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SPECIAL PROCEDURES OF THE
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Mandates of the Special Rapporteur on the rights of indigenous peoples and the Working Group on the issue of human rights and transnational corporations and other business enterprises.

REFERENCE: AL Indigenous (2001-8) Transnational corporations and business (2011)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of indigenous peoples and Working Group on the issue of human rights and transnational corporations and other business enterprises pursuant to Human Rights Council resolutions 15/14 and 17/4.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding **the alleged authorization of new mining rights and the related expansion of a hydroelectric project in the traditional territory of the Saramaka maroon people**. These issues arise from the alleged grant of new mining rights in Saramaka territories under an agreement to modify the Mineral Agreement of 7 April 1994 and expand the Afobaka hydroelectric dam and reservoir, also in Saramaka territories, as part of the TapaJai project. The mining concessions and the expansion of the Afobaka dam are alleged to contravene the judgment of the Inter-American Court of Human Rights in the case of *Saramaka People v. Suriname*,¹ which affirmed the collective land and resource rights of the Saramaka, a maroon tribal group in northeast Suriname, and ordered the Government of Suriname to legally recognize and protect the land and natural resource rights of indigenous and tribal peoples in the country.

As your Excellency's Government is aware, in 2011, the Special Rapporteur on the rights of indigenous peoples issued a report following an on-site visit to Suriname which outlined the measures needed to secure indigenous and tribal peoples' land and related rights in Suriname, particularly in light of your Government's obligations under the Inter-American Court's ruling in the *Saramaka People v. Suriname* case (A/HRC/18/35/Add.7).

According to information received:

¹ *Saramaka People v. Suriname*, Judgment of 28 November 2007, Inter-Am Ct. H.R., (Ser. C) No. 172 (2007).

On 26 November 2012, Suriname concluded an agreement to modify the 7 April 1994 Mineral Agreement (as first amended on 13 March 2003) (“the Mineral Agreement”). The parties to this new agreement are the Government, the state-owned mining company N.V. Grasshopper Aluminum Company (Grassalco), the Canadian mining company IAMGOLD, and IAMGOLD’s locally incorporated subsidiary Rosebel Gold Mines N.V. The Mineral Agreement makes the State a “joint venture partner” in this mining operation, and thus part owner. As this new agreement in various ways contradicts extant law, it must be enacted by Suriname’s legislative body, the National Assembly, and thus becomes a law in its own right. The new Mineral Agreement is reportedly still pending approval by the National Assembly.

The new Mineral Agreement, which has been consented to by Suriname’s Council of Ministers and the Council of State, as is required by the Constitution, will allegedly enlarge and grant new concessional rights to IAMGOLD over some 15 percent of Saramaka territory (defined in the Mineral Agreement as the ‘area of interest’), and allows the company to automatically convert rights of exploration to rights of exploitation (a permit to mine as opposed to explore for and define mineral deposits). This ‘area of interest’ includes up to 33 Saramaka communities as well as two pre-existing concessions held by IAMGOLD (Headley’s Reef and Thunder Mountain). Both of these existing concessions were obtained in 1992 without any consultation or agreement with the Saramaka. According to allegations, the Saramaka only became aware of their existence when company employees began operations in their lands, including in the residential areas of their villages.

Like the existing concessions, the agreement granting new concessions to IAMGOLD was allegedly negotiated and concluded without adequate participation of, or consultation with, traditional Saramaka authorities. Although the Mineral Agreement requires that environmental and social impact assessments (ESIAs) be conducted prior to the conversion of exploration rights into exploitation rights, the short time frame allocated for carrying out these studies would not allow for an effective process of consultation with the Saramaka, in accordance with their customs and traditions. Furthermore, the terms of the Mineral Agreement reportedly do not require that environmental and social impact assessments (ESIAs) be undertaken in connection with the prospective exploration in the area of interest, which according to the allegations, will almost certainly have a significant impact on Saramaka subsistence practices and the peaceful enjoyment of their traditional lands more generally.

