



Vereniging van Saramakaanse Gezagsdragers

Benoit Bosquet
FCPF
World Bank
Washington DC

Paramaribo, 18 October 2009

Dear Mr. Bosquet:

I am writing to you on behalf of the Saamaka people to express our serious concerns about Suriname's application for the Forest Carbon Partnership Facility ("FCPF"). In particular, we are deeply concerned that Suriname's pending application to the FCPF ("Suriname's R-PP" or the "R-PP") is not consistent with the rights of the Saamaka and other indigenous and tribal peoples, especially as expressed in the 2007 and 2008 judgments of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*.¹ The judgment of the Court, and the norms and procedures contained therein, comprise part of Suriname's "applicable international obligations," which apply by virtue of the operating principles set forth in FCPF's Charter.²

There has been no meaningful participation to date:

I am also writing to you because the Government of Suriname has failed to respond to our repeated efforts to raise these issues locally and we therefore feel compelled to communicate directly with the World Bank. This lack of communication includes the Government's wholly inadequate consultation processes pertaining to the FCPF. This has comprised two short meetings for which we were unable to adequately prepare and to choose our own representatives. For example, the consultation meeting on the R-PIN was held many months after that document had been submitted to the World Bank and one month *after* the document had been approved by the Bank. This is not consultation and effective participation in decision making. It doesn't even meet the Bank's free, prior and informed consultation standard as it was manifestly after the fact. Likewise, the meeting about the R-PP was a rushed affair that had every appearance of being held solely so that the Government could say that it had held a meeting, while also complying with a deadline for submission of the R-PP. The short meeting organised by Conservation International, which the State claims should count as consultation – which it was not – was equally deficient.

In short, the process to date has been wholly inadequate and incompatible with our rights. In its judgment in the *Saramaka People* case, for instance, the Inter-American Court held that the Saamaka people have the right to effectively participate in decision making that may affect our rights or territory³ and to do through

¹ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of the I-A Ct. Human Rights, 28 November 2007. Series C No. 172; and *Saramaka People v. Suriname. Judgment of 12 August 2008*. Interpretation of the Judgment of the I-A Ct. Human Rights on Preliminary Objections, Merits and Costs. Ser C No. 185. Available at: <http://www.corteidh.or.cr/casos.cfm>.

² *Charter of the Forest Carbon Partnership Facility, Operating Principles*, 3.1(d).

³ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172 (hereinafter "Saramaka People v. Suriname"), at para. 133.

representatives freely chosen by us in accordance with our own procedures.⁴ Such participation must be from the earliest stages of a plan or project, be undertaken in good faith and with the objective of obtaining our consent, and be culturally appropriate.⁵ Not one of these conditions has been met in the process pertaining to the FCPF so far. While the Government has stated that it will employ free, prior and informed consent as the basis for decision making – this is a right explicitly recognised by the Court in *Saramaka People* – it has failed to specify how it will do this and nor has it acted consistently with this principle to date.

The R-PIN and R-PP conflict with Suriname’s international obligations:

In addition to the preceding, we are greatly concerned that all of the State’s submissions to the FCPF are based on extant law that holds that the State is owner of all forests in Suriname (except for a small area of forest that is privately owned). In the first place, the Inter-American Court has held that the forests within Saamaka territory belong to the Saamaka people and the State has an (as yet unfulfilled) obligation to recognise and regularise our ownership rights.⁶ Not only has the State failed to even commence consultation with the Saamaka about this – which directly contravenes the orders of the Court – it is again claiming that it owns these forests, and the forests in all indigenous and tribal territories, in its submissions to the FCPF. This failure to address tenure issues also presents a major challenge in determining the actual extent of forests that may be counted in a REDD system.

While the State asserts public ownership over all forests – in fact, extant Suriname law provides that the State owns all land unless a title has been issued – this assertion is manifestly illegitimate because it contravenes Suriname’s international obligations, obligations made explicit in a ruling of an international human rights court. The State’s assertions are also manifestly discriminatory given that it acknowledges that the private persons may and do presently own forests in Suriname, yet denies that indigenous and tribal peoples hold equal rights.⁷ On what basis are indigenous and tribal peoples denied these rights?

We observe that the Inter-American Court in *Saramaka People* ruled that Suriname’s existing legal framework does not provide adequate protections to indigenous and tribal peoples, including as pertaining to tenure rights, and ordered that it be amended accordingly.⁸ Yet, the State continues to use this legal framework. The Court also unambiguously holds that indigenous and tribal peoples have the right to own, effectively control and manage our traditional territories,⁹ and that these rights

⁴ *Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* Judgment of 12 August 2008. Series C No. 185 (hereinafter “Interpretation Judgment”), at para. 18.

⁵ *Saramaka People v. Suriname*, para. 133 et seq.

⁶ *Saramaka People v. Suriname*, at para. 121 (stating that “members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory...”).

⁷ See Inter-American Commission on Human Rights, *Report on Admissibility and Merits No. 09/06 on the Case of the Twelve Saramaka Clans*, 2 March 2006, para. 6 & 14. Available at: http://www.forestpeoples.org/documents/s_c_america/suriname_iachr_12_saramaka_clans_mar_06_eng.pdf. (observing that indigenous and tribal peoples in Suriname “have endured racial discrimination, and that one major manifestation of such discrimination has been the failure of state authorities to recognize customary indigenous forms of land possession and use”).

⁸ *Saramaka People v. Suriname*, para. 106-16, 176-85.

