the American Convention establishes that: "[e]very citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs [...]." Similarly, Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples establishes that "[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives [...]," and the pertinent part of Article 32 stipulates that "States shall consult and cooperate in good faith [...] prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the [...] utilization or exploitation of mineral [...] resources."<sup>239</sup>

203. Consequently, in order to ensure the use and enjoyment of the right to indigenous collective property recognized in Articles 1(1) and 21 of the Convention, in relation to the utilization or exploitation of natural resources in their traditional territory, the State must, for the effects of this case, put in place mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples. This is not only a matter of public interest, but also forms part of the exercise of their right to take part in any decision-making on matters that affect their interests, in accordance with their own procedures and institutions, in relation to Article 23 of the American Convention (*supra* para. 196).<sup>240</sup>

#### ***i) Effective participation by means of a consultation process***

204. In this case, in its answering brief, the State "recognize[d] that consultation is an important instrument to ensure broad support and to have the peoples take ownership of development processes," and advised that, currently, Suriname is committed to developing a protocol that reflects the principle of the free, prior and informed consent of the peoples (*infra* para. 210). Furthermore, in its final written arguments, the State indicated that the "principle of free, prior and informed consent [was] an international requirement that States should adhere to when consulting indigenous and tribal people. This mean[t] that States must meet the minimum requirements: adhere to the meeting culture of the communities; giving them the opportunity to be represented by persons or organizations of their own choice; inform them in advance on the [respective] topic in an understandable language. In principle, it mean[t] that there must be a clear and prior agreed consultation structure with the communities. The State of Suriname declared [that it was] already applying this principle [...]. Developing regulations on [prior, free and informed consent] would mean improving and formalizing what occurs in practice."

205. Nevertheless, Suriname has argued that, for the effects of this case, there were no indigenous peoples living within or near the area of the mining concession, because the distance between that area and the nearest indigenous village, Alfonsdorp, was about 6.3 km. Thus, the

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<sup>238</sup> *Case of the Saramaka People, supra*, para. 129, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 215.

<sup>239</sup> *Cf.* Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples, *supra*; Article 6 of the Inter-American Democratic Charter stipulates that: It is the right and responsibility of all citizens to participate in decisions relating to their own development [...]."

<sup>240</sup> *Cf. Mutatis mutandi, Case of Yatama v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 225.*

State indicated that the mining operations had no substantial effect on the exercise of the rights and traditional activities of the community, and therefore consultation was unnecessary.

206. In this regard, the Court has already established that the State must ensure the effective participation “with regard to any development, investment, exploration or extraction plan.”<sup>241</sup> In particular, the Court referred to development and investment plans as “any activity that may affect the integrity of the lands and natural resources [...]”; in particular, any proposal related to logging or mining concessions.”<sup>242</sup>

207. In this regard, the Court considers that the State’s duty in relation to this guarantee must be complied with prior to the execution of activities that may have a significant impact on the interests of the indigenous and tribal peoples, such as the exploration, and the exploitation or extraction stages. In this case, although the mining concession was granted in 1958, the bauxite extraction operations began in 1997 – that is, almost 40 years later – at which time, the company had determined the precise place where the extraction operations would be implemented in relation to the rest of the territory that had previously been explored. The guarantee of effective participation should have been put in practice before the start of the mining extraction or exploitation operations, which did not happen in this case. In particular, with regard to the Kaliña and Lokono peoples who were nearby and had a direct relationship with the area, and whose traditional territory was adversely affected (*supra* para. 92).

208. However, the information that the parties have provided to the Court does not reveal the existence of any domestic mechanism, law or measure that would guarantee the effective participation of the indigenous and tribal peoples, even though the State has indicated certain measures it was allegedly taking at the present time to ensure this right (*infra* para. 210).

209. In this regard, the State argued that, under Suriname law, the rights and interests of the indigenous peoples and the Maroons were taken into consideration when the State decided to award a concession, and referred to article 41 of the Forest Management Act<sup>243</sup> and to article 25(1) of the Mining Decree.<sup>244</sup> The former established that “The customary law rights of the inhabitants of the interior living in tribal communities in their villages and settlements as well as their agricultural plots, will be respected as much as possible”; and the latter indicated that “the application for exploration rights should take place in conformity with article 10 and give: [...] b. a

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<sup>241</sup> Cf. *Case of the Saramaka People*, *supra*, para. 129. Likewise, in the *case of the Garífuna Community of Punta Piedra and its members*, the Court indicated that the consultation must take place beforehand, and must be carried out starting in the initial stages of the development or investment plan so that the indigenous and tribal peoples may truly participate and influence the decision-making process. Cf. *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, paras. 217 and 223.

<sup>242</sup> *Case of the Saramaka People*, *supra*, para. 129. The Court understands, also, that a mining project has different stages, including, above all, the exploration stage, the exploitation stage, and that of the project conclusion. Cf. Mining Decree of May 8, 1986, articles 21, 25 and 30, which indicate reconnaissance, exploration and exploitation as the stages of a large-scale mining project in Suriname (evidence file, folios 428, 431 and 435).

<sup>243</sup> Forest Management Act of September 18, 1992, article 41: “1. a. The customary law rights of the inhabitants of the interior living in tribal communities in their villages and settlements as well as their agricultural plots, will be respected as much as possible. b. In case of violations of the customary 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. 2. Upon consultation with the Minister responsible for regional development, the Minister will declare certain forestry areas to be communal forest for the benefit of the tribal inhabitants of the interior. The utilization and management of the communal forest are further established by state decree. 3. No concession fee shall be due for the communal forest. The relevant provisions of this act will accordingly be applicable to timber, wood products and non-timber products to be transported from the communal forest and intended for possible commercial use. The gatherer will then owe the charges mentioned in article 32 paragraph 1b and article 40, and the compensation mentioned in article 13 [...]” (evidence file, folio 2727).

<sup>244</sup> Mining Decree of May 8, 1986, article 25 (evidence file, folio 431).

report on the villages existing in the terrain and in the vicinity of the requested terrain and on the residents, according to tribe.” However, the Court finds that although the domestic norms recognized the “interests” of the rights of the indigenous and tribal peoples when granting logging and mining concessions, this did not include the right to effective participation.<sup>245</sup>

210. In addition, as mentioned, the State has expressed its willingness to continue working to ensure the prior, free and informed consultation of the indigenous and tribal peoples, (*supra* para. 204). To achieve this, the State indicated that, currently, it was prepared a protocol on free, prior and informed consent, and that it had established the Commission on the Law on Traditional Authorities. The purpose of this law was to recognize the traditional authorities as legitimate representatives of the indigenous peoples, particularly in situations in which the indigenous peoples must be consulted. In this regard, although the Court considers that the State’s undertaking to create a consultation protocol is positive, this has not yet been adopted, and the case file does not reveal whether the protocol would take into account the relevant standards established by this Court in order to truly ensure the effective participation of the indigenous and tribal peoples.

211. In addition, the Court considers that the effective participation of the Kaliña and Lokono peoples should also be ensured by the State in relation to any development or investment plan, as well as any new exploration or exploitation operations that may be started up in the future in the traditional territories of these peoples,<sup>246</sup> in particular, within the Wane Kreek Nature Reserve (*supra* para. 206).

212. In conclusion, from the body of evidence, the Court has verified that the State failed to ensure the effective participation, by means of a consultation process, of the Kaliña and Lokono peoples before undertaking or authorizing the exploitation of the bauxite mine within their traditional territory.

### ***ii) Prior social and environmental impact assessment***

213. The Court has verified that, in 2005, a private consultant hired by BHP Billiton prepared an environmental sensitivity analysis, which concluded that the Wane 1 and Wane 2 sections had suffered considerable environmental damage as a result of the mining activities. However, Suriname argued that its laws did not require the preparation of environmental impact assessments. The State also indicated that the area affected by the mining activities was being rehabilitated, but the representatives have contested this.

214. In this regard, the Court has established that the State must guarantee that no concession will be granted within the territory of an indigenous community unless and until independent and technically-qualified entities, under the State’s supervision, have made a prior assessment of the social and environmental impact.<sup>247</sup> The Court has also determined that environmental impact

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<sup>245</sup> Cf. Expert opinion of Mariska Muskiet dated April 30, 2007 (merits file, folios 452 and ff).

<sup>246</sup> According to different testimonies and the expert opinion of Stuart Kirsch, (merits file, folio 357), logging concessions granted to non-indigenous third parties exist within the Wane Kreek Nature Reserve. Also according to the Bauxite Institute of Suriname, new exploration activities have been initiated since 2014 in Wane Kreek Hills as a result of the concession granted from 1958 to 2033 (evidence file, folio 3076). The Court has insufficient evidence to establish the date, location, number of concessions, individuals or companies to which logging concessions have been granted or whether exploration activities were, indeed, resumed in 2014.

<sup>247</sup> Cf. *Case of the Saramaka People*, *supra*, para. 129, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 205. Cf. Article 14 of the Convention on Biological Diversity, *supra*: “Impact Assessment and Minimizing Adverse Impacts. 1. Each Contracting Party, as far as possible and as appropriate, shall: (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures; (b) Introduce appropriate arrangements to ensure that the environmental consequences of its

assessments “help to evaluate the possible damage or impact that a development or investment project may have on the property and community in question. The purpose of [such studies] is not [merely] to have an objective measurement of the possible impact on land and persons, but also [...] to ensure that the members of the peoples [...] are aware of possible risks, including environmental and health risks,” so that they can weigh up whether to accept the proposed development or investment plan, “voluntarily and with full knowledge.”<sup>248</sup> The permitted level of impact cannot negate the very survival of the members of the indigenous and tribal peoples.<sup>249</sup>

215. In addition, the Court has established that environmental impact assessments must respect the traditions and culture of the indigenous peoples and that one of the purposes of requiring such assessments is to ensure the right of the indigenous people to be informed of all proposed projects on their territory.<sup>250</sup> Therefore, the State’s obligation to supervise such assessments interrelates with its duty to ensure the effective participation of the indigenous people.<sup>251</sup> In this regard, the Court reiterates that in this specific case, the safeguard concerning effective participation in the environmental impact assessment becomes important prior to the start-up of exploitation operations, because that is when the specific area of the whole concession in which the extraction operations will be executed is determined.

216. In this case, the Court has verified that: (a) the social and environmental impact assessment was not made before the startup of the extraction activities in 1997; (b) domestic law did not require such an assessment (*supra* para. 213); (c) the first assessment was made in 2005, eight years after the startup of exploitation, and the Kaliña and Lokono peoples did not participate in it before it was accepted, and (d) the assessment was carried out by a private entity, subcontracted by the mining company, and there is no evidence that it was subject to subsequent supervision or monitoring by State agencies. Consequently, the environmental impact assessment was not prepared in keeping with the provisions of the Court’s case law, or with the relevant international standards.<sup>252</sup>

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programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account; [...] and Rio Declaration on Environment and Development, *supra*, Principle 17 which stipulates that: “[e]nvironmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

<sup>248</sup> Cf. *Case of the Saramaka People*, *supra*, para. 133, and *Case of the Saramaka People v. Suriname. Interpretation of the judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 185, paras. 40 and 41, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 205.

<sup>249</sup> Cf. *Case of the Saramaka People. Interpretation of the judgment*, *supra*, para. 42.

<sup>250</sup> Cf. *Case of the Saramaka People. Interpretation of the Judgment*, *supra*, para. 41, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 206. Cf. Rio Declaration on Environment and Development, *supra*, Principle 10 indicates that: “[e]nvironmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

<sup>251</sup> Cf. *Case of the Saramaka People. Interpretation of the Judgment*, *supra*, para. 41, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 206, and Rio Declaration on Environment and Development, *supra*, Principle 22 indicates that: “[i]ndigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

<sup>252</sup> Cf. Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folio 357). The expert witness indicated that, in a personal communication of February 10, 2009, the Vice President for Sustainable Development of BHP Billiton advised him that the domestic laws of Suriname did not require environmental and social impact studies, and this is why they were not conducted until 2005.



217. The Court takes note that the Wane Kreek Nature Reserve was established in order to protect and conserve nine unique ecosystems (*supra* para. 81) in part of the territory claimed as traditional by the Kaliña and Lokono peoples. However, the Court observes that, to the contrary, the extraction of bauxite in Wane Kreek 1 and 2 resulted in serious damage to the environment and to the natural resources necessary for the survival and development of the Kaliña and Lokono peoples (*supra* paras. 91 and 92). In this regard, according to various testimonies<sup>253</sup>, extraction operations had a widespread impact on this area, because the noise of the construction work and the frequent dynamite explosions caused the animals and birds to leave the area; the streams were contaminated, thus harming the fishing; the cutting down of trees and the noise of the operations drove away different types of wildlife, thereby affecting the hunting,<sup>254</sup> and the soil was affected so that many of the traditional plants stopped growing. In addition, other adverse effects resulted from the construction of the highway to transport the bauxite.<sup>255</sup>

218. These negative impacts on the environment and the indigenous natural resources were also acknowledged in the 2005 Environmental Sensitivity Analysis prepared for NV BHP Billiton Maatschappij Suriname, because it concluded that the Wane 1 and Wane 2 sections had suffered considerable environmental damage as a result of the open-cast mining of bauxite. Moreover, the recommendations made by the assessment included: (i) that the companies commit to not mining Wane 3 and Wane 4 and avoid further environmental degradation; (ii) that the exploration and extraction activities be ended as soon as possible; (iii) that the damaged areas be rehabilitated, and (iv) that the companies withdraw from the Wane Kreek Nature Reserve<sup>256</sup> (*supra* para. 91).

219. In this regard, the mining companies have put in place certain policies for the rehabilitation of the area. According to evidence provided by the State following the visit,<sup>257</sup> Wane 1 and 2 would be rehabilitated by August 2015 (*supra* para. 93), and the estimated growth of what has been planted would be 70-80%, although in other areas there could be a lower rate of growth.<sup>258</sup> However, the representatives stressed that this contradicted the photographs showing the devastated area provided as evidence, and the testimony of the victims (*supra* para. 92). Consequently, the representatives indicated that there is no certainty that the rehabilitation measures will be successful because, for example, the trees that have been planted have not attained the size anticipated and, therefore, it is expected that the rehabilitation of all the territory affected will take a long time.<sup>259</sup>

220. During its on-site procedure, the Court verified that the area had clearly been damaged and the landscape altered radically (*supra* para. 93). Hence, it finds that, to date, the actions taken have not met the objectives established for the satisfactory rehabilitation of the territory in question, especially considering that it is a nature reserve and a protected area.

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<sup>253</sup> According to the expert opinion of Dr. Stuart Kirsh, the Wane Kreek Nature Reserve has become a, *de facto*, extractive zone for mining natural resources with negative effects for the environment and prejudicial consequences for the indigenous peoples. *Cf.* Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folios 357 to 360).

<sup>254</sup> *Cf.* Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 450), and Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folio 360).

<sup>255</sup> For example, legal and illegal logging activities, poaching, sand and gravel mining and, recently, the mining of kaolin. *Cf.* Affidavit made by Captain Grace Watamaleo on January 27, 2015 (merits file, folio 450).

<sup>256</sup> *Cf.* Environmental sensitivity analysis of the Wane 4 Concession, July 4, 2005 (merits file, folio 390).

<sup>257</sup> *Cf.* Memorandum of August 2015 prepared by the Bauxite Institute of Suriname on the rehabilitation of Wane Kreek Hills (evidence file, folio 3076).

<sup>258</sup> *Cf.* Memorandum of August 2015 prepared by the Bauxite Institute of Suriname on the rehabilitation of Wane Kreek Hills, *supra* (evidence file, folio 3076).

<sup>259</sup> *Cf.* Expert opinion of Stuart Kirsh of January 27, 2015 (merits file, folios 359 to 362).

221. In this regard, the State has the obligation to protect the areas of both the nature reserve and the traditional territories in order to prevent damage to the indigenous lands, even damage caused by third parties, with appropriate supervision and monitoring mechanisms<sup>260</sup> that guarantee human rights; in particular by supervising and monitoring environmental impact assessments. The Court also notes that Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples stipulates that "States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, [...] impact."