According to the information received, the new and existing concessions, granted without consultation with the Saramaka and without ESIAs, contravene the binding judgment of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*. Specifically, the concessions violate the Court’s order that until the delimitation, demarcation, and titling of the Saramaka territory has been carried out, Suriname must abstain from acts which might lead the agents of the

State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the territory to which the members of the Saramaka people are entitled, unless the State obtains the free, informed and prior consent of the Saramaka people.²

The judgment further requires the Government to “ensure that environmental and social impact assessments are conducted by independent and technically competent entities, prior to awarding a concession for any development or investment project within traditional Saramaka territory.”³

At present, IAMGOLD, through its local subsidiary Rosebel Gold Mines N.V., reportedly operates a gold mine within the “Rosebel concession”, which lies immediately adjacent to the N’djuka maroon community of Nieuw Koffiekamp within the traditional Saramaka territory. This community allegedly faces the prospect of forcible relocation once mining operations commence in the southern portion of the concession. This mining operation is also one of the concessions that the Inter-American Court ordered to be reviewed to determine its compatibility with the measures the Court required Suriname to take in order to ensure the survival of the Saramaka. It is alleged that this review has not taken place and the State has not given any indication that it intends to conduct that review. Although the Inter-American Court in its monitoring of Suriname’s compliance with the *Saramaka* judgment also took note in November 2011 of the lack of review of this mining operation, the Government has not since taken any steps to change this situation. Notwithstanding this failure, the Government is allegedly in the advanced stages of granting new rights to IAMGOLD to further expand its operations into Saramaka territory, allegedly putting the 33 communities in the modified Mineral Agreement’s area of interest at risk of displacement.

Although not specified explicitly in the new Mineral Agreement, the State has also allegedly agreed to the concomitant development of new hydropower energy sources (known as the TapaJai project) to provide power for IAMGOLD’s operations with potential impacts on the Saramaka’s territory. It is alleged that the Saramaka have not been provided with any information about the current design of the TapaJai project and their requests for this information have been ignored by the State. The State has allegedly begun constructing infrastructure related to this hydropower project in Saramaka territory recently and is doing so over the explicit objections of the Saramaka and their traditional authorities.

The existing Afobaka dam in Saramaka territory, which will be expanded under the TapaJai project, allegedly led to the forcible displacement of inhabitants of some Saramaka villages when it was constructed in the 1960s. It is alleged that both the TapaJai project and the expansion of the Afobaka dam and reservoir are likely to have further negative effects, including involuntary displacement due to

² Saramaka People, *supra* note 1, paras. 194(a) and 214(5).

³ *Ibid.*, paras. 194(e) and 214(9).

inundation of five Saramaka communities, some of which are already in a vulnerable state as a result of previous displacement, as well as adverse effects on productive lands used for their subsistence. Construction of the roads required for the TapaJai project has allegedly begun without any form of ESIA, as required by the Inter-American Court judgment, and this as well will allegedly have a significant negative impact on the Saramaka People.

Furthermore, according to the allegations, the Government obtained the consent for the road construction from the *Gaama*, or Paramount Chief of the Saramaka. However, this consent was not valid since the Gaama owns no land and as such does not have authority under Saramaka customary law to make decisions regarding the use of Saramaka lands or territories. It has been pointed out that the captains of the landowning Saramaka clans are the traditional authorities that have this authority and that they have previously rejected the road construction related to the TapaJai project. Consequently, the road construction also violates the orders of the Court in *Saramaka* requiring that consultations be conducted in accordance with Saramaka tradition and custom, and that the Saramaka must decide who will represent them in such consultations.⁴

In light of the concerns raised by the above allegations and information, we would like to refer your Excellency's Government to the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly with an affirmative vote by Suriname, as well as to the judgment of the Inter-American Court of Human Rights in the case *Saramaka People v. Suriname*.

Article 26 of the Declaration affirms the right of indigenous peoples "to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and to State recognition and protection of the same. The Declaration further provides that indigenous peoples have the right to be consulted "through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources" (art. 32). Furthermore, "[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned" (art. 10).