⁹ *Saramaka People v. Suriname*, para. 87-117. Consistent with its conjunctive reading of the right to property and indigenous and tribal peoples’ right to self-determination, the Court explicitly ordered that legislative recognition of territorial ownership rights must include recognition of “their right to manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system.” *Saramaka People v. Suriname*, at para. 194 and 214(7). See also Interpretation Judgment, para. 48 and 50 (where the Court emphasised this aspect of its judgment).

do not depend on national laws for their existence.¹⁰ As noted above, the Court's ruling also extends to ownership of the forests within our territories because the natural resources¹¹ traditionally used by indigenous and tribal peoples¹² are owned by them.¹³ The UN Committee on the Elimination of Racial Discrimination has adopted similar recommendations with respect to indigenous and tribal peoples in Suriname,¹⁴ and it recently observed that Indonesia's proposed REDD legal framework was incompatible with that country's international obligations because it failed to recognise "proprietary rights to indigenous peoples in forests."¹⁵

Disregarding its international obligations, Suriname's R-PP fails to list any measures addressing respect for indigenous and tribal peoples' rights to own and control their traditional territories. Component 2a merely says that that a study is needed on "the identification of land tenure and other resource issues effecting [*sic*] REDD."¹⁶ It does not specify however what this study will focus on or how indigenous and tribal peoples may participate in the study. Component 2a also continues to incorrectly identify 'community forest', which may be issued pursuant to Article 41 of the 1992 Forest Management Act, as a form of tenure that may be granted to people in the interior. The Inter-American Court however rejected 'community forests' as an adequate means of providing protection for tenure rights in *Saramaka People*.¹⁷

Despite the preceding, Component 2c of the R-PP explains that a Presidential Task Force reported in January 2009 on finance mechanisms for sustainable forest management. It identified the "absence of formal collective land rights and titling for traditional forest communities" as a factor that has "a negative influence on forest financing...."¹⁸ Yet, nowhere in the R-PP are these issues discussed beyond commissioning the above mentioned study. This omission is difficult to understand in light of the State's obligations to implement the rulings of the Inter-American Court in *Saramaka People* and to do so no later than 20 December 2010.

¹⁰ See *inter alia* *Mayagna (Sumo) Awas Tingni Community Case*, Inter-American Court of Human Rights, August 31, 2001, Series C No 79 and; *Moiwana Community Case*, Inter-American Court of Human Rights, June 15, 2005, Series C No. 124.

¹¹ *Saramaka People v. Suriname*, at para. 122 (explaining that "it follows that the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life").

¹² *Id.* (explaining that "the right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land. That is, the demand for collective land ownership by members of indigenous and tribal peoples derives from the need to ensure the security and permanence of their control and use of the natural resources, which in turn maintains their very way of life").

¹³ *Saramaka People v. Suriname*, at para. 121 (stating that "In accordance with this Court's jurisprudence as stated in the *Yakye Axa* and *Sawhoyamaya* cases, members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries").

¹⁴ See *Concluding observation of the Committee on the Elimination of Racial Discrimination: Suriname*. CERD/C/SUR/CO/12, 3 March 2009 (inter alia, "urg[ing] the State Party to ensure legal acknowledgement of the collective rights of indigenous and tribal peoples ... to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land tenure system and to participate in the exploitation, management and conservation of the associated natural resources"). See also *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/64/CO/9/Rev.2, 12 March 2004.

¹⁵ See http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf.

¹⁶ Government of Suriname, *RPP, Component 2a*, 29/07/09, at p.5.

¹⁷ *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172, at para. 113 (finding that "the 'community forests' permits are essentially revocable forestry concessions that convey limited and restricted use rights, and are therefore an inadequate recognition of the Saramakas' property rights").

¹⁸ Government of Suriname, *RPP, Component 2c*, 29/07/09, at p.2.

Concluding comments:

The Saamaka people have not yet taken any position in relation to REDD or related activities that may be taken under the FCPF. Indeed, we have not been formally asked for our views and nor have we been provided with any information on which we could base a decision. On this basis, we are not necessarily opposed to REDD or similar initiatives, in large part, because we do not yet fully comprehend what is meant by REDD and what impact it may have on our rights and well being. We are opposed, however, to proposals and plans that do not respect our internationally guaranteed rights and which have been developed without any meaningful participation by indigenous and tribal peoples. In our view, disregard for our rights and participation not only contravenes Suriname's international obligations and World Bank operational policies, it also undermines effective forest protection and conservation measures.

With respect to the upcoming Participant's Committee meeting and its consideration of Suriname's R-PP, we urge the FCPF to not approve said R-PP until such time as the World Bank has completed its due diligence on Suriname's submissions to the FCPF and can ensure that these submissions and any future elaboration thereof are consistent with World Bank operational policies and Suriname's international obligations. We encourage the Bank to conduct its investigations with the full participation of indigenous and tribal peoples' freely chosen representatives.

While we are not necessarily opposed to REDD, we will oppose activities that do not respect our rights, including and especially as elaborated by the Court in *Saramaka People*. Therefore, we will closely monitor this process and, if necessary, will again seek the protection of the Inter-American Court if the substance of Suriname's submissions continues to fail to reflect our rights and do not contain consensual and specific mechanisms to ensure that these rights will be respected in practice. We may do so both through the Court's ongoing monitoring of the implementation of the judgment and through requests for interim orders. With respect to the former, we note that the Court is presently considering Suriname's first report on its compliance with the judgment and is past due to submit its second report.

We look forward to the opportunity to discuss these matters with World Bank staff.

Yours sincerely,

S.H. Jabini

On behalf of the *Gaama* of the Saamaka people
and the Chairman of the Association of Saamaka Authorities

cc. Navin Rai, FCPF
Haddy Sey, FCPF
Charles Di Leva, World Bank Legal Department
Victoria Tauli-Corpuz, TAP/UNPFII
Patricia Muelenhof, Chairperson, Implementation Saramaka Judgment
Commission
Commission of the Traditional Authorities of the Interior on Land Rights
Loreen Jubitana, Director, Bureau VIDS