222. Thus, the adverse impacts in the above-mentioned area directly affected the natural resources of the Kaliña and Lokono peoples within an area that they have traditionally used. In addition, not only were such impacts not avoided by preventive mechanisms or appropriate measures to mitigate the damage occasioned by the State, such as the supervision of an environmental impact assessment, but the negative effects have continued over time, thus affecting the traditional territory and the means of survival of the members of these peoples. Furthermore, the Court recalls that the State is also responsible for supervising and monitoring actions taken on the affected territory in order to achieve its prompt rehabilitation so as to ensure the full use and enjoyment of the rights of the peoples.

223. The Court notes that the mining activities that resulted in the adverse impact on the environment and, consequently, on the rights of the indigenous peoples, were carried out by private agents; first by Suralco alone, and then by the joint venture, BHP Billiton-Suralco.

224. In this regard, the Court takes note of the "Guiding Principles on Business and Human Rights,"<sup>261</sup> endorsed by the Human Rights Council of the United Nations, which establish that businesses must respect and protect human rights, as well as prevent, mitigate, and accept responsibility for the adverse human rights impacts directly linked to their activities.<sup>262</sup> Hence, as reiterated by these principles, "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."<sup>263</sup>

225. Thus, the Special Representative of the Secretary-General of the United Nations on the issue of human rights and transnational corporations and other business enterprises has indicated

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<sup>260</sup> Cf. *Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 21, 2013. Series C No. 261, para. 133, and *Case of Gonzales Lluy el al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 298, para. 184.

<sup>261</sup> Cf. UN, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, presented to the seventeenth session of the Human Rights Council of the United Nations, A/HRC/17/31, 21 March 2011. Available at: <http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>. The Human Rights Council endorsed these principles and created a working group to promote their implementation. Cf. Human Rights Council, Resolution 17/4, UN Doc. A/HRC/17/4, 6 July 2011. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/74/PDF/G1114474.pdf?OpenElement>. Also, cf. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide. Available at: [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf). Likewise, in a resolution of June 4, 2014, the Organization of American States emphasized the need to continue implementing legally binding instruments for businesses and to facilitate "the exchange of information and sharing of best practices on promotion and protection of human rights in business." Cf. Resolution AG/RES. 2840 (XLIV-O/14), on Promotion and Protection of Human Rights in Business, adopted at the second plenary session held on June 4, 2014. Available at: [http://www.oas.org/en/sla/dil/docs/AG-RES\\_2840\\_XLIV-O-14.pdf](http://www.oas.org/en/sla/dil/docs/AG-RES_2840_XLIV-O-14.pdf).

<sup>262</sup> Cf. Guiding Principles on Business and Human Rights, *supra*, Principles 1, 11, 12, 13, 14, 15, 17, 18, 22, 25.

<sup>263</sup> Cf. Guiding Principles on Business and Human Rights, *supra*, Principle 1.

that businesses must respect the human rights of members of specific groups or populations, including indigenous and tribal peoples, and pay special attention when such rights are violated.<sup>264</sup> 226. Based on the above, the Court finds that, because the State did not ensure that an independent social and environmental impact assessment was made prior to the start-up of bauxite mining, and did not supervise the assessment that was made subsequently, it failed to comply with this safeguard; in particular, considering that the activities would be carried out in a protected nature reserve and within the traditional territories of several peoples.

### ***iii) Shared benefits***

227. When considering development plans within the territories of indigenous and tribal peoples, the State should, within reason, share the benefits of the project in question, as appropriate. This concept is inherent in the right to compensation recognized in Article 21(2) of the Convention, which refers not only to total deprivation of a property title by means of expropriation by the State, but also includes the deprivation of the normal use and enjoyment of that property.<sup>265</sup>

228. In this case, the victims' representatives asserted that there is no evidence in the case file before the Court that the Kaliña and Lokono peoples benefited from the mining concession granted by the State; rather, to the contrary, this caused severe damage to the environment in the area, thereby prejudicing these peoples. However, the State argued that the minimum damage was caused and that, in any case, the Kaliña and Lokono peoples had been compensated by the fact that they could use and enjoy the highway built in order to transport their timber.

229. In this regard, the Court finds that, according to the evidence in the file, the domestic laws of Suriname do not recognize this safeguard. Also, even though there is no dispute that the indigenous peoples use the highway, this access cannot be considered to provide a direct, mutually-agreed benefit for the peoples in light of the above-mentioned standards; above all, bearing in mind that the highway was part of the exploitation project that had an adverse impact on the natural resources of their territory. Hence, this requirement was not met either.

### ***iv) Conclusion regarding the safeguards***

230. Based on the foregoing, the Court concludes that the State of Suriname failed to ensure the effective participation of the Kaliña and Lokono peoples by means of a consultation process. The Court also concludes that a social and environmental impact assessment was not made, and that the benefits of the said mining project were not shared. Furthermore, Suriname has not adopted mechanisms in order to guarantee these safeguards. Consequently, the State has violated Articles 21 and 23 of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples and their members.

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<sup>264</sup> According to the paragraph 18 of the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: "The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men." UN Doc. A/HRC/17/31. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>.

<sup>265</sup> Cf. *Case of the Saramaka People*, *supra*, paras. 138 and 139.

**VI-III**  
**RIGHT TO JUDICIAL PROTECTION (ARTICLE 25) IN RELATION TO**  
**ARTICLES 13, 1(1) AND 2 OF THE AMERICAN CONVENTION**

**A. Arguments of the Commission and of the parties**

231. The **Commission** indicated that, previously, in the case of the *Saramaka People v. Suriname*, the Inter-American Court had determined that the Suriname Civil Code, the 1982 L-Decree, the 1986 Mining Decree, and the 1992 Forestry Management Act failed to provide appropriate and effective remedies that would protect the Saramaka tribal people from acts that violated their right to communal property. On this basis, taking into consideration that the State provided no information that would prove that it had adopted concrete measures to resolve the problems found in the *Saramaka* case, the Commission concluded that, in this case, the State had violated the right to judicial protection because no effective and appropriate remedy exists in the domestic law of Suriname that would guarantee the protection of the right to collective property of the indigenous and tribal peoples.

232. In addition, in its Merits Report, the Commission indicated that, following the Admissibility Report, the petitioners had alleged that the State's failure to provide details regarding the precise dates when property titles and leases were issued to non-indigenous persons on part of the traditional territory of the Kaliña and Lokono peoples, without offering any reason to justify the refusal to make such public information available, contravened Article 13 of the American Convention. The Commission considered that what had occurred was part of the facts of the case, and concluded that, although it had insufficient evidence to declare the violation of Article 13 of the American Convention, it had analyzed this failure to provide information when examining the violation of the right to collective property of the Kaliña and Lokono peoples, recognized in Article 21 of the Convention.

233. The **representatives** agreed with the Commission's affirmation that Suriname had still not created legal or administrative mechanisms to reconstitute or to recognize the property rights of the indigenous peoples, or to delimit, demarcate and grant title to their ancestral territories. In this regard, they added that the Kaliña and Lokono peoples had availed themselves of the right of petition recognized in Article 22 of the Surinamese Constitution, under which they had held meetings with authorities and filed complaints and petitions before different Ministries and State officials. However, they argued that the procedures were ineffective, because the State had not taken any concrete steps, in violation of the right to judicial protection.

234. Regarding the right of access to information, in the brief they submitted to the Commission on May 28, 2008, the representatives argued that the failure to provide the information requested constituted a violation of Article 13 of the American Convention. However, before the Court, they did not request the declaration that this article had been violated; rather they argued these facts in relation to violations of Articles 3, 21, and 25 of the American Convention, together with Articles 1 and 2 of this instrument, by the State of Suriname.

235. The **State** did not refer to the alleged violation of the right to judicial protection. However, during the visit made to the National Assembly as part of the on-site procedure, the National Assembly spokesperson indicated that the Decree Granting State-owned Land of June 15, 1982, known as the "L-Decree" recognized the rights of the indigenous peoples to some extent and that, in the practice, their right to collective property was acknowledged.

236. The State made no mention of the alleged violation of the right of access to information during the merits stage before the Commission and, during the on-site procedure, argued that access to public records was not denied in Suriname.

## **B. Considerations of the Court**

237. The Court has stated repeatedly that States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), and these must be substantiated in accordance with the rules of due process of law (Article 8(1)), under the general State obligation to ensure to all persons subject to their jurisdiction the free and full exercise of the rights recognized by the Convention (Article 1(1)).<sup>266</sup> The inexistence of an effective remedy for the violations of the rights recognized in the Convention entails a violation of the Convention by the State Party in which this situation occurs.<sup>267</sup>

238. The Court has also interpreted that the scope of the State obligation to provide a judicial remedy established in Article 25 of the Convention is not restricted to the mere existence of courts and formal proceedings; rather, the State must also take positive measures to ensure that such remedies are effective to decide whether there has been a human rights violation and, eventually, to provide redress.<sup>268</sup>

239. Thus this article identifies two specific State obligations. The first is to legislate and ensure the due application by the competent authorities of effective remedies that protect all persons subject to their jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations. The second is to guarantee the means to execute the respective decisions and final judgments issued by those competent authorities so that the rights that have been declared or recognized are truly protected.<sup>269</sup>

240. As regards indigenous and tribal peoples, this Court's case law has indicated that States have the obligation to establish appropriate proceedings under their domestic laws to process the land claims of the indigenous peoples as a result of the general obligation to ensure rights established in Articles 1 and 2 of the Convention.<sup>270</sup> Thus, the remedies offered by the State should provide a real possibility<sup>271</sup> for the indigenous and tribal communities to be able to defend their rights and exercise effective control over their territory.<sup>272</sup>

241. Based on the above, the Court will now examine the alleged violation of Article 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument. To this end, it will assess: (a) the appropriate and effective remedies in the domestic laws to protect the rights of the indigenous and tribal peoples; (b) the appropriateness and effectiveness of the petitions filed before the State authorities, and (c) the right of access to information in relation to Article 25 of the American Convention.

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<sup>266</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No.1, para. 91, and *Case of López Lone, supra*, para. 245.

<sup>267</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community, supra*, para. 113, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra*, paras. 193 and 198.

<sup>268</sup> Cf. *Case of Velásquez Rodríguez, Merits, supra*, paras. 63, 68 and 81 and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members, supra*, para. 165.

<sup>269</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Wong Ho Wing v. Peru. Preliminary objection, Merits, Reparations and Costs*. Judgment of June 30, 2015. Series C No. 297, para. 196.

<sup>270</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, para. 102, and *Case of the Sawhoyamaya Indigenous Community, supra*, para. 109.

<sup>271</sup> Cf. *Case of the Constitutional Court v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, para. 90, and *Case of the Xákmok Kásek Indigenous Community, supra*, para. 144.

<sup>272</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community, supra*, paras. 148 to 153 and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra*, para. 112.

### ***B.1 Appropriate and effective remedies in domestic law to protect the rights of the indigenous and tribal peoples***

242. In the *case of the Saramaka People v. Suriname*, based on the arguments of the parties and the Commission, the Court examined the provisions of articles 1386, 1387, 1388, 1392 and 1393 of the Civil Code; the Mining Decree (Decree E 58) of May 8, 1986, and article 41(1)(b) of the 1992 Forestry Management Act, in order to determine whether, under these laws, it was possible to obtain satisfactory reparation for the presumed violations of the collective property rights of the indigenous and tribal peoples.<sup>273</sup>

243. Regarding the Civil Code, the Court considered that the judicial remedy it established was inappropriate and ineffective because it was only available to individuals who claimed a violation of their individual rights to property, and did not recognize the right to collective property.<sup>274</sup> The Court also noted that, in order to file a legal action, the Mining Decree required that the claimant hold a right or interest issued by the State that could be registered; however, the members of the Saramaka people did not possess a title to their traditional territory, so that the apparent remedy was inappropriate and ineffective.<sup>275</sup> Lastly, the Court observed that the procedure established in the Forestry Management Act for filing written claims before the President of Suriname was ineffective, because the complaints filed by members of the Saramaka people were left unanswered.<sup>276</sup>

244. In the instant case, the State provided no documentation or information that would reveal any change in the norms examined in the *case of the Saramaka People v. Suriname*. Consequently, the Court considers that these norms continue to be inappropriate and ineffective to resolve presumed violations of the collective property rights of the indigenous and tribal peoples in Suriname.

245. Nevertheless, the facts of this case reveal that the alleged victims have based themselves on article 22 of Suriname's Constitution to file written petitions before different State authorities in order to claim their rights (*supra* para. 65 and *infra* para. 265). The Court notes that this article establishes that everyone has the right to submit written petitions to public authorities, and the law will establish the respective procedure. This regulates the fundamental right of petition, while delegating the creation of specific remedies to norms of a lesser rank, such as the laws.

246. However, the Court finds that, for this right of petition to be effective, it must include a prompt, coherent, complete and detailed response to the matters indicated in the petition, regardless of whether or not it is favorable to the request. Thus, the Court recalls that Article 24 of the American Declaration of the Rights and Duties of Man establishes that: "[e]very person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."

247. The State also provided the Decree Granting State-owned Land of June 15, 1982, known as the "L-Decree." This decree establishes that, in order to request the award of State-owned land, the applicant must present a written petition to the Ministry of Spatial Planning, Land and Forestry

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<sup>273</sup> Cf. *Case of the Saramaka People, supra*, paras. 179 to 184.

<sup>274</sup> Cf. *Case of the Saramaka People, supra*, para. 179.

<sup>275</sup> Cf. *Case of the Saramaka People, supra*, para. 183.

<sup>276</sup> Cf. *Case of the Saramaka People, supra*, para. 184.

Management,<sup>277</sup> indicating the location of the land and the intended use.<sup>278</sup> The Commissioner of the corresponding district will be advised of this application<sup>279</sup> and, eventually, it will be decided and the applicant will be advised of the decision by the Minister of Spatial Planning, Land and Forestry Management himself.<sup>280</sup> The Court has noted that the procedures established in this instrument refer, in general, to the granting of State-owned land to individuals or legal persons who reside in Suriname,<sup>281</sup> and are unrelated to specific claims concerning the land of indigenous peoples such as those examined in this case. Moreover, the State did not specify how the procedure could provide satisfactory redress for the violations alleged by the Kaliña and Lokono peoples; particularly, considering that they lack legitimacy to request the award of the land, because the State does not recognize the collective legal personality of the indigenous peoples (*supra* para. 112).

248. Furthermore, the Court notes that, in his report of August 18, 2011, the Special Rapporteur on the rights of indigenous peoples of the United Nations asserted that it was evident that Suriname must adopt legislative provisions or regulations that would provide adequately specific and concrete protections and procedures to secure the rights of indigenous and tribal peoples. Thus, in light of the judgments delivered by the Court in the *Moiwana* and *Saramaka* cases, he recommended that priority should be placed on developing specific legal provisions on two points: (i) a procedure to identify and title indigenous and tribal lands, and (ii) a procedure for consulting with, and seeking consent of, indigenous and tribal peoples for resource extraction and other activities affecting their lands.<sup>282</sup>

249. Consequently, the Court considers that the norms analyzed in this case do not include administrative or judicial remedies establishing procedures for the protection of the right to collective property of indigenous and tribal peoples.

250. Nevertheless, the Court takes into consideration that, during the public hearing in this case, the State indicated that it was “aware that the laws of Suriname do not yet comply with international standards,” and therefore asked the Court to provide it with guidance in order to resolve the complex issues related to the recognition of the rights of indigenous and tribal peoples in Suriname.

251. Thus, the Court finds that, pursuant to its case law, as well as to other relevant international standards, in order to ensure the human rights of the indigenous peoples, the domestic remedies should be interpreted and applied taking the following criteria into account:

1. The recognition of collective legal personality as indigenous and tribal peoples,<sup>283</sup> as well as individual legal personality as members of such peoples;<sup>284</sup>

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<sup>277</sup> Cf. Article 1 of the Decree Granting State-owned Land of June 15, 1982 (evidence file, folio 2691).

<sup>278</sup> Cf. Article 5 of the Decree Granting State-owned Land of June 15, 1982 (evidence file, folio 2692).

<sup>279</sup> Cf. Article 7 of the Decree Granting State-owned Land of June 15, 1982 (evidence file, folio 2693).

<sup>280</sup> Cf. Articles 8, 9 and 10 of the Decree Granting State-owned Land of June 15, 1982 (evidence file, folio 2693).

<sup>281</sup> Cf. Article 2 of the Decree Granting State-owned Land of June 15, 1982 (evidence file, folio 2691).

<sup>282</sup> Cf. Report of the former Special Rapporteur on the rights of indigenous peoples, James Anaya, of August 18, 2011, paras. 17, 34 and 35. Available at: [http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7\\_en.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add7_en.pdf).