As noted above, the Special Rapporteur on the rights of indigenous peoples has also issued a report specifically on the measures needed to secure indigenous and tribal peoples' land and related rights in Suriname.⁵ This report was prepared at your Excellency's Government's request. In particular, the Special Rapporteur recommended that legislation be developed to secure indigenous peoples' land and resource rights and to clarify the responsibilities of the Government and third parties when consulting with indigenous peoples in connection with development projects. In this report, the Special

⁴ See *Saramaka People v. Suriname*, Judgment of 12 August 2008, Inter-Am Ct. H.R., (Ser. C) No. 185 (2008), para. 18.

⁵ A/HRC/18/35/Add.7.

Rapporteur also referred to the Government's obligations under the judgment in *Saramaka People*, emphasizing that “[i]t is imperative that Suriname take steps to fully implement the judgment of the Court, in order to avoid a prolonged condition of international illegality.”

In November 2011, the Inter-American Court, in a subsequent resolution monitoring Suriname's compliance with its judgment, found that the Government had not yet complied with the majority of the Court's substantive orders, including those dealing with: the delimitation, demarcation, and collective titling of territory; abstention from acts by the State or third parties that might affect the existence, value, use, or enjoyment of Saramaka territory; review of existing concessions; adoption of measures recognizing and ensuring the right to consultation in accordance with Saramaka tradition and custom; and assurances that adequate ESIA's be conducted prior to awarding development concessions within Saramaka territory.⁶

Finally, all States have a duty under the international human rights legal framework to protect against human rights abuse by third parties. In this context we would call your attention to the Guiding Principles on Business and Human rights (A/HRC/17/31) which clarify States' duty “to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises” (Principle 1). The Guiding Principles also explain that fulfilling this duty to protect requires that States take “appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” This requires, inter alia, that States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Principle 3). In the context of granting mining licenses/concessions or land titles, fulfilling this duty might entail, inter alia, requiring that meaningful consultations with potentially affected communities take place prior to the approval of such licences, requiring that due regard be paid to issues of marginalization and vulnerability of potentially affected communities, as well as specific United Nations human rights instruments relating to indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples, requiring assessment of the human rights impacts of proposed activities and the creation of plans to mitigate any potential negative impacts, and that the State takes the results of such assessments and mitigation plans into account in the consideration of whether to grant licenses/concessions. Fulfilling this duty might further entail, ensuring that potentially affected populations have access to effective remedy in instances where adverse human rights impacts do occur, that are caused by or linked to business activities.

As we continue to monitor and clarify the circumstances surrounding the present situation, we would be interested in knowing your Excellency's Government's views about the accuracy of the information contained in this letter and would be grateful to receive any additional information your Government may deem relevant. In particular, we would like to know further information about:

⁶ Inter-Am. Ct. H.R., Case of the Saramaka People v. Suriname, Monitoring Compliance with Judgment, (23 November 2011), para. 50, Resolution point 2.

1. The current status of the second amendment and supplemental agreement to the 7 April 1994 Mineral Agreement between the Government, N.V. Grasshopper Aluminum Company, IAMGOLD, and Rosebel Gold Mines N.V.;

2. The current status of the TapaJai project, including any work currently being carried out in connection with this project;

3. Whether consultations have been conducted with Saramaka traditional authorities or communities in connection with the amendment and supplement to the Mineral Agreement and related mining concessions or in connection with the TapaJai project's expansion of the Afobaka dam and reservoir;

4. Whether any environmental and social impact assessments have been undertaken in relation to either the mining concessions to IAMGOLD or the TapaJai project, and if so, the results of these studies;

5. Any recent efforts by the Government to implement the judgment of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*, and the recommendations contained in the 2011 report of the Special Rapporteur on the rights of indigenous peoples on Suriname (A/HRC/18/35/Add.7);

6. What steps has the Government taken to prevent, investigate, punish and redress human rights abuse within its territory and/or jurisdiction by business enterprises, in relation to the allegations raised in this letter.

We would appreciate a response from your Excellency's Government within 60 days. We undertake to ensure that your Excellency's Government's response will be taken into account in our assessment of this situation and in developing any recommendations that we make for your Excellency's Government's consideration pursuant to the terms of our mandates.

Please accept, Excellency, the assurances of our highest consideration.

James Anaya
Special Rapporteur on the rights of indigenous peoples



Pavel Sulyandziga
Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises