



**VID S**  
**Vereniging van  
Inheemse Dorpshoofden  
in Suriname**

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**VSG**

**Vereniging van  
Saramaccaanse  
Gezagsdragers**



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Paramaribo, May 7th 2009

To:  
The Minister of  
Physical Planning, Land- and  
Forestry Management,  
Mr. M. Jong Tjien Fa, BA  
Cornelis Jong Bawstraat 10-12

&  
The Minister of  
Labor, Technological Development and  
Environment  
Mrs. J.D. Amarello-Williams  
Wagenwegstraat 22

&  
The Minister of  
Regional Development  
Mr. M. Felisi  
Van Roseveltkade 2

Subject: Surinames Readiness Plan Idea Note (R-PIN)

Honourable Ministers,

The Association of Indigenous Village Leaders in Suriname and the Association of Saramaka Authorities are writing to you to express our serious concerns about Suriname's Readiness Plan Idea Note ("R-PIN"), which was submitted to the World Bank's Forest Carbon Partnership Facility ("FCPF") on 15 December 2008.

From a presentation of Mrs. A. Tjon Sie Fat of Conservation International (CI) on 17 April 2009, followed by an invitation for a meeting with the acting director of the Ministry of Physical Planning, Land- and Forestry Management, received on April 24, 2009, we had to understand that the R-PIN was approved by the FCPF in March 2009 (we will take this up separately with the World Bank). We understand that the FCPF initiative is also linked to proposed revisions to the 1992 Forest Management Act, as you know, an issue that we are also concerned about.

As discussed herein, the R-PIN as presented by Suriname, is inconsistent with the Charter of the FCPF and Operational Policy 4.10 on Indigenous Peoples, a mandatory World Bank policy, because it fails to adequately address and respect

indigenous and tribal peoples' rights. Likewise, there have been no meaningful consultations with and effective participation by indigenous and tribal peoples with respect to the R-PIN. This contravenes Suriname international obligations, *inter alia*, as expressed in the 2007 and 2008 *Saramaka People* judgments of the Inter-American Court of Human Rights and in the jurisprudence of the Committee on the Elimination of Racial Discrimination (2004 and 2009).

We want to highlight at the outset that the FCPF's Charter affirms that its "Operating Principles" include the following:

The operation of the Facility, including implementation of activities under Grant Agreements and Emission Reduction Programs, shall: ... Comply with the World Bank's Operational Policies and Procedures, taking into account the need for effective participation of forest dependent indigenous peoples and forest dwellers in decisions that may affect them, respecting their rights under national law and applicable international obligations.<sup>1</sup>

Similarly, the FCPF Information Memorandum affirms that:

the FCPF will adhere to several principles of engagement, including 'inclusiveness and broad stakeholder participation' at the national and international levels. 'At the national level, the relevant stakeholders and right-holders will be consulted and participate in the readiness process [...] it is important that these actors participate early on in the readiness process. Countries will, for example, make special efforts to ensure that forest-dependent indigenous peoples and other forest dwellers meaningfully participate in decisions that may affect them and that their rights are respected consistent with national law and applicable international obligations.'<sup>2</sup>

As noted above, indigenous and tribal peoples did not participate in the elaboration of the R-PIN, nor did the State make any "special efforts" to seek or ensure our participation. That this is true is conceded in the document itself, which states that "Although the GoS desired more dialogue with ... Indigenous and Maroon peoples, time and resources did not permit such wide consultations."<sup>3</sup> The R-PIN further states that resource materials from prior consultation processes were used, such as the forest sector policy, the biodiversity strategy document, and the CSNR management plan. We observe that none of these processes adequately incorporated indigenous and tribal participation and were, moreover, about subjects different to that addressed in the R-PIN.

The R-PIN further states that "Dialogue with wider circles of relevant stakeholders, including representatives of the Maroon and Indigenous peoples, will take place in the next phases, i.e. during project preparation, implementation, monitoring and evaluation."<sup>4</sup> This is not acceptable: consultation cannot be meaningful after the Government has unilaterally pre-determined the parameters for the discussion. Also, we are not stakeholders, but rights-holders, and we fully expect

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<sup>1</sup> *Charter of the Forest Carbon Partnership Facility*, Operating Principles, 3.1(d).

<sup>2</sup> *Forest Carbon Partnership Facility: Information Memorandum*, World Bank, Washington D.C., 13 June 2008.