<sup>283</sup> Cf. *Case of the Saramaka People*, *supra*, para. 172.

<sup>284</sup> Cf. *Case of the Sawhoyamaya Indigenous Community*, *supra*, para. 188, and *Case of the Xákmok Kásek Indigenous Community*, *supra*, para. 249.

2. The recognition of legal standing to file administrative, judicial or any other type of action collectively, through their representatives, or individually, taking into account their customs and cultural characteristics;<sup>285</sup>

3. The guarantee of access to justice for the victims – as members of an indigenous or tribal people – without discrimination,<sup>286</sup> and in keeping with the rules of due process;<sup>287</sup> hence, the available remedy must be:

a) Accessible,<sup>288</sup> simple and within a reasonable time.<sup>289</sup> This means, among other matters, establishing special measures to ensure effective access and the elimination of obstacles to access to justice. In other words::

i) Ensure that the members of the community can understand and be understood during the legal proceedings undertaken, providing them with interpreters or other means that are effective in this regard;<sup>290</sup>

ii) Give the indigenous and tribal peoples access to technical and legal assistance in relation to their right to collective property,<sup>291</sup> if they are in a situation of vulnerability that would prevent them from obtaining this, and

iii) Facilitate physical access to the administrative or judicial institutions, or to the bodies responsible for ensuring the right to collective property of the indigenous and tribal peoples, and also facilitate their participation in judicial, administrative or any other proceedings, without this entailing exaggerated or excessive efforts,<sup>292</sup> due either to the distances or to the channels for accessing such institutions, or to the elevated cost of the proceedings.<sup>293</sup>

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<sup>285</sup> Cf. *Case of the Saramaka People*, *supra*, paras. 173 and 174.

<sup>286</sup> Cf. *Case of Tiu Tojín v. Guatemala*, *supra*, para. 100, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of May 29, 2014. Series C No. 279, paras. 202, 203 and 206. In addition, the fifth preambular paragraph of the United Nations Declaration on the Rights of Indigenous Peoples reaffirms “that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,” while Article 2 establishes that “[i]ndigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” Cf. *United Nations Declaration on the Rights of Indigenous Peoples*, *supra*.

<sup>287</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 62 and 96, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 166.

<sup>288</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 102, and *Case of the Sawhoyamaxa Indigenous Community*, *supra*, para. 109.

<sup>289</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, paras. 112 and 134, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 262.

<sup>290</sup> Cf. *Case of Tiu Tojín*, *supra*, para. 100, and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 201

<sup>291</sup> Cf. United Nations Permanent Forum on Indigenous Issues. Report on the sixth session (14 to 25 May 2007). E/2007/43. E/C.19/2007/12. In this report (para. 23), the Permanent Forum recommended “that States, in consultation with the indigenous peoples concerned, provide financial and technical assistance for indigenous peoples to map the boundaries of their communal lands, finalize legal and policy frameworks for the registration of collective titles, as a matter of urgency, and support indigenous peoples in preparing their claims for collective title.” Cf. *Mutatis mutandi, Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46.1, 46.2.a and 46.2.b American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, paras. 25 to 28.

<sup>292</sup> Cf. *Case of Tiu Tojín*, *supra*, para. 100.

<sup>293</sup> Cf. *Mutatis mutandi, Case of Cantos v. Argentina. Merits, Reparations and Costs*. Judgment of November 28, 2002. Series C No. 97, paras. 54 and 55, and *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion. OC-11/90, *supra*, paras. 29 to 31. Also, Cf. IACHR, *Access to justice as a guarantee of economic, social and cultural rights. A review of the standards adopted by the Inter-American system of human rights*. OEA/Ser.L/V/II.129. Doc. 4 of September 7, 2007, paras. 66 to 80. Available at: <https://www.cidh.oas.org/countryrep/AccessoDESC07eng/Accessodescindice.eng.htm>, and *Access to justice for women victims of violence in the Americas*. OEA/Ser.L/V/II. Doc. 68 of January 20, 2007, para.



- b) Appropriate and effective to protect, ensure and promote the rights over their indigenous lands, by means of which they can implement the processes of recognition, delimitation, demarcation, and titling and, if appropriate, secure the use and enjoyment of their traditional territories;<sup>294</sup>
4. The granting of effective protection that takes into account the inherent particularities that differentiate them from the general population and that accord with their cultural identity,<sup>295</sup> their economic and social characteristics, their possible situation of vulnerability, their customary law, values, uses and customs,<sup>296</sup> as well as their special relationship to the land,<sup>297</sup> and
5. Respect for the internal mechanisms for deciding disputes on indigenous issues, which are in harmony with human rights.<sup>298</sup>

## **B.2 Appropriateness and effectiveness of the judicial proceedings and petitions filed before State authorities**

252. Despite the inexistence of specific judicial proceedings regulated by law, the Kaliña and Lokono peoples have had recourse to courts of the ordinary jurisdiction and to various administrative authorities in order to file formal requests and complaints based on the right of petition recognized in Article 22 of the 1987 Constitution (*supra* para. 65), in order to claim recognition of the rights to their ancestral territory, their legal personality, and the obligation to consult them.

253. In this regard, the judgment issued on May 21, 1998, by the Cantonal Court of the First Canton of Paramaribo in the case of *Tjang A. Sjin v. Zaalman and Others*, established that the community of Marijkedorp (Wan Shi Sha) should respect the property rights of Tjang A. Sjin, because he had a valid property title under Surinamese law (*supra* para. 63). Also, the judgment of July 24, 2003, delivered by the Cantonal Court of the First Canton of Paramaribo in the case of *Celientje Martina Joeroeja-Koewie and Others v. Suriname & Suriname Stone & Industries N.V.*, rejected the request of the residents of Pierrekondre to revoke a sand mining concession granted in their territory, because they lacked legal personality as a collective entity (*supra* para. 64).

254. In addition, on January 12, 2003, the captains of the Kaliña and Lokono peoples presented a formal petition to the President of Suriname, Ronald Venetiaan, and the respective Ministries and State agencies, requesting the recognition of the right to their ancestral territories, their legal personality, and the obligation to consult them. On January 31 and February 28, 2003, meetings were held in this regard, but no specific agreements were reached (*supra* paras. 65 and 66). Subsequently, on March 22, 2004, the captains of the Kaliña and Lokono peoples reiterated the contents of the petition of January 12, 2003. However, the State did not answer the petition (*supra* para. 65).

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112. Available at: <https://www.cidh.oas.org/women/Access07/Report%20Access%20to%20Justice%20Report%20English%20020507.pdf>.

<sup>294</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, para. 138, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 157.

<sup>295</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 51, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 112.

<sup>296</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 63, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 167.

<sup>297</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, para. 149, and *Case of the Kuna Indigenous Community of Madungandí and the Emberá Indigenous Community of Bayano and their members*, *supra*, para. 111.

<sup>298</sup> Cf. Articles 27 and 33(2) of the United Nations Declaration on the Rights of Indigenous Peoples, *supra*.

255. Furthermore, in December 2004, the CLIM sent a communication to the State-owned Lands Office asking it to suspend the issue of land titles in the area known as “Tuinstad Albina.” Also, on May 22, 2006, CLIM sent a communication to the Ministry of Spatial Planning requesting the suspension of any activity that had an impact on their ancestral territory. However, the communications went unanswered (*supra* para. 67). Likewise, on October 7, 2007, the captains of the Kaliña and Lokono peoples presented a communication to the President of Suriname contesting several constructions in the community of Pierrekondre, without obtaining a response from the State (*supra* para. 68). And, on January 28, 2013, the captains of Marijkedorp (Wan Shi Sha), Pierrekondre, Tapuku and Erowarte presented a communication to the President of the Republic protesting against the construction of a casino in the community of Marijkedorp, without receiving any answer (*supra* para. 69).

256. Based on the foregoing, witness Loreen Jubitana, Director of the Association of Indigenous Village Leaders in Suriname (VIDS), testified in the affidavit she presented to the Court that the State has made no concrete progress towards resolving the problems related to the recognition of the rights of the indigenous peoples and that, to the contrary, whenever pressure is brought to bear on the State, it establishes a commission as a way of diffusing the situation, without achieving effective results.<sup>299</sup>

257. Meanwhile, expert witness Stuart Kirsh indicated in his sworn testimony before the Court that, even though they had submitted many petitions and held numerous meetings with State authorities, the Kaliña and Lokono peoples had not received a productive or conclusive response to their requests for recognition of their ancestral territories and other rights.<sup>300</sup>

258. Consequently, the Court finds that the acts and omissions of the State authorities in the petitions and judicial proceedings examined in this section have not provided appropriate and effective answers to the claims submitted, so that they have not afforded a real possibility for the Kaliña and Lokono peoples to achieve the restitution of their ancestral territories.

### ***B.3 The right of access to information in relation to Article 25 of the American Convention***

259. The Court considers it important to emphasize that the parties have not argued the violation of Article 13 of the Convention during the proceedings before this Court (*supra* paras. 232 and 234). However, it deems it pertinent to apply the *iura novit curia* principle, which allows the Court to examine possible violations of the norms of the Convention that have not been alleged in the briefs presented by the parties, provided the latter have had the opportunity to express their respective positions in relation to the facts that substantiate such violations.<sup>301</sup>

260. It is for the Court to analyze whether the State’s failure to answer the request for information on the property titles, which the victims have alleged, constitutes a violation of Article 25 of the American Convention in relation to Article 13 thereof.

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<sup>299</sup> Cf. Affidavit made by Loreen Jubitana on January 27, 2015 (merits file, folio 434).

<sup>300</sup> Cf. Affidavit made by Stuart Kirsh on January 27, 2015 (merits file, folio 351).

<sup>301</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations and Costs*, Judgment of September 1, 2015. Series C No 299, para. 194. The State did not comment on the alleged violation of the right of access to information during the merits stage before the Commission, even though it was advised of this allegation by the representatives; thus, the State had the opportunity to indicate its position with regard to these facts. In addition, during the on-site procedure, it argued that, in Suriname, access to public records was not denied.

261. The Court has established that, pursuant to the protection accorded by the American Convention, the right to freedom of thought and expression includes not only the right and freedom to express one's own thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds.<sup>302</sup> Hence, Article 13 of the Convention, by expressly stipulating the right to seek and receive information, protects the right of everyone to request access to information in the hands of the State, with the exceptions permitted under the Convention's regime of restrictions. This information must be handed over without the need to prove a direct interest in order to obtain it or personal involvement, except in cases in which a legitimate restriction applies.<sup>303</sup>

262. The Court has established that States are obliged to provide the information requested. However, if it is necessary to refuse to provide the information, a justified response must be given that allows the reasons to be known, as well as the norms on which the refusal to hand over the information is based. Thus, an analysis of the decision will make it possible to determine whether the restriction is compatible with the restrictions allowed by the American Convention; in other words, those that are lawful, necessary and proportionate in order to achieve a legitimate objective, which responds to a public interest within a democratic society.<sup>304</sup> In cases when the State does not respond, the Court understands that, in addition to the violation of Article 13 of the Convention, this attitude constitutes an arbitrary decision.<sup>305</sup> Hence, the burden of proof in justifying any denial of access to information lies with the body from which the information was requested.<sup>306</sup>

263. In this specific case, on October 7, 2007, the captains of eight communities of the Kaliña and Lokono peoples,<sup>307</sup> the Land Rights Commission of the Lower Marowijne<sup>308</sup> and the Association of Indigenous Village Leaders in Suriname<sup>309</sup> asked the State "to clarify and produce the relevant documents that prove whether the persons identified above [H.J. De Vries and Harrold Sijlbing] possess valid land titles in the village of Pierrekondre; and if so, [to explain] the nature of those titles and whether the said persons had permission to build houses and/or stores under them. [They asked] that this information be provided in writing and discussed with [them] as soon as it

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<sup>302</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30, and *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293, para.135.

<sup>303</sup> Cf. *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para.77, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2010. Series C No. 219, para. 211.

<sup>304</sup> Cf. *Case of Claude Reyes et al., supra*, para. 77, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 2, 2015. Series C No. 300, para. 90.

<sup>305</sup> Cf. *Case of Claude Reyes et al., supra*, para. 77, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia"), supra*, para. 211.

<sup>306</sup> Cf. Inter-American Juridical Committee. Resolution 147 of the 73<sup>rd</sup> regular session: Principles on the Right of Access to Information. August 7, 2008. Operative paragraph 7. Available at: [http://www.oas.org/cji/eng/CJI-RES\\_147\\_LXXIII-O-08\\_eng.pdf](http://www.oas.org/cji/eng/CJI-RES_147_LXXIII-O-08_eng.pdf).

<sup>307</sup> The chiefs of the indigenous peoples who signed the request were: Ricardo Pané, chief of the community of Christiaankondre; Henry Zaalman, chief of Wan Shia Sha; Jona Gunther, chief of Erowate; Harold Galgren, chief of Alfonsdorp; Ramses Kajoeramari, chief of Langamankondre; Romeo Pierre, Chief of Pierrekondre; Frans Perre, chief of Tapuku, and Leo Maipio, chief of Bigiston.

<sup>308</sup> Represented by Grace Watamaleo, Coordinator of the Land Rights Commission of the Lower Marowijne (CLIM).

<sup>309</sup> Represented by Loreen Jubitana, Director of the Association of Indigenous Village Leaders in Suriname.

was available.<sup>310</sup> However, the State of Suriname did not respond to this request.<sup>311</sup> Nevertheless, during the on-site procedure, the State indicated that any Surinamese could access the public records and request this information.

264. Similarly, this Court asked the State to provide the freehold land titles, and leasehold titles and long-term leases granted to indigenous and non-indigenous third parties, as well as information as to how many of these titles had been issued to non-indigenous third parties. This information was delivered on September 22, 2015, but in Dutch (*supra* para. 27), and without explaining the information that had been sent, after it had been requested on three occasions (*supra* paras. 12 and 16).<sup>312</sup>

265. The Court has received no specific information on the existence of a domestic law that establishes and regulates access to information in Suriname. However, it observes that the October 7, 2007, request for information on the existence of property titles in Pierrekondre was submitted under the protection of article 22 of the Suriname Constitution, which permits anyone to present written petitions to the public authorities. As already mentioned, in its case law, the Court has indicated that the State has the obligation to provide the information requested or, if the request must be refused, it must set out the justification in its decision, so that the reasons and norms on which it based the decision not to provide the information may be known. Moreover, Article 24 of the American Declaration establishes, as part of the right of petition, the State's obligation to issue a prompt decision (*supra* para. 246).

266. In this regard, the Court underlines the fact that the State failed to respond to this petition justifying its decision not to provide the said documentation. In addition, the Court has already established on previous occasions that the failure to provide a response enables the State to decide in a discretionary or arbitrary manner whether or not to facilitate certain information, which results in legal uncertainty in relation to the exercise of the right in question.<sup>313</sup>

267. Furthermore, the Court considers that the information requested was important documentation to provide the Kaliña and Lokono peoples with precise facts on how many individuals from outside their communities were in the area, and the legal situation of the land ownership. Thus, the information could have provided them with additional evidence when filing their claims in the domestic jurisdiction. Consequently, the Court finds that the failure to hand over information in Suriname's public records, and the failure to justify the refusal to provide it, placed these peoples at a disadvantage and in ignorance in relation to the third parties who alleged that they held title to part of the lands. Hence, the State failed to ensure, under the right of petition, access to information and to justice.

### **C. Conclusion**

268. Based on the foregoing, the Court concludes that the above-mentioned domestic provisions do not provide appropriate and effective legal remedies to protect the members of the Kaliña and

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<sup>310</sup> Cf. Formal petition presented under art. 22 of the 1987 Constitution of the Republic of Suriname, October 7, 2007 (evidence file, folios 332 and 333).

<sup>311</sup> Cf. Brief of May 28, 2008 (evidence file, folio 570), and Brief of October 29, 2008 (evidence file, folio 1258).

<sup>312</sup> In this regard, during the public hearing, the Court requested these documents as part of the helpful evidence. On March 14, the State delivered several annexes to the final arguments, which did not include the information on the titles issued to third parties requested during the hearing. On March 26 and April 15, 2015, the Court again asked the Government of Suriname to provide this information. Initially, the State advised the Court that the investigation into the requested titles was underway, but did not attach any documents that proved this information. Finally, on September 22, 2015, the State provided the Court with this information, but in Dutch, after it had again been requested following the visit.

<sup>313</sup> Cf. *Case of Claude Reyes et al.*, *supra*, para. 77, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia")*, *supra*, para. 211.

Lokono peoples against acts that violate their right to property; the judicial proceedings and petitions that were filed were not effective in this regard, and the State did not provide the information requested by the representatives or justify the impossibility of handing it over. Consequently, the State is responsible for the violation of the right to judicial protection established in Article 25 of the American Convention, in relation to Articles 1(1), 2 and 13 of this instrument.

## **VII REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)**

269. Under the provisions of Article 63(1) of the American Convention,<sup>314</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make satisfactory reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>315</sup>

270. The Court has established that the reparations must have a causal nexus with the facts of the case, the violations that have been declared and the harm that has been proved, as well as with the measures requested in order to redress the respective harm. Therefore, the Court must observe this concurrence in order to rule appropriately and in accordance with law.<sup>316</sup>

271. Based on the violations of the American Convention declared in Chapter VI of this Judgment, the Court will proceed to examine the arguments and recommendations presented by the Commission, the claims of the victims' representatives, and the arguments of the State, in light of the criteria established in its case law in relation to the nature and scope of the obligation to make reparation, so as to establish measures aimed at redressing the harm caused to the victims.<sup>317</sup>

272. The Court considers that, in cases such as this one, the reparation should help strengthen the cultural identity of the indigenous and tribal peoples, guaranteeing the control of their own institutions, cultures, traditions and territories in order to contribute to their development in keeping with their life projects, and present and future needs. The Court also recognizes that the situation of the indigenous peoples varies according to national and regional characteristics, as well as to their different historical and cultural traditions. Consequently, the Court finds that the measures of reparation granted should provide effective mechanisms, in keeping with their specific ethnic perspective, that permit them to define their priorities as regards their development and evolution as a people.<sup>318</sup>

### **A. Injured party**

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<sup>314</sup> Article 63(1) of the American Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

<sup>315</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 313.

<sup>316</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 314.

<sup>317</sup> Cf. *Case of Velásquez Rodríguez. Reparations and Costs, supra*, paras. 25 and 26, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 315.

<sup>318</sup> Cf. *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 316.

273. The Court considers that anyone who has been declared a victim of the violation of any right recognized in the Convention is an injured party, in the terms of Article 63(1) thereof. Hence, this Court considers the Kaliña and Lokono peoples and their members to be the injured party.

## **B. Restitution**

274. The **Commission** asked that the Kaliña and Lokono peoples be recognized as legal persons. Also that, following effective and fully informed consultations with the Kaliña and Lokono peoples and respecting their customary law, the State take steps to: (i) delimit, demarcate and grant collective title to the Kaliña and Lokono peoples over the lands and territories they have traditionally occupied and used; (ii) review the land titles, transfer rights, and short- and long-term leases granted to non-indigenous persons, and determine the modifications that are required; (iii) review the terms of the mining activities authorized inside the Wane Kreek Nature Reserve, and (iv) review the terms of the establishment and management of the nature reserves in order to ensure that they do not obstruct the full use and enjoyment of the lands of the peoples, and remove the status of “nature reserve” or, to the contrary, retain this, but under a model of co-management with the peoples, all of this following the corresponding consultation.

275. The Commission also asked the Court, with regard to the mining concessions, to order the State to refrain from any act by the State or by private third parties that might affect the enjoyment of the Kaliña and Lokono peoples, such as concessions, development or investment projects, or indiscriminate logging that does not comply with the applicable international standards. Also, in its final observations, the Commission specified that the measures of reparation should be complied with within a specific time frame. To the contrary, as ordered by the Court in the case of the *Xákmok Kásek*, the State must pay compensation for non-compliance with the established time frame.

276. Meanwhile, the **representatives** asked that the Court order the State to adopt any legislative, administrative, and any other measures as may be required to: (i) recognize and secure the right of the Kaliña and Lokono peoples to juridical personality with the purpose of ensuring the full exercise and enjoyment of their right to communal property; (ii) create an effective mechanism for the delimitation, demarcation and titling of the Kaliña and Lokono peoples’ traditionally owned territory and their traditionally used natural resources, in accordance with their customary law, values, customs and mores and with full respect for the boundaries traditionally acknowledged by these peoples and their neighbors, the N'djuka tribal peoples, with the collaboration of the victims and within 18 months. They also asked that, until this process has been completed, Suriname abstain from any act that would affect their territory, unless the State obtains the free, prior and informed consent; (iii) restitute the lands that are in the hands of third parties; (iv) restitute to the victims the lands incorporated into the protected areas and that form part of the territories of the Kaliña and Lokono peoples, recognizing their property rights and associated rights over those lands, and also require the State to negotiate with the representatives, freely chosen by the victims, the possible maintenance of the protected areas, ecosystem and species management plans, and equitable benefit-sharing mechanisms; (v) review and, when appropriate, revoke logging and oil palm concessions within the territory of the Kaliña and Lokono peoples, with the effective participation of the victims, and (vi) guarantee the prior and informed consultation and the effective participation in activities that may affect the Kaliña and Lokono peoples or their territories, and also share, reasonably, the benefits of any development project executed in their territory.

277. The **State** did not comment on the claims of the Commission and the representatives concerning measures of restitution in its answering brief. However, in its final arguments, the State asserted the following with regard to the requests of the parties and the Commission: (i) the delimitation, titling and demarcation involved a series of difficulties that, in principle, would make

this unviable; (ii) the indigenous peoples did not possess the capacity to take on the management of the reserves (*supra* para. 120); (iii) the restitution of the reserves was not possible because this would introduce changes in the population balance and would create a precedent for other indigenous and tribal groups who lived in nature reserves; also, the State had environmental obligations in both the domestic sphere towards its citizens, and in the international sphere based on international environmental treaties, such as the Convention on Biological Diversity; (iv) regarding the possibility of expropriating third parties, this would result in ethnic and racial turmoil, have unforeseen consequence for the lives of those who were obliged to abandon these territories, and entail economic prejudice at the local and State levels,<sup>319</sup> and (v) the State could not share the control of its resources, because 85% of the Suriname's economy was dependent on natural resources<sup>320</sup> and, therefore, it must control them totally in order to provide for all its citizens and "to sustain the economy as the main driver for developing the nation."

278. In Chapters VI-I and VI-II, the Court determined that the State had violated Article 3, 21 and 23 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples, for various reasons: (a) the failure to recognize collective juridical personality; (b) the failure to recognize and guarantee indigenous communal property by failing to delimit, demarcate, grant title to, and guarantee use and enjoyment, as well as the adverse impacts resulting from the issue of titles to third parties, and due to different types of damage in the reserves, and (c) the lack of effective participation in relation to the exploitation project within one reserve (*supra* paras. 114, 142, 160, 198 and 230).

279. The Court establishes that, in order to achieve integral reparation of the violations that have been proved by the restitution of the rights that have been violated, the State must adopt the following measures:

*i) Juridical personality and collective property*

- a) Grant the Kaliña and Lokono peoples legal recognition of the collective juridical personality corresponding to the community of which they are members in order to ensure them the exercise and full enjoyment of their right to property of a communal nature, as well as access to justice as a community in keeping with their customs and traditions, as established in paragraphs 105 to 114. The State must comply with the measure of reparation within 18 months of notification of this Judgment, and
- b) Delimit, demarcate, and grant collective title to the territory of the members of the Kaliña and Lokono peoples, guaranteeing the use and effective enjoyment, as established in paragraphs 129 to 142 of the Judgment, and by means of processes in which these peoples participate. This should be carried out taking into account the rights of other tribal peoples in the area.

280. In the case of the lands claimed that are in the hands of non-indigenous or non-tribal third parties, whether natural or legal persons, the State must, through its competent authorities, decide whether to purchase or expropriate the territory in favor of the indigenous peoples, by payment of compensation to those affected as established by domestic law.<sup>321</sup> When deciding this matter, the

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<sup>319</sup> The State indicated that it would have to provide financial compensation to the third parties who were expropriated, and the cost would be too great. It would also have consequences for the local economy, because, as the area was near the border with French Guiana, many economic activities involved trade and the provision of services and these would be negatively affected by the restriction of certain facilities.

<sup>320</sup> In particular, in 2013, bauxite represented 15% of the State's total earnings.

<sup>321</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, paras. 148 and 217, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 324. In this regard, the Court recalls its case law according to which:

State authorities should abide by the standards established in this Judgment (*supra* paras. 155 to 159 and 168), bearing in mind, in particular, the special relationship that the indigenous peoples have with their lands in order to preserve their culture and ensure their survival. The decision taken by the domestic authorities should never be based exclusively on the fact that these lands are in private hands or that they are being exploited rationally.<sup>322</sup>

281. If the State should consider that, for objective and duly justified reasons, it is not possible to grant title to the traditional lands, it must grant collective property titles to these peoples on adjoining alternative lands of the same size and quality as those that it has not granted. To implement this measure, the State must ensure the effective participation of the Kaliña and Lokono peoples and their members, in keeping with the relevant standards.<sup>323</sup>

282. Until these measures have been implemented, the State must ensure, immediately and effectively, that the lands that are currently in possession of the Kaliña and Lokono peoples do not suffer any intrusion, interference or harm by third parties or State agents that could jeopardize the existence, value, use and enjoyment of their territory,<sup>324</sup> and also, to guarantee legal certainty, cease issuing new property titles and leases in the territories of the Kaliña and Lokono peoples.

283. The State must draw up, by mutual agreement with the Kaliña and Lokono peoples and the other tribal peoples in the area, as well as with private third parties, rules for peaceful and harmonious coexistence in the territory in question that respect the uses and customs of the Kaliña and Lokono peoples, and that guarantee their relationship with their traditional areas, including the Marowijne River (*supra* para. 159).

284. The State has three years from notification of the Judgment to deliver the corresponding titles to the Kaliña and Lokono peoples, and these must be duly regularized to ensure the effective use and enjoyment of their property.

285. The State must, within three months of notification of this Judgment, implement the necessary mechanisms for coordination among the institutions that are involved in decision-making and have competence in this matter, in order to ensure the effectiveness of the measures established above.<sup>325</sup>

*ii) Restrictions in the nature reserves*

286. With regard to the Galibi and Wane Kreek nature reserves, the State must adopt the sufficient and necessary measures to guarantee, by appropriate mechanisms, the Kaliña and Lokono peoples' effective access, use and participation in them, in order to ensure the compatibility of environmental protection and the rights of the indigenous peoples, pursuant to paragraph 181 of the Judgment, so that maintaining the reserves does not constitute an excessive obstacle to

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"restrictions to the right to property of private individuals may be necessary in order to achieve the collective goal of preserving the cultural identities of a democratic and pluralist society in the sense of the American Convention; and proportionate if fair compensation is paid to those affected, pursuant to Article 21(2) of the Convention."

<sup>322</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, para. 217, and *Case of the Xákmok Kásek Indigenous Community, supra*, para. 284.

<sup>323</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, para. 217, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 325.

<sup>324</sup> Cf. *Case of the Mayagna (Sumo) Awás Tingni Community, supra*, para. 153.2, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 324.b.

<sup>325</sup> Cf. *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 328.



their rights.<sup>326</sup> Thus, any restriction of their rights must comply with the requirements of legality, necessity and proportionality, and the achievement of a legitimate purpose (*supra* para. 155).

iii) *The concessions within the nature reserves on the traditional territory*

287. In view of the fact that activities under the mining concession ceased in 2009,<sup>327</sup> the Court finds that it is unnecessary to establish measures relating to the review and revocation of the mining concession requested by the representatives. However, since the concession does not end until 2033, the Court notes that, in any case, the State must take the necessary measures to ensure that no actions are taken that could affect the traditional territory, in particular in the Wane Kreek Nature Reserve, while the effective participation of the Kaliña and Lokono peoples by means of a consultation process, has not been ensured, in the terms of paragraphs 206, 207 and 212.

**C. Rehabilitation of the territory**

288. The **Commission** asked that measures be taken to rehabilitate the area where the mining operations in the Wane Kreek Nature Reserve took place, in consultation with the Kaliña and Lokono peoples. It also asked that an independent study be made of the actual impact on the soil, forests and rivers, and a remediation plan. The peoples must be consulted in order to achieve this objective.

289. The **representatives** called for: (i) the restitution and restoration of the lands in the hands of third parties, and of those that are within the three protected areas created in the territory of the Kaliña and Lokono peoples, and (ii) the effective environmental remediation and rehabilitation of the lands degraded by the mining operations within the territory of these peoples. Added to this, in their final observations, the representatives emphasized that the mining activity had caused extensive damage and that the efforts made to rehabilitate the territory had not been effective. The **State** did not submit any explicit arguments in this regard; however, following the on-site procedure, the State submitted a memorandum of the Director of the Bauxite Institute of Suriname dated August 27, 2015, which indicated that various actions had been taken to rehabilitate the territory that had been damaged by the mining operations, without providing any further evidence in this regard.

290. In view of the fact that the State was found responsible for the violation of Article 21 of the Convention because of the damage caused to the environment and the lands of the Kaliña and Lokono peoples owing to the bauxite mining operations in the Wane Kreek Nature Reserve (*supra* para. 230), and since, to date, the remediation work carried out by the company has been neither effective nor sufficient, the Court establishes that the State must:

- a) Implement the sufficient and necessary actions to rehabilitate the area affected. To this end, an action plan for the effective rehabilitation of the area must be drawn up, in conjunction with the company that has been in charge of this rehabilitation, and with the participation of a representative of the Kaliña and Lokono peoples.<sup>328</sup> This plan must include: (i) a complete updated evaluation of the area affected, by an assessment prepared by independent experts; (ii) a timetable for the work; (iii) the necessary measures to remediate any adverse effects of the mining operations, and (iv) measures

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<sup>326</sup> Cf. *Case of the Xákmok Kásek Indigenous Community*, *supra*, para. 313.

<sup>327</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 299, and *Case of the Garifuna Community of Punta Piedra and its members*, *supra*, para. 327.

<sup>328</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 293.

to reforest the areas that are still affected by those operations, all of this taking into account the opinion of the peoples that have been affected,<sup>329</sup> and

- b) Establish the necessary mechanisms to monitor and supervise the execution of the rehabilitation by the company. To this end, the State must appoint an expert in such matters in order to ensure total compliance with the rehabilitation of the area.

291. Compliance with this measure of reparation is a State obligation that must be completed within three years. During this period, the State must provide an annual report on the steps taken to complete the action plan, following its adoption.<sup>330</sup>

#### **D. Creation of a community development fund**

292. The **representatives** asked that the Court order the State to establish a development fund as a repository for the funds awarded for the pecuniary and non-pecuniary damage caused by the violation of the rights of the Kaliña and Lokono peoples. In this regard, the representatives argued that this community development fund should be set up in a different way to the funds established in the cases of the *Moiwana Community*<sup>331</sup> and the *Saramaka People*,<sup>332</sup> both against Suriname, because, in their opinion, these have not functioned satisfactorily. Thus, the representatives asked that the Court order the State to transfer any compensation awarded to an entity to be freely identified by the victims and controlled and autonomously managed by the victims themselves, and that the funds could be used at their discretion to invest, for example, in health, education, resource management, and other projects in their territory. Added to this, the representatives underlined that the Kaliña and Lokono peoples were fully capable of managing the fund, because they had been managing funds through their traditional institutions and representative organizations for decades. Consequently, they indicated that they did not want the State to be involved in making decisions about or managing the fund in question.

293. In its final written arguments, the State disputed the necessity and importance of establishing any type of development fund for indigenous peoples, because the Government's policy was to develop the country equitably in order to improve the quality of life of all Surinamese peoples, including the indigenous peoples and the Maroons. Nevertheless, the State affirmed that, if the Court decided to establish a development fund, the State's participation in the fund was essential to ensure that the funds were not used inappropriately. It also stated that its participation in the development funds of the *Moiwana Community* and the *Saramaka People* cases had not been an obstacle for the allocation of the capital.

294. The Commission did not make any explicit comments in this regard, although it asked that the Kaliña and Lokono peoples be redressed, both individually and collectively, for the different violations of their rights claimed in this case.

295. In view of the fact that the State has been found internationally responsible for the violation of Articles 1(1), 2, 3, 21, 23 and 25 of the Convention, which has resulted in the harm to extremely representative values of the members of the Kaliña and Lokono peoples that have an impact on their cultural identity and on the cultural heritage to be transmitted to future generations, the

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<sup>329</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, paras. 294 and 295.

<sup>330</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 295.

<sup>331</sup> Cf. *Case of the Moiwana Community*, *supra*, paras. 213 to 215.

<sup>332</sup> Cf. *Case of the Saramaka People*, *supra*, paras. 201 and 202.

Court finds it appropriate, as it has in previous cases,<sup>333</sup> to establish the creation of a community development fund as compensation for the pecuniary and non-pecuniary damage suffered by the members of these peoples. Furthermore, this fund is in addition to any other present or future benefit that might correspond to the Kaliña and Lokono peoples as a result of the State's general development obligations.<sup>334</sup>

296. Bearing in mind that "indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources,<sup>335</sup> as well as the observations of the representatives concerning the requested investment projects, the Court finds that the purpose of the community development fund must be to develop projects in the areas of health, education, food security, resource management, and others that the Kaliña and Lokono peoples consider pertinent for their development.

297. The State must take all the necessary administrative, legislative, financial and human resource measures to create and implement this fund and, to this end, within three months of notification of this Judgment, it must appoint an authority with competence in this matter, to administer the Fund. Meanwhile, the Kaliña and Lokono peoples must choose a representative for the dialogue with the State, so that the fund is implemented in accordance with the will of the peoples.<sup>336</sup>

298. The State must allocate the sum of US\$1,000,000.00 (one million United States dollars) to this fund, to be invested and implemented in keeping with the proposed objectives, within no more than three years of notification of this Judgment.

299. Lastly, the Court establishes that, during the implementation period, the parties must provide the Court with an annual report describing the projects in which the sum allocated to the fund is invested.

### **E. Guarantees of non-repetition**

300. In cases such as this one, in which repeated violations of the human rights of indigenous and tribal peoples have been committed, the guarantees of non-repetition acquire greater relevance as a measure of reparation, so that similar acts are not repeated and also to contribute to prevention.<sup>337</sup> In this regard, the Court recalls that the State must adopt any legal, administrative or other type of measures necessary to ensure effective exercise of the rights<sup>338</sup> of the indigenous and tribal peoples, pursuant to its obligation to respect and ensure rights established in Articles 1(1) and 2 of the Convention.

#### **E.1 Measures for the recognition of juridical personality, and guarantees of collective property, participation, and access to justice**

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<sup>333</sup> Cf. *Case of the Yakye Axa Indigenous Community*, *supra*, para. 205, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 332.

<sup>334</sup> Cf. *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, paras. 332 to 336.

<sup>335</sup> Cf. Article 29 (1) of the United Nations Declaration on the Rights of Indigenous Peoples, *supra*.

<sup>336</sup> Cf. *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 334.

<sup>337</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 241, para. 92. "The guarantees of non-repetition [...] will contribute to prevention." Cf. Principle 23 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. UN Doc. A/Res/60/147. Resolution adopted by the General Assembly of the United Nations on December 16, 2005, Principle 23.

<sup>338</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra*, para. 166, and *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2005. Series C No. 293, para. 389.

301. In addition to the measures requested for the Kaliña and Lokono peoples (*supra* paras. 274 and 275), the **Commission** also asked that the Court order the State to take the legislative, administrative and any other measures necessary to recognize to the indigenous peoples: (a) juridical personality; (b) the right to collective property; (c) the right to be consulted with regard to any development, investment or conservation projects, and (d) the right to judicial protection to defend their rights vis-à-vis their traditional territories. The Commission also considered that the State should eliminate the legal provisions that prevented protection of the right to property, and should review the existing legal framework in order to amend any provisions that were contrary to the rights of the peoples which have been examined in this case.

302. In addition to the measures requested in favor of the Kaliña and Lokono peoples (*supra* para. 276), the **representatives** asked that the Court order the State to take all the legislative, administrative or any other measures necessary to recognize and ensure collective access to justice (legal standing) and the right to effective judicial remedies to the indigenous peoples. The representatives also requested the review, adoption or amendment of the legislation related to protected areas, mining, logging, hunting and forests to ensure their consistency with the victims' rights.

303. The **State** indicated that: (a) Surinamese law was unfamiliar with the concept of attributing legal personality as a collective to ethnic groups; thus, the fact that this was not regulated in the Civil Code could not be attributed to the State. Nevertheless, it indicated that, in the context of examining the impact that this recognition would have on the Surinamese legal system, the State was in the process of enacting the traditional authorities act, which would provide a solution to the problem of recognition of juridical personality; (b) regarding the claim to lands, control over them and their natural resources could not be handed over to all the indigenous and tribal peoples of Suriname as this would have a disastrous effect on the country's economy; (c) under the laws of Suriname, the rights and the interests of the indigenous peoples and the Maroons were taken into consideration when the State took a decision to grant a concession, and referred to article 41 of the Forestry Management Act and to article 25(1) of the Mining Decree (*supra* para. 209), and (d) starting on September 27, 2013, various measures were being taken to adopt a protocol on free, prior and informed consent, but delays had occurred owing to factors that can be attributed to both the State and the indigenous communities (*supra* para. 210). Nevertheless, it expressed its willingness to continue working to improve consultations with the indigenous communities.

304. The Court has found the State responsible for the violation of the rights recognized in Articles 3, 21, 23 and 25, in relation to Articles 1(1), 2 and 13 of the Convention, owing to: (a) its domestic law not recognizing collective juridical personality; (b) the failure to recognize collective property; (c) the absence of mechanisms for the delimitation, demarcation and titling of territories; (d) the lack of mechanisms that ensure effective participation, by a consultation process, and (e) the absence of adequate and effective remedies to secure access to collective justice to the indigenous and tribal peoples (*supra* paras. 114, 142, 160, 230 and 268).

305. Consequently, taking into account the obligations arising from Article 2 of the Convention, the Court establishes that the State shall adopt all the necessary legislative, administrative or other measures to:

- a) Grant the indigenous and tribal peoples in Suriname legal recognition of collective juridical personality in order to ensure them the exercise and full enjoyment of their right to property in accordance with their customs and traditions, as established in paragraphs 105 to 114. The State must comply with the measures of reparation with two years of notification of this Judgment, at the latest;

- b) Establish an effective mechanism for the delimitation, demarcation and titling of the territories of the indigenous and tribal peoples in Suriname. The State must adopt these measures with the effective participation of these peoples, in accordance with their customary law, values, practices and customs,<sup>339</sup> and also in light of the standards established in this Judgment (*supra* paras. 129 to 142), within three years of its notification, at the latest;
- c) Adapt its domestic remedies in order to ensure effective collective access to justice for the indigenous and tribal peoples, and also to ensure access to the necessary information to exercise this right. To this end, the State must apply and interpret such remedies taking into account the standards for indigenous matters mentioned in paragraph 251 of this decision, within no more than two years of notification of this Judgment, and
- d) Guarantee: (i) the effective participation, by means of a consultation process, of the indigenous and tribal peoples of Suriname, according to their traditions and customs, in any project, investment, nature reserve or activity that could have an impact on their territory; (ii) the preparation of social and environmental impact assessments by independent and technically-qualified entities, prior to agreement to any investment or development project within the traditional territory of the indigenous and tribal peoples, and (iii) the sharing of benefits resulting from such projects with the indigenous and tribal peoples, as appropriate (*supra* para. 201). All of this, in keeping with the standards indicated in this Judgment<sup>340</sup> (*supra* paras. 201 to 229) and within no more than two years of notification of the Judgment.

306. In addition, the Commission and the representatives asked, in general, for the review and amendment of the domestic legislation on mining, logging, hunting, and on any other matter that could be contrary to the rights of the indigenous peoples, without stipulating clearing the laws or the respective articles, or how this would be contrary to the said rights. Accordingly, and since no particular violation has been proved in the merits section of this Judgment, these requests have no causal nexus, and therefore it is not in order to adopt a measure of reparation.

## **E.2 Training measures**

307. The **representatives** requested the implementation of mandatory training programs or courses that included modules on domestic and international human rights standards concerning indigenous and tribal peoples for law enforcement officials, civil servants and others whose functions involved relations with indigenous peoples at all hierarchical levels. All of this within a reasonable time and with the corresponding budgetary provisions. In addition, they indicated that these measures should ensure the effective participation and the free, prior and informed consent of the Kaliña and Lokono peoples, expressed through their freely chosen representatives.

308. Neither the **Commission** nor the **State** commented in this regard.

309. Based on the violations that have been proved, the Court establishes that the State must implement, within a reasonable time and with the respective budgetary provision, permanent

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<sup>339</sup> Cf. *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, para. 164, and *Case of the Kuna indigenous peoples of Madungandí and the Emberá Indigenous Peoples of Bayano and their members*, *supra*, para. 232.

<sup>340</sup> Cf. *Case of the Saramaka People*, *supra*, para. 194 d) and e) and *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, paras. 299 and 300.

mandatory programs or courses that include modules on national and international standards concerning the human rights of the indigenous and tribal peoples; in particular, concerning the respect, protection and guarantee of the right to collective property. These courses must be addressed at law enforcement officials, and those whose functions relate to this issue, as part of the general and continuing training of the officials at all hierarchical levels in their respective institutions.<sup>341</sup>

## **F. Satisfaction**

### **F.1 Publication and radio broadcast of the Judgment**

310. The **representatives** requested that the State be required to translate the Judgment into Dutch and to publish it in the State's Official Gazette and in a national daily newspaper.

311. Neither the **Commission** nor the **State** commented in this regard.

312. Based on the violations declared in this Judgment, the Court deems it pertinent to order, as it has in other cases,<sup>342</sup> that the State, within six months of notification of this Judgment, make the following publications: (a) the official summary of this Judgment prepared by the Court in English, which must be translated into Dutch and Surinamese by the State<sup>343</sup> and published in the respective languages, once, in the Official Gazette and in a national newspaper with widespread circulation in Suriname, and (b) this Judgment in its entirety in English, as well as the official summary of the Judgment translated into Dutch, available for one year on an official website of the State.

313. In addition, the Court finds it appropriate, as it has in other cases,<sup>344</sup> that the State broadcast the official press release of the Judgment, in Dutch and/or in Surinamese, by one or more radio stations with widespread coverage among the Kaliña and Lokono peoples. The radio broadcast must be made on the first Sunday of the month on at least four occasions. The State must previously advise the representatives, with at least two weeks' notice, of the radio station and the date and time of this broadcast. The State must comply with this measure within six months of notification of this Judgment.

### **F.2 Another measure that was requested: public act to acknowledge the State's responsibility**

314. The **representatives** requested that the State make an official, public apology for violating the rights of the Kaliña and Lokono peoples and that, in public, it undertake that, in future, such rights would be respected. The apology should be made in a formal ceremony, organized and conducted with the full and effective participation of the freely chosen representatives of the Kaliña and Lokono peoples. Also, all the members of the victims' communities must be invited, and it must be broadcast in the media.

315. Neither the **Commission** nor the **State** commented in this regard.

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<sup>341</sup> Cf. *Case of the Kichwa Indigenous People of Sarayaku*, *supra*, para. 302, and *mutatis mutandis*, *Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013*, para. 337.

<sup>342</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88*, para. 79, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 338.

<sup>343</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C. No. 251*, para. 263, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 338.

<sup>344</sup> Cf. *Case of the Yakye Axa Indigenous Community, supra*, para. 227, and *Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 339.

316. In this regard, the Court considers that the delivery of this Judgment and the reparations ordered herein are sufficient and appropriate measure in this case; consequently, it does not find it necessary to order the holding of a public ceremony to acknowledge responsibility.

### **G. Costs and expenses**

317. The **representatives** indicated in their pleadings and motions brief that the State should reimburse the costs and expenses incurred by the members of the peoples in prosecuting the case before the Commission and the Court, as well as in the domestic sphere. To this end, they indicated that the costs of VIDS and KLIM amounted to US\$179,970.94 (one hundred and seventy nine thousand nine hundred and seventy United States dollars and ninety-four cents), and that the expenses of the Forest Peoples Programme, over the last 15 years, amount to US\$15,000.00 (fifteen thousand United States dollars). Additionally, in their final observations, the representatives also requested the reimbursement of the expenses incurred by Forest Peoples Programme owing to the public hearing in this case, which amounted to US\$13,294.25 (thirteen thousand two hundred and ninety-four United States dollars and twenty-five cents). Lastly, the representatives requested the payment of the expenditure that was incurred owing to the on-site procedure, which amounted to US\$4,847.40 (four thousand eight hundred and forty-seven United States dollars and forty cents).

318. Neither the Commission nor the State commented in this regard.

319. The Court reiterates that, pursuant to its case law,<sup>345</sup> costs and expenses are part of the concept of reparation, because the actions taken by the victims to obtain justice, in both the domestic and the international spheres, entail disbursements that should be compensated when the international responsibility of the State has been declared in a judgment against it. Regarding the reimbursement of expenses, it is for the Court to assess their scope prudently, and this includes the expenses generated during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.<sup>346</sup>

320. In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather the parties must include arguments that relate the evidence to the fact it is meant to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.<sup>347</sup> The Court has also indicated that "the claims of the victims or their representatives for costs and expenses, and the evidence that supports them, must be presented to the Court on the first procedural occasion granted to them; that is, in the pleadings and motions brief, without prejudice to such claims being updated subsequently in keeping with the new costs and expenses incurred owing to the proceedings before this Court."<sup>348</sup>

321. With regard to the costs and expenses of VIDS and KLIM, the representatives argued that the activities carried out related to investigations into the ancestral lands of the Kaliña and Lokono

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<sup>345</sup> Cf. *Case of Velásquez Rodríguez. Reparations and Costs*, *supra*, para. 42, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 361.

<sup>346</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 361.

<sup>347</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 362.

<sup>348</sup> *Case of Chaparro Álvarez and Lapo Íñiguez*, *supra*, para. 275, and *Case of the Garífuna Community of Punta Piedra and its members*, *supra*, para. 362.

peoples, the mapping of the area claimed, KLIM meetings, meetings with State authorities, preparation of land and resources management plans, visits of experts and Maroon authorities, the hiring of two employees for KLIM, the rent of an office and the purchase of the respective office supplies. However, the Court has verified that the vouchers provided do not prove that the amounts indicated were effectively disbursed, because most of them were issued by VIDS and KLIM themselves, without any substantiation by the person or entity that received the alleged payment. Also, the justifications indicated on those vouchers do not establish clearly the relationship between the presumed expenditure and the processing of the proceedings in the domestic or the international sphere. Furthermore, the amounts included on the list of expenses do not coincide with those requested by the representatives. In addition, the representatives did not provide any evidence with regard to the costs and expenses incurred by the Forest Peoples Programme. However, the Court finds it reasonable to suppose that these organizations incurred expenses based on their representation of the victims.

322. With regard to the expenses relating to the public hearing and the on-site procedure held in this case, which correspond to air fares, accommodation, food and internal transportation, the Court notes that the vouchers provided prove the expenses incurred by the representatives owing to those activities.<sup>349</sup>

323. Consequently, as reimbursement of costs and expenses for the work carried out in the litigation of the case in the domestic and international spheres, the Court finds it in order to grant the reasonable sum of US\$15,000.00 (fifteen thousand United States dollars) to VIDS and KLIM, in conjunction, and the sum of US\$10,000.00 (ten thousand United States dollars) to Forest Peoples Programme. In addition, the Court orders the State to pay the representatives the sum of US\$18,141.65 (eighteen thousand one hundred and forty-one United State dollars and sixty-five cents) for the expenses incurred by the representatives during the public hearing and the on-site procedure held in this case. The amounts indicated must be paid by the State to the representatives within six months of notification of this Judgment. Lastly, the Court considers that during the proceeding on monitoring compliance with this Judgment, it may establish that the State should reimburse the victims of their representatives any reasonable expenses incurred during that procedural stage.

#### ***H. Method of complying with the payments ordered***

324. The State shall comply with the monetary obligation by payment in United States dollars or the equivalent in Surinamese dollars, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment to make the calculation. If, for reasons that can be attributed to the beneficiaries of reimbursements or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit those amounts in their favor in a deposit account or certificate in a solvent Surinamese financial institution, in United States dollars, and under the most favorable financial conditions allowed by banking law and practice. If the corresponding amounts are not claimed, after 10 years, the amounts shall be returned to the State with the interest accrued.

325. The amounts allocated in this Judgment to reimburse costs and expenses shall be delivered to the representatives in full, as established in this Judgment, without any deductions arising from possible taxes or charges.

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<sup>349</sup> Cf. Annex A to the representatives' final written arguments (merits file, folios 731 to 752), and Annex 9 to the representatives' observations on the on-site procedure (evidence file, folios 2906 to 2917).



326. If the State should fall in arrears with regard to the Community Development Fund, or the payment of the costs and expenses, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Suriname.

327. Pursuant to its consistent practice, the Court reserves the right, inherent in its authority and also arising from Article 65 of the American Convention, to monitor full compliance with the Judgment. The case will be considered concluded when the State has complied fully with the provisions of this Judgment.

328. Within one year of notification of this Judgment, the State shall provide the Court with a report on the measures taken to comply with it.

## **VIII OPERATIVE PARAGRAPHS**

329. Therefore,

### **THE COURT**

#### **DECLARES,**

By six votes to one, that

1. The State is responsible for the violation of the right to recognition of juridical personality, recognized in Article 3 of the American Convention, in relation to Articles 1(1), 2, 21 and 25 thereof, to the detriment of the Kaliña and Lokono peoples and their members, pursuant to paragraphs 105 to 114 of this Judgment.

Judge Pérez Pérez dissenting.

By six votes to one, that

2. The State is responsible for the violation of the right to collective property and political rights, recognized in Articles 21 and 23 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples and their members, pursuant to paragraphs 122 to 230 of this Judgment.

Judge Pérez Pérez dissenting.

By six votes to one, that

3. The State is responsible for the violation of the right to judicial protection, recognized in Article 25 of the American Convention, in relation to Articles 1(1), 2 and 13 thereof, to the detriment of the Kaliña and Lokono peoples and their members, pursuant to paragraphs 237 to 268 of this Judgment.

Judge Pérez Pérez dissenting.

#### **AND ESTABLISHES,**

Unanimously, that:

4. This Judgment constitutes, *per se*, a form of reparation.

5. The State shall grant the Kaliña and Lokono peoples legal recognition of collective juridical personality, as established in paragraph 279.i.a of this Judgment.
6. The State shall delimit and demarcate the traditional territory of the members of the Kaliña and Lokono peoples, as well as grant them collective title to that territory and ensure their effective use and enjoyment thereof, taking into account the rights of other tribal peoples in the area, as established in paragraphs 279.i.b, 284 and 285 of this Judgment.
7. The State shall, through its competent authorities, establish how the territorial rights of the Kaliña and Lokono peoples will be protected in cases in which the land claimed is owned by the State or by third parties, as established in paragraphs 280 to 285 of this Judgment.
8. The State shall take the appropriate measures to ensure the access, use and participation of the Kaliña and Lokono peoples in the Galibi and Wane Kreek Nature Reserves, as established in paragraph 286 of this Judgment.
9. The State shall take the necessary measures to ensure that no activities are carried out that could have an impact on the traditional territory, in particular in the Wane Kreek Nature Reserve, while the above-mentioned processes for the effective participation of the Kaliña and Lokono peoples have not been guaranteed, as established in paragraph 287 of this Judgment.
10. The State shall implement the sufficient and necessary measures to rehabilitate the affected area in the Wane Kreek Nature Reserve, as established in paragraphs 290 and 291 of this Judgment.
11. The State shall create a community development fund for the members of the Kaliña and Lokono peoples, in the terms and within the time frame established in paragraphs 295 to 299 of this Judgment.
12. The State shall implement the necessary inter-institutional coordination mechanisms in order to ensure the effectiveness of the measures established above, within three months of notification of this Judgment, as established in paragraphs 285, 290, 291, 295 and 299 of this Judgment.
13. The State shall take the necessary measures to recognize the collective juridical personality of indigenous and tribal peoples in Suriname, as established in paragraph 305.a of this Judgment.
14. The State shall take the necessary measures to establish an effective mechanism for delimiting, demarcating and titling the territories of indigenous and tribal peoples in Suriname, as established in paragraph 305.b of this Judgment.
15. The State shall take the necessary measures to establish domestic remedies, or adapt those that exist, in order to ensure effective collective access to justice for indigenous and tribal peoples, as established in paragraph 305.c of this Judgment.
16. The State shall take the necessary measures to ensure: (a) effective participation processes for indigenous and tribal peoples in Suriname; (b) the execution of social and environmental impact assessments; and (c) the distribution of benefits, as appropriate, as established in paragraphs 305.d of this Judgment.
17. The State shall implement permanent programs or courses on the human rights of indigenous and tribal peoples, as established in paragraph 309 of this Judgment.

18. The State must issue the publications and the radio broadcast, as established in paragraphs 312 to 313 of this Judgment.

19. The State must pay the amounts established in paragraph 323 of this Judgment as reimbursement of costs and expenses within six months of notification hereof.

20. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply therewith.

21. The Court will monitor full compliance with the Judgment, in execution of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with its provisions.

Judges Humberto Antonio Sierra Porto and Eduardo Ferrer Mac-Gregor Poisot advised the Court of their joint concurring opinion, and Judge Alberto Pérez Pérez advised the Court of his dissenting opinion, both of which accompany this Judgment.

Done at San José, Costa Rica, on November 25, 2015, in the English and the Spanish languages, the text in Spanish being authentic.

Judgment of the Inter-American Court of Human Rights. Case of Kaliña and Lokono Peoples v. Surinam. Merits, Reparations and Costs.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

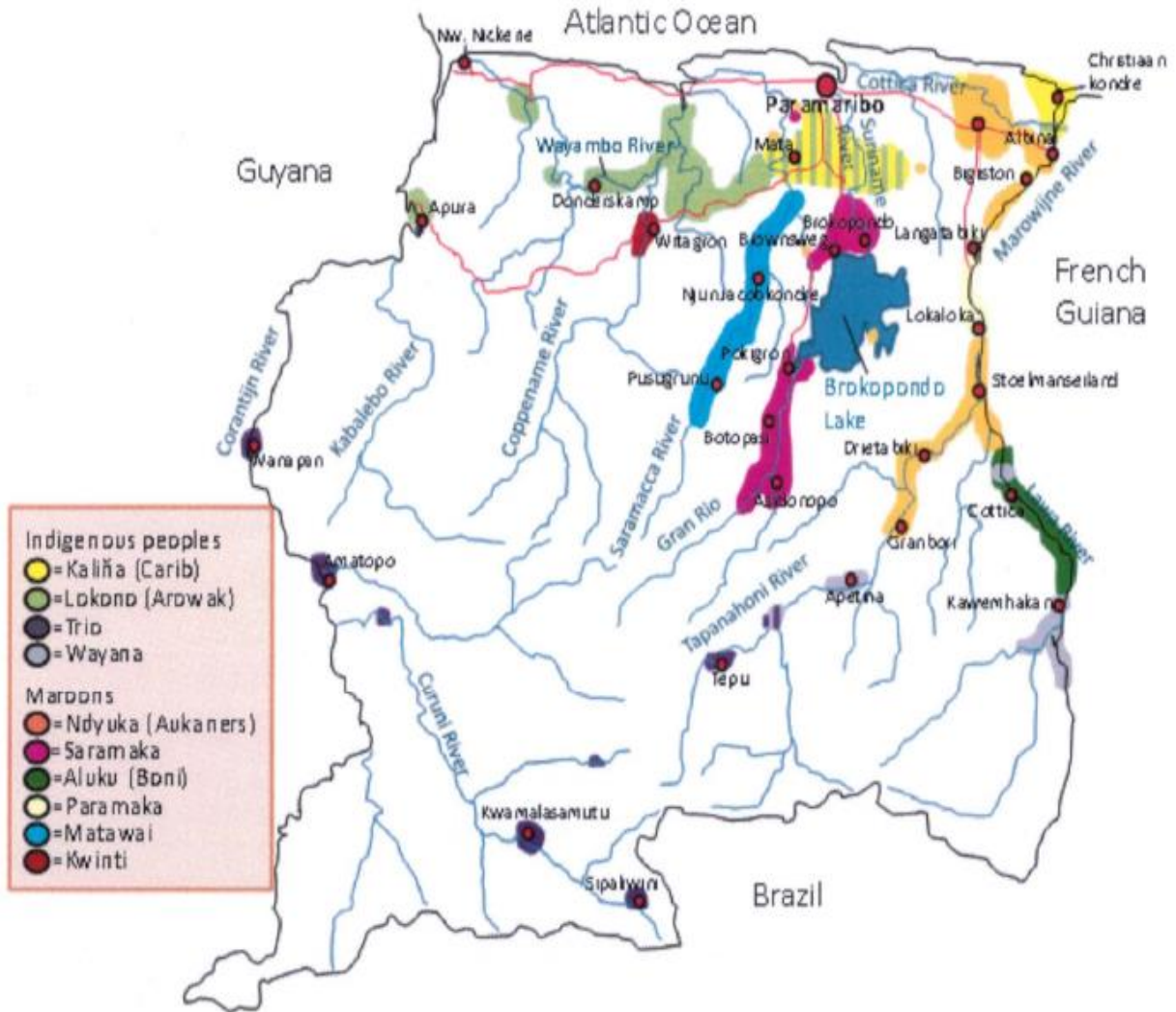
So ordered,

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary

## IX ANNEXES

### ANNEX I



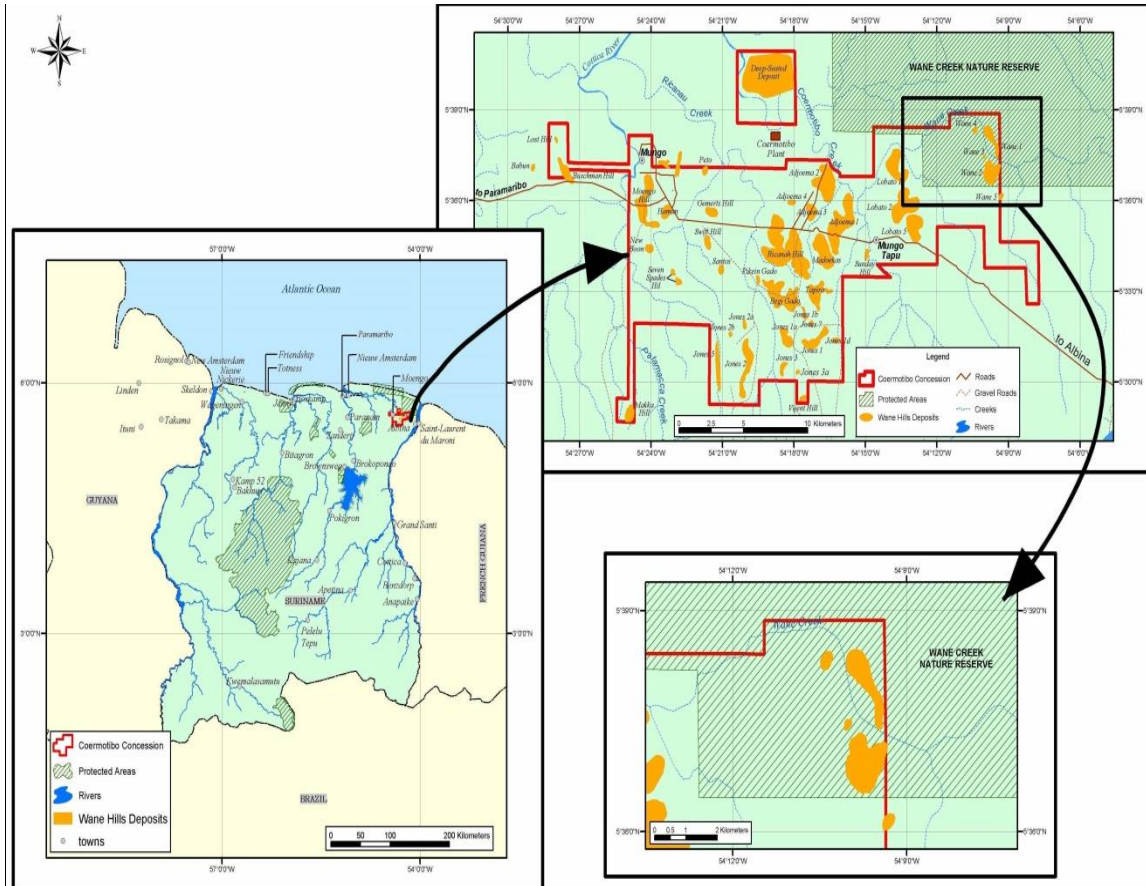
Note: This map is included for illustrative purposes. The map was presented by the State with its final written arguments. It provides an approximate delimitation of the territory occupied by the indigenous peoples and the Maroons in Suriname.

## ANNEX II



Note: This map is included for illustrative purposes. The map was presented by the victims' representatives during the public hearing in this case. It delimits, approximately, the territory claimed by the victims and the location of the communities of the Kaliña and Lokono peoples that are part of this case. During the on-site procedure, the State argued that the map provided by the representatives was imprecise and the representatives have indicated that it shows the approximate, rather than the exact, area of the territory claimed.

### ANNEX III



**Figure 1: Map showing location of the Moengo-Ricanau-Jones Range of hills in the Moengo region of Eastern Suriname, with focus on the Wane Hills.**

Note: This map is included for illustrative purposes. The map was presented by the victims' representatives attached to the report of expert witness Stuart Kirsh. It shows the area granted under the bauxite concession within the Wane Creek Nature Reserve.

**JOINT CONCURRING OPINION OF JUDGES**

**HUMBERTO ANTONIO SIERRA PORTO AND**

**EDUARDO FERRER MAC-GREGOR POISOT**

**CASE OF THE KALIÑA AND LOKONO PEOPLES V. SURINAME**  
**JUDGMENT OF NOVEMBER 25, 2015**  
**(Merits, Reparations and Costs)**

1. We have prepared this concurring opinion with regard to two issues dealt with in the judgment in the case of the *Kaliña and Lokono Peoples v. Suriname*, namely: (i) the guarantees of collective property in relation to the mining concession within the Wane Kreek Nature Reserve, particularly with regard to the right to effective participation through a consultation process, and (ii) the recognition of collective juridical personality.

2. With regard to the first point, in this judgment the Court established that:

200. As previously noted, in 1958, Suriname granted Suralco a mining concession until 2033, for the extraction of bauxite in the eastern part of the country. In 1997, the company started up its operations to extract bauxite from deposits in an area of approximately 100 to 144 hectares, within the Wane Kreek Nature Reserve, known as Wane Kreek 1 and 2 (*supra* paras. 88 and 90). Preparatory work, such as the construction of a highway to reach the mine and transport the mineral, was initiated in the mid-1990s (*supra* para. 89). There is no dispute about the fact that the Kaliña and Lokono peoples played no part in any of these activities and that the corresponding environmental impact assessment was not made (*infra* para. 213). However, the Court does not have competence in relation to the award of the mining concession in 1958. Nevertheless, the Court is competent to examine measures taken following the entry into force of its jurisdiction; in particular, the extraction operations carried out as of 1997.

201. In this regard, the Court has already established in the *case of the Saramaka People v. Suriname* that, under Article 1.1 of the Convention, in order to ensure that the restrictions imposed on the right to property of the indigenous and tribal peoples owing to the issue of concessions within their territory do not entail a denial of their survival, the State must comply with the following three guarantees: “first, it must ensure the effective participation of the members of the [indigenous and tribal peoples], in accordance with their customs and traditions, with regard to any development, investment, exploration or extraction plans (hereinafter “development or investment plan”) implemented within [their territory]. Second, the State must ensure that the members of the [indigenous and tribal peoples] receive a reasonable benefit from the plan implemented within their territory. Third, the State must ensure that no concession will be



granted within their territory until independent and technically-qualified entities, under the State's supervision, have conducted a prior social and environmental impact assessment. These safeguards are intended to preserve, protect and ensure the special relationship that the members of the [indigenous and tribal peoples] have with their territory, which, in turn, ensures their survival [as an indigenous people]." In the instant case, the Court will analyze the State's alleged failure to comply with these safeguards in relation to the start-up of bauxite extraction operations in 1997.

202. Furthermore, the Court reiterates that Article 23 of the American Convention establishes that: "[e]very citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs [...]." Similarly, Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples establishes that "[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives [...]," and the pertinent part of Article 32 stipulates that "States shall consult and cooperate in good faith [...] prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the [...] utilization or exploitation of mineral [...] resources."