<sup>3</sup> *The Forest Carbon Partnership Facility (FCPF) Readiness Plan Idea Note (R-PIN)*, Government of Suriname February 16, 2009, at p. 2.

<sup>4</sup> *Id.*

to be treated as such in relation to the FCPF, especially as the FCPF Charter requires respect for our rights.

In the 17 April 2009 presentation about the FCPF, a member of the VIDS Bureau was told that the State does not have funds to consult with village leaders and indigenous and tribal communities. Instead, we were told that indigenous and tribal peoples will have to participate in the development of the R-PLAN through a single representative on a working group. This person, it was explained, would be somehow responsible for communicating with all indigenous and tribal peoples in interior. Moreover, it was stated that the Government intends to submit the Readiness PLAN (“R-PLAN”) before 24 August 2009 and, therefore, that any consultation process will have to be concluded in advance of that date.

It is deeply troubling to us that the Government found the time to consult with international NGOs (CI, WWF, Tropenbos), who were also involved in drafting the R-PIN, yet could not find the time to meet with indigenous and tribal peoples’ organisations and communities. Indeed, we were not even informed about the R-PIN until April 2009, some 4 months after the document had been submitted to the World Bank and a month after it had been approved by the FCPF. We cannot understand this omission since we will undoubtedly be directly and disproportionately affected by the proposed activities given that our traditional territories contain a large percentage of the forests within Suriname’s borders. International or other NGOs however have no rights to our forests and are merely interested parties.

The Government’s proposal with respect to our participation in the formulation of the R-PLAN, including the proposed August 2009 deadline, is simply unacceptable and cannot in anyway be considered to amount to ‘special efforts’ to secure our meaningful participation. It is not feasible to expect indigenous and tribal peoples and our communities to understand and make informed choices about the FCPF and associated activities within a few months. Moreover, as stated by the Inter-American Court of Human Rights in *Saramaka People*, indigenous and tribal peoples have the right to effectively participate in decision making “in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community....”<sup>5</sup> The Court stresses that effective participation must conform to the customs and traditions of indigenous and tribal peoples and that consultation must be undertaken in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.<sup>6</sup> The Court further explained in its 2008 interpretation judgment that “By declaring that the consultation must take place ‘in conformity with their customs and tradition’, the Court recognized that it is the Saramaka people, not the State, who must decide which person or group of persons will represent the Saramaka people in each consultation process....”<sup>7</sup> These principles apply to all indigenous and tribal peoples. The Government’s proposal is wholly incompatible with these binding norms of international law and must be revised in a participatory manner.

It is similarly deeply troubling that the Government has failed to adhere to the requirements pertaining to our rights and participation from the very beginning of its

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<sup>5</sup> *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.

<sup>6</sup> *Id.*

<sup>7</sup> *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.

engagement with the FCPF. This raises serious questions about the extent to which our rights may be addressed in future FCPF activities, including the R-PLAN.

With regard to respect for our rights, the R-PIN is wholly deficient and lacking in any meaningful detail. For example, our rights are not even mentioned in the section on p. 6 under the heading “key issues in the area of forest law enforcement and forest sector governance (e.g., concession policies and enforcement, land tenure, forest policies, capacity to enforce laws, etc.” Additionally, the R-PIN appears to be based on national law, which provides that “Virtually all forested land in Suriname is officially owned by the Government, who can grant permits and concessions for timber harvesting, mining, and so forth, but retains ownership.”<sup>8</sup> We observe that the Inter-American Court of Human Rights in *Saramaka People* unequivocally ruled that Suriname’s existing legal framework does not provide adequate protections to indigenous and tribal peoples and ordered that it be amended accordingly.<sup>9</sup> This included a **rejection** by the Court of ‘community forests’ as an adequate protection for our rights.<sup>10</sup> We further note that the R-PIN recognises that private persons presently own forests in Suriname and, therefore, that it is racially discriminatory to deny such rights to indigenous and tribal peoples.<sup>11</sup>

Continued assertions by the State of ownership of all forests also fail to account for the judgment of the Inter-American Court in *Saramaka People*, which unambiguously holds that indigenous and tribal peoples have the right to own, effectively control and manage our traditional territories,<sup>12</sup> and details the corresponding obligations of the State to recognize, respect and protect these rights.<sup>13</sup> The Court holds that these rights do not depend on national laws for their existence.<sup>14</sup> The Court’s ruling also extends to ownership of the forests within our territories because the natural resources<sup>15</sup> traditionally used by indigenous and tribal peoples<sup>16</sup>

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<sup>8</sup> *The Forest Carbon Partnership Facility (FCPF) Readiness Plan Idea Note (R-PIN)*, Government of Suriname February 16, 2009, p. 2. See also *id.* p. 6.

<sup>9</sup> *Saramaka People v. Suriname*, para. 106-16, 176-85.

<sup>10</sup> *Id.* 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”).

<sup>11</sup> 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](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”).

<sup>12</sup> *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).

<sup>13</sup> See *inter alia* *Saramaka People v. Suriname*, at para. 115 (explaining that the Court’s jurisprudence holds that traditionally-owned Saramaka territory “must first be delimited and demarcated, in consultation with [the Saramaka] and other neighboring peoples,” and the Saramaka people’s “title must be recognized and respected, not only in practice, but also in law, in order to ensure its legal certainty”).

<sup>14</sup> 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.

<sup>15</sup> *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”).

<sup>16</sup> *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

are owned by us.<sup>17</sup> The UN Committee on the Elimination of Racial Discrimination has adopted similar recommendations with respect to indigenous and tribal peoples in Suriname,<sup>18</sup> and it recently observed that Indonesia's proposed REDD legal framework was incompatible with its international obligations because it failed to recognise "proprietary rights to indigenous peoples in forests."<sup>19</sup>

The R-PIN explains that the "legal recognition of the collective land rights of tribal peoples is still in an embryonic phase in Suriname [and:] Suriname now needs to accelerate the process to initiate a specific land rights system for indigenous and tribal groups. This process involves the determination of boundaries and the demarcation of the lands traditionally inhabited and used, and the granting of a title to these areas."<sup>20</sup> We observe that legislation must first be adopted that provides for demarcation and titling. Further, it is difficult to see how Suriname can implement FCPF or other REDD activities until this process is completed as the Government will be unable to fully assess the total area of State-owned forest available for REDD activities until such time as the legislative and demarcation process is completed. The R-PIN seems to concur to some extent on this point by stating that "As long as the Government has not realized this, the land rights internationally recognized as human rights of indigenous and tribal groups are absolute in the sense that the State has to refrain from all actions that could limit these land rights." We highlight that the Inter-American Court issued an order to this effect in *Saramaka People*.<sup>21</sup>

Indigenous and tribal peoples could choose, as part of the exercise of their right to self-determination,<sup>22</sup> to include their territories in FCPF activities, provided that their free, prior and informed consent is legitimately secured. In other words, indigenous and tribal peoples have the right to enter into agreements, where they so choose, as part of effectively controlling and managing their territory, to develop or

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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").

<sup>17</sup> *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").

<sup>18</sup> 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.

<sup>19</sup> See [http://www2.ohchr.org/english/bodies/cerd/docs/early\\_warning/Indonesia130309.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Indonesia130309.pdf).

<sup>20</sup> *The Forest Carbon Partnership Facility (FCPF) Readiness Plan Idea Note (R-PIN)*, Government of Suriname February 16, 2009, at p. 7.

<sup>21</sup> *Id.* See also Interpretation Judgment, at para. 55 (reiterating Operative Paragraph 5 of *Saramaka People v. Suriname* and stating that "'until the demarcation and titling are completed, the State must refrain from acting or authorising others to affect the existence, value, use or enjoyment of such territory ... unless the State obtains the free, prior and informed consent of the Saramaka people").

<sup>22</sup> *Saramaka People v. Suriname*, at para. at 93. The judgment holds that indigenous and tribal peoples' property rights cannot be divorced from recognition of and respect for the right to self-determination, by virtue of which indigenous and tribal peoples' may "freely pursue their economic, social and cultural development," and may "freely dispose of their natural wealth and resources." See also *id.* at para. 95, where the Court explains that this supports an interpretation of the right to property, *inter alia*, that recognizes indigenous peoples' right "to freely determine and enjoy their own social, cultural and economic development" within their traditional territories.

further elaborate their own forestry management initiatives or to otherwise negotiate agreements for 'payment for ecological services' mechanisms.<sup>23</sup>

Honorable Ministers,

We would like to know if the State will continue to deny indigenous and tribal peoples' rights to own the forests within our traditional territories with respect to FCPF activities? If so, how can the State justify this position with respect to the *Saramaka People* judgement and the requirement contained in the Charter of the FCPF that our rights be respected?<sup>24</sup>

Even if the State (unjustifiably in our view) continues to assert ownership over all forests in Suriname for FCPF purposes, it will nevertheless have to secure indigenous and tribal peoples effective participation in decisions that affect our traditional territories, including the forests therein, and to obtain our free, prior and informed consent in relation to any activity that may affect the integrity of our lands and territories.<sup>25</sup> This, however, presupposes that the State will seek to restrict the exercise and enjoyment of our rights by asserting an "exceptional" and supervening public interest.<sup>26</sup> Is this what the State intends to do to implement FCPF activities?

We believe it necessary at this time to be clear that we will not accept any de-linking of our territorial rights and our right to consent to activities that may affect us from the FCPF or any other REDD or related activities. While we desire a mutually respectful relationship with the State in which dialogue and collaboration are the guiding values, we are and will remain opposed to any process that does not adequately respect our internationally guaranteed rights. In this respect, and as has been made clear by the Inter-American Court and other international human rights bodies, national law must be amended so that it is consistent with the full exercise and enjoyment of our rights. Until this happens, we have grave doubts about Suriname's readiness for FCFP or other REDD or related activities. We further observe that dialogue and collaboration are two-way processes and our exclusion from the R-PIN development and the Government's inadequate proposal in relation to the R-PLAN are not consistent with the values and goals associated with mutually respectful dialogue and collaboration.

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<sup>23</sup> See *Indigenous Community Yakye Axa v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005 Series C No. 125, at para. 146 (holding that "indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations"). See also Inter-American Commission on Human Rights, *Report 75/02, Case 11.140. Mary and Carrie Dann. United States*, December 27, 2002, para. 128.

<sup>24</sup> The rules set forth in the judgment apply to any proposed development or investment project that could affect the integrity of indigenous and tribal peoples' territories. The Court explains in a footnote that a 'development or investment project' means "any proposed activity that may affect the integrity of the lands and natural resources within the territory of the Saramaka people, particularly any proposal to grant logging or mining concessions." *Saramaka People*, at para. 129, note 127.

<sup>25</sup> Interpretation Judgment, at para. 17 (where the Court "emphasized that when large-scale projects could affect the integrity of the Saramaka people's lands and natural resources, the state has a duty not only to consult with the Saramaka's, but also to obtain their free, prior and informed consent in accordance with their customs and traditions."

<sup>26</sup> Interpretation Judgment, at para. 49 (observing that the right to property may be restricted, but only "under very specific, exceptional circumstances, particularly when indigenous or tribal land rights are involved").

We have additional comments about the R-PIN, but we will confine our remarks to those raised above for now.<sup>27</sup> We very much look forward to receiving a response to our questions above and as well as any other comments you may have. We also look forward to meeting you in person to discuss these issues and hope that we are able to find a mutually acceptable way forward.

Yours respectfully,

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The Association of Indigenous  
Village leaders in Suriname

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The Association of Saramaka  
Authorities

R. Pané  
Chair

W. Eduards  
Chair

cc. N. Hindori-Badrising, Cabinet of the President of the Republic of Suriname  
Benoit Bosquet, FCPF  
Navin Rai, FCPF  
Haddy Sey, FCPF  
Charles Di Leva, World Bank Legal Department  
Victoria Tauli-Corpuz, TAP/UNPFII  
Patricia Meulenhof, Chair of the Commission Implementation of the  
Saramaka Judgment  
Land rights Commission of the Traditional Authorities of Indigenous and  
Tribal Peoples in Suriname  
Saskia Ozinga, Board Foundation Tropenbos  
Jenny Springer, WWF US  
WWF Suriname  
Annette Tjon Sie Fat, director CI Suriname

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<sup>27</sup> For instance, we reject the unfounded assertions that shifting agriculture is a driver of deforestation in Suriname (p. 3, 5 and 9). We have practiced our traditional forms of agriculture for centuries without damage to the productive capacity of the forest. The forest has been and is currently being substantially damaged by mining and other activities encouraged and authorised by the State, often with substantial negative impacts on our territories and communities.