203. Consequently, in order to ensure the use and enjoyment of the right to indigenous collective property recognized in Articles 1.1 and 21 of the Convention, in relation to the utilization or exploitation of natural resources in their traditional territory, the State must, for the effects of this case, put in place mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples. This is not only a matter of public interest, but also forms part of the exercise of their right to take part in any decision-making on matters that affect their interests, in accordance with their own procedures and institutions, in relation to Article 23 of the American Convention (*supra* para. 196).

3. In this regard, we are essentially in agreement with the majority of the Court in the sense of reiterating the safeguards established by the Court in its case law in relation to investment or development projects in indigenous or tribal territory. In particular, the State's obligation to organize an effective participation process, implemented by means of prior, free and informed consultation.

### **Prior, free and informed consultation**

4. One of the most significant contributions of the Inter-American Court's case law in indigenous and tribal matters has been the interpretation made of Article 21 of the American Convention. Thus, the Court has developed an interpretation that protects one of the characteristic situations in the region, the communal ownership of ancestral territories. In this understanding, in the context of major development, investment, exploration, exploitation and extraction projects and plans, the Court has established a solid line of case law concerning the obligation to consult the indigenous and tribal peoples insofar as such projects affect both their territory and their way of life within

that territory.<sup>1</sup>

5. The Court has ruled on prior consultation in four cases concerning indigenous or tribal peoples, namely: *Case of the Saramaka People v. Suriname*; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*; and *Case of the Garífuna Community of Punta Piedra and its members, and Case of the Garífuna Community of Triunfo de la Cruz and its members, both v. Honduras*.

6. In this regard, in addition to the considerations in paragraph 201 of this judgment, in the case of the *Saramaka People*, the Court indicated that the consultation must ensure the effective participation of the members of the Community and that the consultation must be: (i) in good faith and designed to reach an agreement; (ii) in keeping with the community's own traditions and customs and their traditional method of decision-making; (iii) during the initial stages of the project in question, and (iv) following the delivery of all relevant information, including information on possible risks.<sup>2</sup>

7. In the case of the *Kichwa Indigenous People of Sarayaku* and, subsequently, in the case of the *Garífuna Community of Triunfo de la Cruz*, the Court specified that "to ensure that the exploration for, or extraction of, natural resources in ancestral territories does not entail a negation of the survival of the indigenous people as such, the State must comply with the following safeguards: (i) conduct an appropriate and participatory process that guarantees the right to consultation, particularly with regard to large-scale development or investment projects; (ii) make an environmental impact assessment, and (iii) as appropriate, reasonably share the benefits produced by the exploitation of natural resources (as a form of just compensation required by Article 21 of the Convention), with the community itself determining and deciding who the beneficiaries of this compensation should be, according to its customs and traditions."<sup>3</sup>

8. In the case of the *Garífuna Community of Punta Piedra*, the Court reiterated that it had established that, "in the case of any development, investment, exploration or extraction project in traditional territories of indigenous or tribal communities, the State must comply with the following safeguards: (i) conduct an appropriate and participatory process that guarantees their right to consultation; (ii) make a prior social and environmental impact assessment, and (iii) as appropriate, reasonably share the benefits produced by the exploitation of the natural resources."<sup>4</sup>

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<sup>1</sup> The Court has determined that "[i]ndigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations." *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Judgment of August 31, 2001. Series C No. 79, para. 149.

<sup>2</sup> Cf. *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 133.

<sup>3</sup> *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012*. Series C No. 245, para. 157, and *Case of the Garífuna Community of Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs*. Judgment of October 8, 2015. Series C No. 305, para. 156.

<sup>4</sup> *Case of the Garífuna Community of Punta Piedra and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2015. Series C No. 304, para. 215.

9. In addition, it should be pointed out that, as established in the instant judgment, even though Suriname is not a party to ILO Convention 169, the Court reiterated what it had established in the *Saramaka* case,<sup>5</sup> to the effect that “the right to property protected by Article 21 of the American Convention, and interpreted in light of the rights recognized in Article 1 common to the two Covenants, and Article 27 of the ICCPR, which cannot be restricted when interpreting the American Convention in this case, confer on the members of the Kaliña and Lokono peoples the right to the enjoyment of their property in keeping with their community-based tradition.”<sup>6</sup>

10. Thus, the Court determined that, applying the foregoing criteria to the instant case, “as indigenous peoples, the Kaliña and Lokono peoples are protected by international human rights law which guarantees the right to the collective territory they have used and occupied traditionally, derived from the use and occupation of the land and of the resources necessary for their physical and cultural survival and, also, that the State has the obligation to adopt special measures to recognize, respect, protect and guarantee to their members the right to communal ownership of this territory.”<sup>7</sup>

11. Furthermore, the Court considered that, for the effect of this case, the right to consultation was also founded on Article 23 of the American Convention, in light of the international standards.<sup>8</sup> To this end, it indicated that the State must have available “mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples. This is not only a matter of public interest, but also forms part of the exercise of their right to take part in any decision-making on matters that affect their interests, in accordance with their own procedures and institutions, in relation to Article 23 of the American Convention.”<sup>9</sup>

12. Consequently, it is clear that the effective participation mentioned in Chapter B.4, paragraphs 204 to 212 of the Judgment must be understood to guarantee prior, free and informed consultation, in accordance with the case law evolved by this Court in this regard.

13. Regarding the moment at which the prior consultation should be conducted, the Court established that:

206. In this regard, the Court has already established that the State must ensure the effective participation “with regard to any development, investment, exploration or extraction plan.”<sup>10</sup> In particular, the Court

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<sup>5</sup> *Case of the Saramaka People, supra*, para. 95.

<sup>6</sup> *Cf.* Paragraphs 122, 123 and 124 of the Judgment.

<sup>7</sup> Paragraph 125 of the Judgment.

<sup>8</sup> Article 18 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295). See also, article 29 of the Declaration. Also, article 6 of the Inter-American Democratic Charter states that: “It is the right and responsibility of all citizens to participate in decisions relating to their own development [...]”

<sup>9</sup> Paragraph 203 of the Judgment.

<sup>10</sup> *Cf. Case of the Saramaka People, supra*, para. 129. Likewise, in the *case of the Garífuna Community of Punta Piedra and its members*, the Court indicated that the consultation must take place beforehand, and must be carried out starting in the initial stages of the development or investment plan so that the indigenous and

referred to development and investment plans as “any activity that may affect the integrity of the lands and natural resources [...]; specifically, any proposal related to logging or mining concessions.”<sup>11</sup>

207. In this regard, the Court considers that the State’s duty in relation to this guarantee must be complied with prior to the execution of activities that may have a relevant impact on the interests of the indigenous and tribal peoples, such as the exploration, and the exploitation or extraction stages. In this case, although the mining concession was granted in 1958, the bauxite extraction operations began in 1997 – that is, 40 years later – at which time, the company had determined the precise place where the extraction operations would be implemented in relation to the rest of the territory that had previously been explored. The guarantee of effective participation should have been put in practice before the start of the mining extraction or exploitation operations, which did not happen in this case. In particular, with regard to the Kaliña and Lokono peoples who were nearby and had a direct relationship with the area, and whose traditional territory was adversely affected (*supra* para. 92)

14. We concur with this specific point because, even though the Court did not have competence to analyze the moment before the initial concession was granted, it is extremely relevant for the particular characteristics of this case to stress that the obligation to consult comes into force prior to different moments. In this regard, a mining project is composed of different stages including exploration, feasibility, construction and exploitation, as well as that of project closure. Thus, the execution of each stage is an independent act, and although the stages are interrelated and are the result of the original act of the concession itself, owing to their characteristics, they should each be subject to prior consultation. In this case, the Court noted that bauxite extraction operations – one of the most important activities of the mining project – started in Wane Kreek in 1997. The Court also verified the environmental consequences of these activities in the area.<sup>12</sup>

15. Thus, the State obligation in relation to development projects in indigenous or tribal territory arises from the moment at which the State accept the obligations contained in the provisions of the American Convention, regardless of the moment at which the concession is granted, because, as mentioned previously, it includes independent stages. Denying this and understanding prior consultation in a different way, confining it explicitly only to the initial stages of the concession of a project, would lead to the absurd situation of permitting new exploitations that have an immediate impact on indigenous territory and culture, affecting them for the rest of the time that the concession is valid. Evidently, since consultation is a constant process of dialogue, it should not be restricted merely to the initial stages of a project; rather, the obligation arises whenever there is a possible impact on the traditional indigenous or tribal life concerned.

16. Based on the above, as the Court concluded in paragraph 212 of the Judgment, since the State failed to ensure the effective participation of the Kaliña and Lokono

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tribal peoples may truly participate and influence the decision-making process. *Cf. Case of the Garífuna Community of Punta Piedra and its members, supra*, para. 217.

<sup>11</sup> *Case of the Saramaka People, supra*, para. 129.

<sup>12</sup> *Cf. Paragraphs 216 to 222 of the Judgment.*

peoples, by means of a consultation process, before undertaking or authorizing the exploitation of the bauxite mine within their traditional territory, the State violated Articles 21 and 23 of the Convention, in relation to Articles 1.1 and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples and their members.

### **Recognition of collective juridical personality**

17. In this Judgment, the Court, based on previous cases concerning Suriname,<sup>13</sup> declared that:

114. In conclusion, since the domestic laws of Suriname do not recognize the collective exercise of the juridical personality of the indigenous and tribal peoples, this Court finds that the State has violated Article 3 of the American Convention, to the detriment of the Kaliña and Lokono peoples, in relation to Article 2 of this instrument. In addition, for the effects of the instant case, the failure to recognize the juridical personality of the Kaliña and Lokono peoples has an impact on the violation of other rights recognized in Articles 1.1, 21 and 25 of the Convention.

18. We concur with this reasoning, because the recognition of collective juridical personality is an essential requirements to ensure that the indigenous and tribal peoples may exercise different rights that, owing to their communal characteristics, need to be protected collectively. Thus, the Court reiterated that:

107. [...] “the right that the State recognize their juridical personality is one of the special measures that should be granted to the indigenous and tribal groups in order to ensure that they may enjoy their territories according to their traditions. This is the natural consequence of the recognition of the right of the members of the indigenous and tribal groups to enjoy certain rights collectively.”

109. [...] “the recognition of juridical personality is one way, although not the only way, to ensure that the community as a whole may enjoy and exercise fully the right to property, in accordance with their system of communal ownership, as well as the right to equal judicial protection against any violation of this right.”

19. It should be noted that the Court took the State to task, considering that this non-compliance was “particularly serious owing to the provisions of the judgment in the *case of the Saramaka People* of November 28, 2007 (*supra* para. 107), which were reiterated to the State for the effects of that case, in the order on monitoring compliance of November 23, 2011.”<sup>14</sup>

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<sup>13</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005. Series C No. 124, para. 86.5, and *Case of the Saramaka People*, *supra*, paras. 173 and 174.

<sup>14</sup> Cf. Paragraph 113 of the Judgment.

20. Consequently, when establishing reparations, in addition to the other elements ordered in favor of the Kaliña and Lokono peoples,<sup>15</sup> the Court ordered Suriname, as a guarantee of non-repetition, to:<sup>16</sup>

a) Grant the indigenous and tribal peoples in Suriname legal recognition of collective juridical personality in order to ensure them the exercise and full enjoyment of their right to property in accordance with their customs and traditions, as established in paragraphs 105 to 114. The State must comply with the measures of reparation with two years of notification of this Judgment, at the latest.

### **Conclusion**

21. Based on the foregoing, the undersigned emphasize the above-mentioned developments in the Court's case law in relation to the right to effective participation by means of a consultation process, which should be understood in light of the Court's consistent case law and, in this specific case, in light of the right to participate in the conduct of public affairs, recognized in Article 23 of the American Convention.

22. Moreover, with regard to the right to recognition of juridical personality, established in Article 3 of the American Convention, this has been interpreted underlining the relevance of the collective dimension of indigenous and tribal peoples. And this is consistent with the enlightened interpretation that this Court has developed throughout its case law on this matter, in the sense of recognizing that the rights of indigenous and tribal peoples have singular characteristics related to their particular ways of life, traditions, world vision, and culture, which are also protected by the American Convention on Human Rights.

Humberto Antonio Sierra Porto  
Judge

Eduardo Ferrer Mac-Gregor Poisot  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>15</sup> Cf. Paragraph 279 a) of the Judgment.

<sup>16</sup> Cf. Paragraph 305 of the Judgment.

**PARTIALLY DISSENTING OPINION OF  
JUDGE ALBERTO PÉREZ PÉREZ**

**CASE OF THE KALIÑA AND LOKONO PEOPLES V. SURINAME**

**JUDGMENT OF NOVEMBER 25, 2015  
(Merits, Reparations and Costs)**

I have dissented from operative paragraphs 1 to 3 because they unduly cite certain articles of the American Convention on Human Rights that have presumably been violated as grounds for the judgment: respectively, Articles 3, 23 and 13. The Court's application of these articles in this case conflicts with the evident meaning of these provisions, and the reasoning that is given is totally insufficient and even, in one case, almost inexistent.

Furthermore, as will be seen, the rights that it is intended to protect by citing Articles 3, 13 and 23 are correctly founded on other provisions of the Convention, already contained in the text of the judgment.

**I. Article 3 (Right to Recognition of Juridical Personality)  
was not violated**

Article 3 establishes:

*Article 3. Right to recognition of juridical personality*

*Every person has the right to recognition as a person before the law.*

Meanwhile, Article 1(2) stipulates:

*2. For the purposes of this Convention, "person" means every human being.*

Significantly, neither of these provisions has been transcribed in the text of the judgment. Perhaps the reason for this unjustified omission is the fact that it is sufficient to read Article 3 and Article 1(2) to note that the right to recognition of juridical personality is one of the "rights and guarantees that are inherent *in the human being*" (Article 29(c)), that cannot be suspended in states of emergency (Article 27(2)).

Consequently, Article 3 cannot serve as grounds for granting or recognizing *legal status [personería jurídica]* to groups or collective entities, whether or not they are indigenous or tribal peoples or communities.

Recognition of juridical personality to the individual human beings who compose that people or community, as the Court did in the case of the *Sawhoyamaya Indigenous Community*, is

a different matter. In that case, it declared that Article 3 had been violated to the detriment of several individual members of this community who “*did not have records of their birth and death, or any other document provided by the State that could prove their existence and identity.*” The Court stated:

188. The right to recognition of juridical personality before the law represents a parameter to determine whether a person is entitled to any given rights and whether such a person can enforce such rights. The breach of such recognition implies the absolute denial of the possibility of being a holder of such rights and of assuming obligations, and renders the individual vulnerable to the non-observance of the same by the State or by individuals.

189. The State has a duty to provide the general legal conditions and resources, so that the right to recognition of juridical personality may be exercised by its holders. In particular, the State is bound to ensure to those persons in situations of vulnerability, exclusion and discrimination, the legal and administrative conditions that may secure for them the exercise of such right, pursuant to the principle of equality under the law.

190. In the instant case, the Court has considered proved that 18 of the 19 members of the Sawhoyamaxa Community who died as a result of the State’s failure to comply with its preventive duty regarding their right to life (*supra* para. 178), did not have any birth or death records, or any other document provided by the State able to prove their existence and identity. (...)

194. *Based on the above considerations, and notwithstanding the fact that other members of the Community may be in the same situation, the Court finds that the State violated the right to recognition of juridical personality recognized in Article 3 of the American Convention, to the detriment of NN Galarza, Rosana López, Eduardo Cáceres, Eulalio Cáceres, Esteban González Aponte, NN González Aponte, NN Yegros, Jenny Toledo, Guido Ruiz-Díaz, NN González, Luis Torres-Chávez, Diego Andrés Ayala, Francisca Britez, Silvia Adela Chávez, Derlis Armando Torres, Juan Ramón González, Arnaldo Galarza and Fátima Galarza.*<sup>1</sup>

Article 3 has also been interpreted and applied correctly – that is, as a fundamental right of all human beings – in numerous cases. For example, in the *Case of the Yean and Bosico Girls v. Dominican Republic* the Court decided as follows:

178. A stateless person, *ex definitione*, does not have recognized juridical personality, because he has not established a juridical and political connection with any State; thus nationality is a prerequisite for recognition of juridical personality.

179. The Court considers that the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual’s condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals.

180. In this specific case, the State maintained the Yean and Bosico children in a legal limbo in which, even though the children existed and were inserted into a particular

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<sup>1</sup> *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paras. 188 to 190 and 194.



social context, their existence was not recognized legally; in other words they did not have juridical personality.<sup>2</sup>

The Court has also declared, with full justification, the violation of Article 3 in cases of forced disappearance. In the case of *Anzualdo Castro v. Peru*, which was the first case in which it adopted this position, the Court explained the content and basis of Article 3 and explained the reasons for its application to such cases:

87. As to the alleged violation of Article 3 of the Convention (*supra* paras. 56 and 57), the Court has noted that the content itself of the right to juridical personality is that every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights [which] implies the capacity to be the holder of rights (capacity and exercise) and obligations; the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of [the] rights and obligations [the civil and basic].

88. This right represents a parameter to determine whether a person is entitled to any given rights and whether that person can enforce such rights, therefore, the failure to recognize juridical personality places the person in a vulnerable position in relation to the State or third parties. Thus, the content of the right to juridical personality refers to the corresponding general obligation of the State to provide the means and general legal conditions necessary to guarantee each person the free and full enjoyment of the right to the recognition of his or her juridical personality.

89. However, pursuant to the principle of effectiveness and the need for protection in cases of people and groups in a vulnerable situation, this Court has observed the broader legal content of this right, by considering that the State "is bound to guarantee to those persons in situations of vulnerability, exclusion and discrimination, the legal and administrative conditions that may secure for them the exercise of such right, pursuant to the principle of equality under the law." [...]

90. Certainly, case law has developed the legal content of [the right to recognition of physical personality of every human being] in cases involving human rights violations other than forced disappearance of persons, because, in most cases of this type, the Court has found that it was not necessary to analyze the violation of Article 3 of the Convention, since there were no facts that warranted this. Nevertheless, *in view of the multiple and complex nature of this serious human rights violation, the Court reconsiders its previous position and deems it possible that, in this type of case, forced disappearance may entail a specific violation of the said right: in addition to the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he is entitled, his disappearance seeks not only one of the most serious forms of placing the person outside the protection of the law, but also denies that person's existence and leaves him in a kind of limbo or uncertain legal situation before society, the State, and even the international community.*

91. Thus, the Court bears in mind that one of the characteristics of forced disappearance, contrary to extrajudicial execution, is that it entails the State's refusal to acknowledge that the victim is in its custody and to provide information in this

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<sup>2</sup> *Case of the Yean and Bosico Girls v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 8, 2005. Series C No. 130, paras. 178 to 180, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, paras. 265 to 268.

regard, in order to create uncertainty as to his whereabouts, life or death, to intimidate and to eliminate rights (*supra* paras. 60 and 80).

[...]

*101. Based on the foregoing, the Court finds that in cases of forced disappearance of persons, the victim is placed in a situation of legal uncertainty that prevents, impedes or eliminates the possibility of the individual being entitled to or effectively exercising his rights in general, in one of the most serious forms of non-compliance with the State's obligations to respect and ensure human rights. This has resulted in the violation of the right to juridical personality of Mr. Anzualdo Castro.*<sup>3</sup>

Thus, the grounds for the recognition of the *legal status [personería jurídica]*<sup>4</sup> of the indigenous or tribal peoples or communities should be sought in relation to other provisions of the Convention. These grounds are not very hard to find, because they are the legal consequence of the recognition of the right to property (in this case collective property) established in Article 21. No one can be the holder of a right without the corresponding existence of the consequent legal status [*personería jurídica*]. And the Court explained this in its judgment in the case of the *Saramaka People*, in which it set out the correct reasoning with absolute clarity:

171. The recognition of their juridical personality is a way, albeit not the only one, to ensure that the community, as a whole, will be able to enjoy and exercise fully their right to property, in accordance with their communal property system, and the right of equal access to judicial protection against violations of that right.

172. The Court considers that the right to have their juridical personality recognized by the State is one of the special measures that should be provided to indigenous and tribal groups in order to ensure that they are able to enjoy their territory in accordance with their own traditions. This is a *natural consequence of the recognition of the right of members of indigenous and tribal groups to enjoy certain rights in a communal manner.*<sup>5</sup>

The same reasoning must be applied in the instant case; thus, the reference to Article 3 and, in particular, the supposed violation of this article, is not only unjustified, but also unnecessary.<sup>6</sup>

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<sup>3</sup> *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 22, 2009. Series C No. 202, paras. 87 to 91 and 101.

<sup>4</sup> I find it preferable to reserve the use of the expression "*juridical personality*" [*personalidad jurídica*] to situations covered by Article 3 of the Convention (the right of every human being to recognition as a person before the law) and, instead, speak of "*legal status*" [*personería jurídica*] for cases in which the condition of subject of rights and obligations is attributed to a group, community or people.

<sup>5</sup> *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2007. Series C No. 172, paras. 171 and 172.

<sup>6</sup> In the case of the *Saramaka People*, incongruously, the Court ended by declaring "the violation of the right of the members of the *Saramaka People* to recognition of their juridical personality pursuant to Article 3 of the Convention in relation to their right to property under Article 21 thereof, and the right to judicial protection under Article 5 of this same instrument, as well as with regard to the general obligation of the State to adopt the legislative or other measures required to make those rights effective and to respect and ensure their free and full exercise without discrimination, in accordance with Articles 2 and 1(1) of the Convention, respectively." This was an evident inconsistency which the Court should not repeat.

## II. Article 13 (Freedom of Thought and Expression) was not violated

Article 13(1) of the American Convention establishes the following:

### *Article 13. Freedom of Thought and Expression*

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

Once again it is necessary to point out that this provision has not been transcribed in the text of the judgment. Perhaps the reason for this unjustified omission is the fact that it is sufficient to read Article 13 to understand that the refusal to hand over certain information considered necessary in order to exercise the rights to participation and to consultation of an indigenous or tribal people are unrelated to "freedom of thought and expression" and, in particular, with the "freedom to seek, receive, and impart information and ideas of all kinds."

As the Court rightly indicated in the judgment in the *Sarayaku* case:

[R]egarding the alleged violation of Articles 13, 23 and 26 of the Convention, the Court agrees with the Commission that, in cases such as this one, access to information is vital for effective democratic monitoring of the State's management of the exploration and exploitation of natural resources on the territory of indigenous communities, a matter of evident public interest. Nevertheless, *the Court considers that, in this case, the facts have been sufficiently analyzed and the violations conceptualized under the rights to communal property, consultation and cultural identity of the Sarayaku People, in the terms of Article 21 of the Convention, in relation to Articles 1(1) and 2 thereof; accordingly, it will not rule on the alleged violation of those provisions.*<sup>7</sup>

In the instant case, the Court considered the possible violation of Article 13 *ex officio*, because it had not been alleged by either the Commission or the presumed victims.<sup>8</sup> It immediately began to examine the possible violation of Article 13 consisting in the "the State's failure to answer the request for information on the property titles, which the victims have alleged."<sup>9</sup> More precisely, this was a request "to clarify and produce the relevant documents that prove whether the persons identified above [H.J. De Vries and Harrold Sijlbing] possess valid land titles in the village of Pierrekondre; and if so, [to explain] the nature of those titles and whether the said persons had permission to build houses and/or stores under them. [They] asked that this information be provided in writing and discussed with [them] as soon as it was available."<sup>10</sup> It is clear that this request for information is unrelated to "a matter of evident public interest," rather it refers to a matter of interest to the Kaliña and Lokono indigenous peoples in order to exercise their right to judicial protection (Article 25) in relation to their rights to collective property, participation and consultation.

<sup>7</sup> *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 230.

<sup>8</sup> *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs.* Judgment of November 25, 2015, para. 259.

<sup>9</sup> *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 260.

<sup>10</sup> *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 263.

To the contrary, the freedom of information recognized in Article 13 of the Convention refers (in the terms transcribed above from the judgment in the Sarayaku case) to "information [that] is vital for effective democratic monitoring of the State's management of the exploration and exploitation of natural resources on the territory of indigenous communities." The instant case does not relate to the "democratic control of the State's management," but to the exercise of the specific rights mentioned at the end of the preceding paragraph. As the judgment indicates, "the information requested was important documentation to provide the Kaliña and Lokono peoples with precise facts on how many individuals from outside their communities were in the area, and the legal situation of the land ownership. Thus, the information could have provided them with additional evidence when filing their claims in the domestic jurisdiction."<sup>11</sup>

Therefore, it was not in order to declare a violation of Article 13 of the Convention; rather it was sufficient to declare the violation of Article 25 (Right to Judicial Protection).

### **III. Article 23 (Right to Participate in Government) was not violated**

Article 23 of the American Convention establishes the following:

#### *Article 23. Right to Participate in Government*

1. *Every citizen shall enjoy the following rights and opportunities:*
  - a. *to take part in the conduct of public affairs, directly or through freely chosen representatives;*
  - b. *to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and*
  - c. *to have access, under general conditions of equality, to the public service of his country.*
2. *The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.*

In this case, Article 23 was transcribed in the text of the judgment. But the transcription is partial and biased. It only goes as far as the words "public affairs," and omits the passage that states "directly or through freely chosen representatives" as well as subparagraphs (b) and (c) regarding the "rights and opportunities" "to vote and to be elected" and to have equal access "to the public service." Both the elements omitted and the reference to "public affairs" and the name of the rights in question ("Right to Participate in Government") would be sufficient to exclude the application of the norm allegedly violated to a matter concerning private property (Article 21) and not "a matter of evident public interest" (as seen in paras. 13 and 14), but rather a private matter.

According to the second operative paragraph of the judgment, the violation of Article 23 was allegedly proved "pursuant to paragraphs 122 to 230." But, an analysis of those paragraphs reveals that, although they are inserted in Chapter VI.2, entitled "Right to collective property (Article 21) and political rights (Article 23) in relation to Articles 1(1) and 2 of the American

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<sup>11</sup> *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 267.

Convention," none of its sections deals with the political rights that were presumably violated. The "Considerations of the Court" are comprised of the following four sections, and they do not mention such rights either: "B.1 Interpretation of the right to collective property of the indigenous peoples in this case"; B.2 The failure to recognize the right to collective property of the Kaliña and Lokono indigenous peoples"; B.3 Nature reserves in the traditional territory", and "B.4 The right to collective property in relation to the mining concession within the Wane Kreek Nature Reserve."

Also, the four main disputes described in paragraph 127 do not mention political rights or Article 23,<sup>12</sup> and the 109 paragraphs of these sections do not include any terms that would attempt to provide grounds for the alleged violation of Article 23:

a) Paragraph 126: "[...] the Court considers it important to emphasize that, although the parties have not argued the violation of Article 23 of the Convention during the proceedings before this Court, it finds it pertinent to apply the *iura novit curia* principle." In other words, it records the decision to consider a violation that has not been alleged by the parties, but does not explain how this violation has been committed.

b) Paragraph 196: "In this regard, the Court recalls that Article 23 of the American Convention establishes that everyone must enjoy the rights and opportunities "to take part in the conduct of public affairs [...]." In this sense, the participation of the indigenous communities in the conservation of the environment is not only a matter of public interest, but also part of the exercise of their right as indigenous peoples "to participate in decision-making in matters which would affect their rights, [...] in accordance with their own procedures and [...] institutions" (*supra* paras. 178 and 180)." Thus, there is an attempt to identify the "right to take part in the conduct of public affairs" with the right of the indigenous peoples to take part in the adoption of decisions on matters that affect their rights, without providing even the most basic grounds for this. It is evident that these are two different matters.

c) Paragraph 197: "the absence of explicit mechanisms that guarantee the access, use and effective participation of the Kaliña and Lokono indigenous peoples in the conservation of the said nature reserves and the benefits these reserves yield constitutes a violation of the obligation to adopt the necessary provisions to make such measures effective in order to ensure the rights to collective property, to cultural identity, and to political rights, to the detriment of the Kaliña and Lokono peoples." The failure to provide the grounds for the supposed equivalence to political rights continues.

d) In paragraph 198 (the sole paragraph in the section entitled "Conclusion on the restrictions in the nature reserves"), political rights are once again included without any

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<sup>12</sup> "Based on the above, in light of the arguments of the parties, the Court finds that the violations that have been alleged relate to four main disputes: (a) the failure to recognize the right to collective property and the absence of delimitation, demarcation and land-titling of the ancestral lands of the Kaliña and Lokono indigenous peoples; (b) the granting of land titles and leases to non-indigenous persons within the territory claimed by the Kaliña and Lokono peoples; (c) the adverse effects on use and enjoyment of the parts of the nature reserves that fall within the alleged traditional territories, and (d) the absence of effective participation, by means of a consultation process, with regard to the mining concessions within one of the nature reserves in the ancestral territory." *Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 127.

grounds: "In sum, the Court finds that the State has violated the victims' rights to collective property, cultural identity and participation in public matters, mainly by preventing their effective participation, and the access to part of their traditional territory and natural resources, in the Galibi and Wane Kreek nature reserves, as well as by failing to guarantee, effectively, the traditional territory of the communities that has been affected by the environmental degradation within the Wane Kreek Nature Reserve, which constitutes a violation of Articles 21, 2 and 23 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the Kaliña and Lokono peoples and their members."

e) Paragraph 202: "Furthermore, the Court reiterates that Article 23 of the American Convention establishes that: "[e]very citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs [...]." Similarly, Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples establishes that "[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives [...]," and the pertinent part of Article 32 stipulates that "States shall consult and cooperate in good faith [...] prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the [...] utilization or exploitation of mineral [...] resources." In this case, there is evident confusion between "to take part *in the conduct of public affairs*" and Articles 18 and 32 of the Declaration on the Rights of Indigenous Peoples relating to participation *in matters which would affect their rights and the obligation of States to "consult [...] prior to the approval of any project affecting their lands."*

f) Paragraph 203: The following paragraph enunciates, but without providing any grounds, the presumed equivalence between the right to participation and consultation derived from the right to property, and the right to participate in the conduct of public affairs. Thus, it indicates: "Consequently, in order to ensure the use and enjoyment of the right to indigenous collective property recognized in Articles 1(1) and 21 of the Convention, in relation to the utilization or exploitation of natural resources in their traditional territory, the State must, for the effects of this case, put in place mechanisms for the effective participation of the indigenous peoples using procedures that are culturally adapted to the decision-making of such peoples. This is not only *a matter of public interest*, but also forms part of the exercise of *their right to take part in any decision-making on matters that affect their interests, in accordance with their own procedures and institutions, in relation to Article 23 of the American Convention (supra para. 196).*" No explanation is given as to why "*the conduct of public affairs*" would be equivalent to participation in decisions relating to *private* property of a collective nature. Nor is it explained why matters relating to *private* property or to any of its implications would be a "*matter of public interest.*"

g) The paragraph containing the final conclusion in this regard (para. 230) mentions the presumed violation of Article 23, but the only grounds included refer to Article 21 concerning private property, and not to the right to take part in the conduct of public affairs recognized in Article 23, which has a very different meaning and content.

The remaining mentions of Article 23 are contained in the chapter on reparations (VII) and evidently refer to the considerations in the chapter on merits (VI) without adding any reasoning in this regard (paras. 278, 295 and 304). To the contrary, when the grounds for

the alleged violations are described, there is merely a reference to “the lack of effective participation in relation to the exploitation project within one reserve” (para. 278-c) or to “the lack of mechanisms that ensure effective participation, by a consultation process” (para. 304-d).

The foregoing reveals that, on this aspect also, the conclusion reached in the Sarayaku case and transcribed above (*supra*, para. 13) with regard to the presumed violation of Articles 13 and 23 is also applicable: “*the Court considers that, in this case, the facts have been sufficiently analyzed and the violations conceptualized under the rights to communal property, consultation and cultural identity of the Sarayaku People, in the terms of Article 21 of the Convention, in relation to Articles 1(1) and 2 thereof; accordingly, it will not rule on the alleged violation of those provisions.*”

Consequently, it is not in order to declare a violation of Article 23 of the Convention, but rather sufficient to declare the violation of Article 21 (Right to Property).

#### **IV. Conclusions**

In conclusion:

- h)* It is not in order to declare that Articles 3, 13 and 23 of the American Convention have been violated;
- i)* It is sufficient to declare the violation of Article 21 (Right to communal property), and the consequent rights to recognition of legal status [*personería jurídica*] and to consultation and cultural identity, and Article 25 (Right to Judicial Protection) of the American Convention

Alberto Pérez Pérez  
Judge

Pablo Saavedra Alessandri  
Secretary